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Presidential Documents

Title 3—

The President

Proclamation 7502 of November 14, 2001

To Provide for the Termination of Action Taken With Regard to Imports of Lamb Meat

By the President of the United States of America

A Proclamation

1. Proclamation 7208 issued July 7, 1999, implemented action of a type described in section 203(a)(3) of the Trade Act of 1974, as amended (19 U.S.C. 2253(a)(3)) (the ''Trade Act''), with respect to imports of fresh, chilled, or frozen lamb meat, provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTS). Proclamation 7208 took effect on July 22, 1999.

2. Section 204(a)(1) of the Trade Act (19 U.S.C. 2254(a)(1)) requires the United States International Trade Commission (USITC) to monitor developments with respect to the domestic industry while action taken under section 203 remains in effect. If the initial period of such action exceeds 3 years, then the Commission must submit to the President a report on the results of such monitoring not later than the date that is the mid-point of the initial period of the action. The USITC report in Investigation Number TA–204–2, issued on January 22, 2001, has been submitted.

3. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President to reduce, modify, or terminate a safeguard action if, after taking into account any report or advice submitted by the USITC and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, the President determines that changed circumstances warrant such reduction, modification, or termination. The President's determination may be made, *inter alia*, on the basis that the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances.

4. In view of the information provided in the USITC's report, and having sought advice from the Secretary of Commerce and the Secretary of Labor, I determine that the effectiveness of the action taken under section 203 with respect to lamb imports has been impaired by changed economic circumstances. Accordingly, I have determined, pursuant to section 204(b)(1)(A) of the Trade Act, that termination of the action taken under section 203 with respect to lamb meat imports is warranted.

5. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

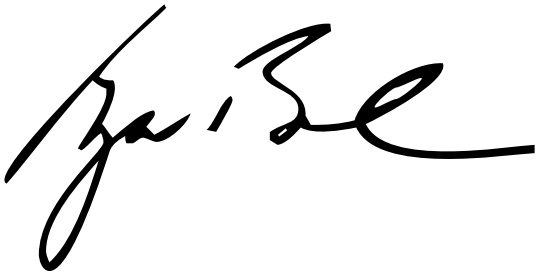
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 204 and 604 of the Trade Act, do proclaim that:

(1) The HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, after the close of November 14, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, 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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Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, after the close of November 14, 2001, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified by striking U.S. note 8, subheading 9903.02.01 through 9903.02.06, and the superior text thereto.

[FR Doc. 01–28993
Filed 11–16–01; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

Federal Register
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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.

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Denver Field Office. On November 12, 2001, the Board relocated its Denver Field Office from 12567 W. Cedar Drive, Suite 100, Lakewood, Colorado to 165 South Union Blvd., Suite 318, Lakewood, Colorado. Appendix II of this part is amended to show the new address. The facsimile number and the geographical areas served by the Denver Field Office are unchanged.

EFFECTIVE DATE: November 12, 2001.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend Appendix II to 5 CFR part 1201 in item 5a by removing ''12567 West Cedar Drive, Suite 100, Lakewood, Colorado 80228 and adding, in its place ''165 South Union Blvd., Suite 318, Lakewood, Colorado 80228''.

Dated: November 9, 2001.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 01–28690 Filed 11–16–01; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 510

Availability of Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations of the Agricultural Research Service (ARS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It informs the public of the change in location and telephone number of the FOIA Coordinator for ARS, provides a TTY number for access for hearing impaired individuals, and addresses multitrack processing of requests and the availability of ''reading room'' material by electronic telecommunication, pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231.

EFFECTIVE DATE: This rule will become effective on December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 5601 Sunnyside Avenue, Mail Stop 5128, Beltsville, Maryland 20705–5128; Telephone (301) 504–1655; TTY–VOICE (301) 504–1743; Facsimile (301) 504–1648; E-mail: *shutchison@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The FOIA requires Federal agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 510 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, subpart A, implementing FOIA.

Pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, § 510.2 is updated to address the availability of ''reading room'' material by electronic telecommunication means. Also § 510.4 is revised to address multitrack processing of requests. As a result, former §§ 510.4 and 510.5 are renumbered and § 510.6 added.

This rule also amends part 510 to inform the public of the change in the location and telephone number of the FOIA Coordinator for ARS and to provide a TTY number for access for hearing impaired individuals.

This rule will become effective 30 days after this publication pursuant to 5 U.S.C. 553(d). Further, this rule has been reviewed to ensure accordance with Executive Orders 12988 and 12866. This rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR Part 510

Freedom of Information.

Accordingly, 7 CFR part 510 is revised to read as follows:

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Multitrack processing.
510.5 Denials.
510.6 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

§ 510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§ 510.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ARS at the following

office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic.*

§ 510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with Subsection 1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov.* The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with Subsection 1.3(c) of this title.

§ 510.4 Multitrack processing.

(a) When ARS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) ARS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ARS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in § 1.16 of this title, or the requester is entitled to expedited processing as set forth in § 1.9 of this title.

§ 510.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.7(a) of this title.

§ 510.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.14 of this title and should be addressed as follows: Administrator, ARS, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this October 29, 2001.

Edward B. Knipling,

Associate Administrator, Agricultural Research Service.

[FR Doc. 01–28835 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3404

Availability of Information

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations of the Cooperative State Research, Education, and Extension Service (CSREES) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It informs the public of the change in location and telephone number of the FOIA Coordinator for CSREES, provides a TTY number for access for hearing impaired individuals, and addresses multitrack processing of requests and the availability of ''reading room'' material by electronic telecommunication, pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231.

EFFECTIVE DATE: This rule will become effective December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 5601 Sunnyside Avenue, Mail Stop 5128, Beltsville, Maryland 20705–5128; Telephone 301–504–1655; TTY–VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *shutchison@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The FOIA requires Federal agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 3404 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, subpart A, implementing FOIA.

Pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, § 3404.2 is updated to address the availability of ''reading room'' material by electronic telecommunication means. Also § 3404.4 is revised to address multitrack processing of requests. As a result, §§ 3404.4 and 3404.5 are renumbered and § 3404.6 added.

This rule also amends part 3404 to inform the public of the change in the location and telephone number of the FOIA Coordinator for CSREES and to provide a TTY number for access for hearing impaired individuals.

This rule will become effective 30 days after this publication pursuant to 5 U.S.C. 553(d). Further, this rule has been reviewed to ensure accordance with Executive Orders 12988 and 12866. This rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR part 3404

Freedom of Information.

Accordingly, 7 CFR part 3404 is revised to read as follows:

PART 3404—PUBLIC INFORMATION

Sec.
3404.1 General statement.
3404.2 Public inspection, copying, and indexing.
3404.3 Requests for records.
3404.4 Multitrack processing.
3404.5 Denials.
3404.6 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

§ 3404.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Cooperative State Research, Education, and Extension Service (CSREES) to the public.

§ 3404.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public

may request access to such materials maintained by CSREES at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic.*

§ 3404.3 Requests for records.

Requests for records of CSREES under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov.* The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(c) of this title.

§ 3404.4 Multitrack processing.

(a) When CSREES has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) CSREES may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) CSREES shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in § 1.16 of this title, or the requester is entitled to expedited processing as set forth in § 1.9 of this title.

§ 3404.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.7(a) of this title.

§ 3404.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.14 of this title and should be addressed as follows: Administrator, CSREES, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 31st day of October 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–28837 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

7 CFR Part 3601

Availability of Information

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations of the National Agricultural Statistics Service (NASS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It informs the public of the change in location and telephone number of the FOIA Coordinator for NASS, provides a TTY number for access for hearing impaired individuals, addresses multitrack processing of requests and the availability of ''reading room'' material by electronic telecommunication pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, and provides current information on obtaining NASS published data and reports.

EFFECTIVE DATE: This rule will become effective on December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 5601 Sunnyside Avenue, Mail Stop 5128, Beltsville, Maryland 20705–5128; Telephone 301–504–1655; TTY-VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *shutchison@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The FOIA requires Federal agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 3601 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, subpart A, implementing FOIA.

Pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, § 3601.2 is updated to address the availability of ''reading room'' material by electronic telecommunication means. Also § 3601.4 is revised to address multitrack processing of requests. Former § 3601.6 is updated to provide current information on obtaining NASS's published data and reports, including online access. As a result, former §§ 3601.4, 3601.5, and 3601.6 are renumbered and § 3601.7 added.

This rule also amends part 3601 to inform the public of the change in the location and telephone number of the FOIA Coordinator for NASS and to provide a TTY number for access for hearing impaired individuals.

This rule will become effective 30 days after this publication pursuant to 5 U.S.C. 553(d). Further, this rule has been reviewed to ensure accordance with Executive Orders 12988 and 12866. This rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR Part 3601

Freedom of Information.

Accordingly, 7 CFR part 3601 is revised to read as follows:

PART 3601—PUBLIC INFORMATION

Sec.
3601.1 General statement.
3601.2 Public inspection, copying, and indexing.
3601.3 Requests for records.
3601.4 Multitrack processing.
3601.5 Denials.
3601.6 Appeals.
3601.7 Requests for published data and information.

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto.

§ 3601.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the National Agricultural Statistics Service (NASS) to the public.

§ 3601.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by NASS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic.*

§ 3601.3 Requests for records.

Requests for records of NASS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1643; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov.* The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(c) of this title.

§ 3601.4 Multitrack processing.

(a) When NASS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) NASS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) NASS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in § 1.16 of this title, or the requester is entitled to expedited processing as set forth in § 1.9 of this title.

§ 3601.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.7(a) of this title.

§ 3601.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.13 of this title and should be addressed as follows: Administrator, NASS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3601.7 Requests for published data and information.

(a) Published data and reports produced by NASS since 1995 are available via the NASS Web site at *http://www.usda.gov/nass/* or an e-mail subscription may be established via the website under Publications. Searching on the website is available by topic, by title, or by date. The titles displayed in the search include NASS's published periodicals and annual reports. Full text of all the titles is available at no cost (PDF Files beginning 1999). Printed copies and reports published after 1996 can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1 (800) 999–6779 (8:30 a.m.–5 p.m. Eastern Time, M–F).

(b) Information on published data, printed subscription rates, and historic publications is available from the Secretary, Agricultural Statistics Board, NASS, U.S. Department of Agriculture, Washington, DC 20250. This information is also available from the NASS website under Publications, NASS Catalog, NASS Periodicals and Annual Reports. Published data, from each State Statistical Office, are available via the NASS website under State Information or by e-mail subscription. Published data subscription forms are available from the State Statistician at each State Statistical Office. Addresses are listed in appendix A to part 3600 of this chapter.

Done at Washington, DC, this 31st day of October 2001.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 01–28838 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

7 CFR Part 3701

Availability of Information

AGENCY: Economic Research Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations of the Economic Research Service (ERS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA). It informs the public of the change in location and telephone number of the FOIA Coordinator for ERS, provides a TTY number for access for hearing impaired individuals, addresses multitrack processing of requests and the availability of ''reading room'' material by electronic telecommunication, pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, and provides current information on obtaining ERS published data and reports.

EFFECTIVE DATE: This rule will become effective December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 5601 Sunnyside Avenue, Mail Stop 5128, Beltsville, Maryland 20705–5128; Telephone 301–504–1655; TTY–VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *shutchison@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The FOIA requires Federal agencies to publish in the **Federal Register** regulations describing how the public may obtain information from the agency (5 U.S.C. 552(a)(1)). Part 3701 of Title 7, Code of Federal Regulations, is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, subpart A, implementing FOIA.

Pursuant to the Electronic FOIA Amendments of 1996, Public Law 104–231, § 3701.2 is updated to address the availability of ''reading room'' material by electronic telecommunication means. Also § 3701.4 is revised to address multitrack processing of requests. Former § 3701.6 is updated to provide current information on obtaining ERS published data and reports. As a result, former §§ 3701.4, 3701.5, and 3701.6 are renumbered and § 3701.7 added.

This rule also amends part 3701 to inform the public of the change in the location and telephone number of the FOIA Coordinator for ERS and to provide a TTY number for access for hearing impaired individuals.

This rule will become effective 30 days after this publication pursuant to 5 U.S.C. 553(d). Further, this rule has been reviewed to ensure accordance with Executive Orders 12988 and 12866. This rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of this Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR part 3701

Freedom of Information.

Accordingly, 7 CFR part 3701 is revised to read as follows:

PART 3701—PUBLIC INFORMATION

Sec.
3701.1 General statement.
3701.2 Public inspection, copying, and indexing.
3701.3 Requests for records.
3701.4 Multitrack processing.
3701.5 Denials.
3701.6 Appeals.
3701.7 Requests for published data and information.

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A and appendix A thereto. *§ 3701.1 General statement.*

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title and appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Economic Research Service (ERS) to the public.

§ 3701.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ERS at the following office: Information Staff, ARS, REE, USDA, Room 1–2248, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743. Office hours are 8 a.m. to 4:30 p.m. Information maintained in our electronic reading room can be accessed at *http://www.ars.usda.gov/is/foia/#Electronic.*

§ 3701.3 Requests for records.

Requests for records of ERS under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.5 of this title and submitted to the FOIA Coordinator, Information Staff, ARS, REE, USDA, Mail Stop 5128, 5601 Sunnyside Avenue, Beltsville, MD 20705–5128; Telephone (301) 504–1640 or (301) 504–1655; TTY–VOICE (301) 504–1743; Facsimile (301) 504–1648; e-mail *vherberger@ars.usda.gov* or *shutchison@ars.usda.gov.* The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(c) of this title.

§ 3701.4 Multitrack processing.

(a) When ERS has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) ERS may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ERS shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in § 1.16 of this title, or the requester is entitled to expedited processing as set forth in § 1.9 of this title.

§ 3701.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.7(a) of this title.

§ 3701.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.14 of this title and should be addressed as follows: Administrator, ERS, U.S. Department of Agriculture, Washington, DC 20250.

§ 3701.7 Requests for published data and information.

Published data and reports produced by ERS since 1996 are available on the ERS Web site at *http//www.ers.usda.gov.* Searching on the website is available by topic, by title, or by date. The titles displayed in the search include ERS's separately published research reports as well as articles in ERS-produced periodicals. Full text of all the titles are available at no cost (usually in PDF Files). Printed copies and reports published before 1996 (while supplies last) can be purchased from the ERS-NASS sales desk at the National Technical Information Center at 1–800–999–6779 (8:30 a.m.–5 p.m., Eastern Standard Time, M–F).

Done at Washington, DC, this 31st day of October 2001.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 01–28836 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

RIN 1904–AB03

Energy Conservation Program for Consumer Products: Amendment to the Definition of ''Electric Refrigerator''

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) is amending the definition of *Electric refrigerator* in its energy conservation program regulations to include a maximum temperature of the fresh food storage compartment, and to exclude certain appliances whose physical configuration makes them unsuitable for general storage of perishable foods.

EFFECTIVE DATE: December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, phone (202) 586–9611 or by e-mail at *michael.raymond@ee.doe.gov.*

Francine Pinto, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, phone (202) 586–7432.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

DOE received requests from several manufacturers of wine coolers, including Danby Products, Ltd. and the Witt Company, seeking exemptions from the refrigerator energy efficiency standards for wine coolers. These products are configured with special storage racks for wine bottles and in general do not attain as low a storage temperature as a standard refrigerator. These characteristics make them unsuitable for general long-term storage of perishable foods. Wine coolers also have glass front doors which makes them less energy efficient than standard refrigerators.

On July 13, 1999, DOE published a Notice of Proposed Rulemaking (NOPR) to amend the definition of the term ''electric refrigerator.'' 64 FR 37706. The Department proposed to amend the definition of electric refrigerator at 10 CFR 430.2 to exclude wine coolers from coverage by the energy efficiency regulations. Sales of these products are small and excluding them from coverage would not have any significant impacts.

DOE proposed to exclude wine coolers by including an upper temperature limit in the definition of electric refrigerator. The refrigerator definition contains the phrase ''designed for the refrigerated storage of food at temperatures above 32° F.'' Clearly, not all temperatures above 32° F would be suitable for the refrigerated storage of food. What is lacking in the definition is a temperature range suitable for food storage for a reasonable length of time. The ''American National Standard—Household Refrigerators/Household Freezers,'' ANSI/AHAM HRF–1–1988, Section 7.6.5.1, ''Recommended Level of Performance'' states: ''It is recommended that in the fresh food compartment of household refrigerators, an average temperature within the range of 34° F and 41° F be attainable between the coldest and warmest settings of the controls. * * *'' Also, from the same paragraph, ''Refrigerator-freezer design and development engineers believe 41° F to be a very practical but not absolute upper limit.''

Accordingly, the Department proposed to change the definition of a refrigerator to include the 41° F upper limit, and to exclude refrigerators containing special storage racks only. By the proposed definition, appliances which, at the coldest setting of the controls, could not attain a fresh food compartment temperature below 41° F, and contained only special-purpose storage racks, would not be considered a refrigerator and, therefore, not a covered product. The definition proposed by the Department was:

''*Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32° F and below 41° F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32° F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8° F.''

II. Discussion

In response to the July 13, 1999, NOPR, the Department received two comments. The Association of Home Appliance Manufacturers (AHAM) supported the proposed rule, but recommended that the upper temperature limit be lowered from 41° F to 38° F. AHAM stated ''this revision is necessary to accommodate the temperatures needed for champagne and other sparkling wines and to avoid unnecessary government imposed limits on technological and commercial development. 38° F also is the rating point for an ''all-refrigerator'' and, therefore, using that limit sets the appropriate divider.'' The Sub-Zero Freezer Company also recommended lowering the upper temperature limit from 41° F to 38° F.

As AHAM and Sub-Zero stated, 38° F is the rating point for the all-refrigerator in the DOE test procedure. It is also the rating point for variable defrost control refrigerators. The purpose of the revised definition of an electric refrigerator is to exclude wine coolers, not all-refrigerators or variable defrost control refrigerators. For this reason, the Department does not want to set the upper limit temperature at 38° F. In order to accommodate concerns about temperatures for the storage of champagne and sparkling wines, we have decided to lower the defined upper temperature limit from 41° F to 39° F. The Department today revises the definition of an electric refrigerator (10 CFR Part 430.2 Definitions), as follows: *Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32° F and below 39° F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32° F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8° F.

III. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

The Department has reviewed this rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). DOE has concluded that this rule is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021, which applies to rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This 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 the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, requires an assessment of the impact of regulations on small businesses. Small businesses are those firms within an industry that are privately owned and less dominant in the market and that meet the size standards for small concerns promulgated by the Small Business Administration. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. The regulatory flexibility analysis requirement does not apply if the head of an agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Today's final rule redefines the term ''electric refrigerator'' to exclude wine coolers. This change to the definition was requested by small

manufacturers of wine coolers for their benefit, and no negative impact on any small manufacturer is foreseen. Accordingly, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

E. Review Under Executive Order 12988, ''Civil Justice Reform''

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 Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 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 reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

F. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 13132

Executive Order 13132 ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must have 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 on March 14, 2000. (65 FR 13735). Today's final rule only changes the definition of an electric refrigerator and 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.

H. Review Under the Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (''Unfunded Mandates Act'') requires that the Department prepare an assessment of costs and benefits before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The written assessment must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented. The Department has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. 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 proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule will not have a significant adverse effect on the supply, distribution, or the use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior

to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on November 14, 2001.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition for *Electric refrigerator* to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator means a cabinet designed for the refrigerated storage of food at temperatures above 32° F and below 39° F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32° F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8° F.

* * * * *

[FR Doc. 01–28822 Filed 11–16–01; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective November 6, 2001. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202)452-3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 2.0 percent to 1.5 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the Federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board of Governors stated that heightened uncertainty and concerns about a deterioration in business conditions both here and abroad are damping economic activity. For the foreseeable future, then, the Committee continues to believe that, against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are weighted mainly toward conditions that may generate economic weakness. Although the necessary reallocation of resources to enhance security may restrain advances in productivity for a time, the long-term prospects for productivity growth and the economy remain favorable and should become evident once the unusual forces restraining demand abate.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth. The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Authority: 12 U.S.C. 343 et seq., 347a, 347b, 347c, 347d, 348 et seq., 357, 374,374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository instituions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	1.5	November 8, 2001

Federal Reserve Bank	Rate	Effective
New York	1.5	November 6, 2001
Philadelphia	1.5	November 7, 2001
Cleveland	1.5	November 8, 2001
Richmond	1.5	November 6, 2001
Atlanta	1.5	November 8, 2001
Chicago	1.5	November 7, 2001
St. Louis	1.5	November 7, 2001
Minneapolis	1.5	November 7, 2001
Kansas City	1.5	November 8, 2001
Dallas	1.5	November 8, 2001
San Francisco	1.5	November 6, 2001

By order of the Board of Governors of the Federal Reserve System, November 13, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–28815 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1116]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home–secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2002 is $480.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Minh–Duc T. Le, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601 – 1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments are contained in § 226.32 of the regulation and impose substantive limitations and additional disclosure requirements on certain closed–end mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $465 for the year 2001.

The Bureau of Labor Statistics publishes consumer–based indices monthly, but does not ''report'' a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollarfigure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2001, was the CPI–U index ''in effect'' on June 1, and reflects the percentage increase from April 2000 to April 2001. The adjustment to the $400 figure below reflects a 3.27 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $480 or 8 percent of the total loan amount, effective January 1, 2002. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2002. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Section 226.32——Requirements for Certain Closed–End Home Mortgages*, under Paragraph 32(a)(1)(ii), paragraph 2.vii. is added.

SUPPLEMENT I TO PART 226–OFFICIAL STAFF INTERPRETATIONS

* * * * *

SUBPART E–SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

* * * * *

Section 226.32—Requirements for Certain Closed–End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. Annual adjustment of $400 amount.

* * * * *

vii. For 2002, $480, reflecting a 3.27 percent increase in the CPI–U from June 2000 to June 2001, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, November 14, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–28849 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–09–AD; Amendment 39–12502; AD 2001–23–05]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Models TB 9, TB 10, TB 20, TB 21, and TB 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe Aerospatiale (SOCATA) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes that do not have factory Modification 165, any edition, incorporated on the front seats. This AD requires you to modify the front seats that have solid metal seat pans. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to eliminate the potential for the front seats to inadvertently unlock from their fixed positions. Such uncontrolled movement could prevent the pilot from making the necessary flight maneuvers to control the airplane.

DATES: This AD becomes effective on January 4, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2002.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all SOCATA Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes that do not have factory Modification 165 incorporated on the front seats. The DGAC reports cases where the seat pan interfered with the front seat locking mechanism. Interference with the seat locking mechanism could result in uncontrolled movement of the front seats.

This condition does not affect airplanes with factory Modification 165, any edition, incorporated. This modification consists of cutting a slot in the solid metal seat pan to eliminate the interference.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA—Groupe Aerospatiale (SOCATA) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes that do not have factory Modification 165, any edition, incorporated on the front seats. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 24, 2001 (66 FR 44556). The NPRM proposed to require you to modify the front seat configuration.

What is the potential impact if FAA took no action? The actions specified by this AD are intended to eliminate the potential for the front seats to inadvertently unlock from their fixed positions. Such uncontrolled movement could prevent the pilot from making the necessary flight maneuvers to control the airplane.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Manufacturer Estimates 36 Aircraft in the U.S. Fleet Are Affected by the Proposed AD

What is the commenter's concern? The AD affects only certain models of seats; commenter estimates that 36 aircraft in the U.S. were affected by the AD. The commenter wants FAA to reflect this in the Cost Impact section.

What is FAA's response to the concern? The FAA agrees with the manufacturer that this initial estimate is correct. However, it is possible that owner/operators might have had modifications made to the aircraft later that make them subject to the AD. The FAA will note that this AD possibly affects 125 aircraft in the U.S. registry.

Comment Issue No. 2: FAA Better Identify Seats Affected by the AD

What is the commenter's concern? One commenter states that only seats with solid metal seat pans are affected by this AD; seats with a mesh seat pan are not affected. The commenter recommended that FAA make it clear in the AD what seats are affected.

What is FAA's response to the concern? The FAA agrees with the commenter and will clearly identify that only solid metal seat pans are affected by the AD.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD possibly affects 125 airplanes in the U.S. registry. Of these 125 airplanes, 36 had the affected seats installed at the manufacturer. The other 89 airplanes could have had these seats installed since manufacture.

What is the cost impact of this AD on owners/operators of the affected

airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	$58 ($29 per seat, 2 seats per airplane).	$358.	$358 × 125 = $44,750.

Regulatory Impact

Does this AD impact various entities? 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.

Does this AD involve a significant rule or regulatory action? 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 copy of the final 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, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2001–23–05 SOCATA Groupe Aerospatiale: Amendment 39–12502; Docket No. 2001–CE–09–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes, all serial numbers, that:

(1) Do not incorporate factory Modification 165, any edition. Modification 165 consists of cutting a slot in the solid metal seat pan to eliminate interference with the locking mechanism;

(2) are equipped with solid metal seat pans; and

(3) are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to eliminate the potential for the front seats to inadvertently unlock from their fixed positions. Such uncontrolled movement could prevent the pilot from making the necessary flight maneuvers to control the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Modify the front seats that have solid metal seat pans. A seat that has a mesh seat pan is not affected and does not require modification.	Within the next 100 hours time-in-service (TIS) after January 4, 2002 (the effective date of the AD).	In accordance with the Accomplishment Instructions section of SOCATA Service Bulletin SB 10–115 25, dated December 2000, and the applicable maintenance manual.
(2) Do not install any of the seats referenced in SOCATA Service Bulletin SB 10–115 25, dated December 2000 (or FAA-approved equivalent part numbers), without incorporating the modification required by paragraph (d)(1) of this AD.	As of January 4, 2002 (the effective date of this AD).	In accordance with SOCATA Service Bulletin SB 10–115 25, dated December 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with SOCATA Service Bulletin SB–10–115–25, dated December 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 4, 2002.

Note 2: The subject of this AD is addressed in French AD 2001–005(A), dated January 10, 2001.

Issued in Kansas City, Missouri, on November 5, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28419 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–44–AD; Amendment 39–12505; AD 2001–23–08]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes priority letter AD 90–02–23, that is applicable to certain Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) propellers. That priority letter currently requires repetitive visual inspections of propeller hubs for cracks using a 10X glass and, if necessary, removal of cracked hubs and replacement with serviceable parts. This amendment changes the frequency and method of inspection by requiring initial and repetitive eddy current inspections (ECI) of the propeller hub fillet radius for cracks and requires that certain model propeller hubs be removed from service. In addition, this AD allows installation of an improved design propeller hub as terminating action to the repetitive ECI. This amendment is prompted by reports of cracked propeller hubs found in service after they had been inspected in accordance with the visual inspections required by the current AD. The actions specified in this AD are intended to prevent failure of the propeller hub resulting from cracks, that can cause blade separation and subsequent loss of aircraft control.

DATES: Effective date December 24, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc., Product Support Department, One Propeller Place, Piqua, OH 45356; telephone: (937) 778–4379, fax: (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7031, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding priority letter airworthiness directive (AD) 90–02–23, applicable to certain Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) propellers, was published in the **Federal Register** on January 27, 1999 (64 FR 4061). That action proposed to change the frequency and method of inspection by requiring initial and repetitive ECI of the propeller hub fillet radius for cracks and, if necessary, removal and replacement of cracked hubs with serviceable parts. In addition, that action proposed to expand the models of propellers affected and allow installation of an improved design propeller hub as terminating action to the repetitive ECI.

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.

Replace ''A'' Hub Design With ''B'' Hub Design

The manufacturer notes that since the NPRM was published, there have been some instances of fractures involving the rear hub half of the ''A'' suffix serial numbered hubs. Since the rear half of the hub cannot be readily inspected, the manufacturer recommends the replacement of ''A'' suffix hubs with the current ''B'' suffix hubs, which incorporate a new design.

The FAA agrees in part and has incorporated into this AD the replacement requirements for ''A'' suffix hubs per Hartzell Service Bulletin HC–SB–61–227, Revision 2, dated May 8, 2000. The FAA is also considering expanding the applicability of this action in the future to remove from service all ''A'' suffix hub designs, regardless of the aircraft model they are installed on.

Current AD is Adequate

One commenter contends that the current AD, requiring visual inspections using a 10× glass at intervals of 50 hours, adequately detects cracked hubs prior to catastrophic failure. Since a new design hub is available, and no catastrophic failures have been attributed to a failure to detect a crack using the current inspections, the commenter contends that there is no need for a more expensive eddy current inspection.

The FAA does not agree. The service history of these propellers since the current AD was issued indicates that the visual inspections are not working as intended. Two hubs that were apparently inspected visually did, in fact, fail in service, releasing propeller blades. In another instance, a crack was discovered during overhaul, 32 hours following a visual inspection performed in accordance with the current AD. Other instances were reported where cracks were found only after unusual vibrations or grease and oil on the windshield prompted examinations of the propeller hubs, which had passed the visual inspection required by the current AD. As a result, the FAA believes that an ECI of the propeller hub is required in order to increase the probability of detection and decrease the risk of in-service failure of the hub.

Increase Repetitive Inspection Period

One commenter requests that the repetitive inspection period be changed from 150 hours to 400–500 hours, then shortened after more data is collected. The commenter feels that the cost analysis does not reflect the true costs of having to perform ECI every 150 hours, particularly for operators located in remote areas of the country.

The FAA does not agree. The service history demonstrates the need for ECI in lieu of the visual inspection. The 150-hour interval is based on an engineering evaluation of crack growth. The cost analysis estimates the average cost to perform the mandated actions. Those costs could be higher in certain cases. Operators could mitigate higher costs by seeking training and certification to perform the ECI at the operator's location. Operators desiring to pursue this alternative should contact Hartzell. In addition, the AD allows for

replacement of certain propeller hubs as terminating action for the repetitive ECI.

Mandatory Overhaul

One commenter notes that instead of requiring repetitive ECI and making design changes to the propeller, operators should be required to adhere to the manufacturer's recommended overhaul interval of 5 years or 1,000 hours. The commenter is concerned that the design changes will introduce a new set of problems, and in the commenter's opinion, while a propeller failure is extremely critical, the older Hartzell propeller designs are extremely reliable when properly maintained.

The FAA does not agree. The cracks were not caused by the lack of maintenance. The repetitive ECI inspection is required at intervals of 150 hours which is far more often than a 5-year or 1,000-hour time between overhaul.

Seriousness of Propeller Failure

One commenter expresses concerns that the FAA has treated the potential failure of these propeller hubs with too much complacency, allowing visual inspections using a 10X glass. The commenter notes that a crack detected using a 10X glass may well be very close to failure and that any propeller hub failure exposes the aircraft to serious control problems and could likely result in a loss of the aircraft.

The FAA agrees that cracks in a propeller hub present a very serious unsafe condition. When the current AD was issued, the FAA viewed a visual inspection with a very short repetitive interval as sufficient to address that serious unsafe condition. Based on the service history since then, the FAA has determined that an inspection method with a higher sensitivity of crack detection is needed, and this AD will require an ECI with longer intervals.

AD Applicability and Aircraft Names

One commenter suggests changes to the aircraft names listed in the AD. The commenter notes that two different type certificates cover aircraft named Britten Norman BN–2, and the AD does not clearly indicate which aircraft may have the affected propellers. The commenter also notes that the phrase ''agricultural category'' does not clearly identify which aircraft may have an affected propeller. The commenter also notes that the Hartzell Y-shank propeller does not appear to be eligible for installation on a number of the aircraft listed in the AD.

The FAA agrees that the applicability of the proposed AD was not clear and that changes are needed to provide operators with an unambiguous identification of the affected propellers. The FAA has reviewed the aircraft type certificate data sheets and supplemental type certificate data sheets and has changed the reference to the ''Britten Norman BN–2( ) aircraft'' to ''Pilatus Britten Norman or Britten Norman BN–2 series aircraft (also known as the Islander or Trislander).'' The AD applies to all Hartzell Y-shank propellers installed on any Britten Norman or Pilatus Britten Norman BN–2 series aircraft that have a Textron Lycoming 540 series engine. The AD does not apply to the Textron Lycoming 541 series engine. The general statement of applicability also includes all Hartzell Y-shank propeller installed on any aircraft certificated in the acrobatic catergory or that has ever been used for agricultural purposes. The list of aircraft types that follows that general statement includes the changes the commenter noted, ''Great Lakes Aircraft Co. 2T–1 series aircraft'' has been changed to ''Great Lakes Aircraft Co. or Chaparral Motors 2T–1 series aircraft,'' Piper ''PA–36–600'' has been changed to ''Piper PA–36–300.'' The list includes those aircraft types that may have a Hartzell Y-shank propeller installed through supplemental type certificate (STC). That STC approval may not be reflected on the aircraft's type certificate data sheet.

Other Changes

Since the FAA published this proposal, the manufacturer has updated Service Bulletin HC–SB–61–227. This AD references Hartzell Propeller Service Bulletin HC–SB–61–227, Revision 2, dated May 8, 2000.

The FAA has also made editorial changes in the requirements of the AD. Those changes do not alter the substance of the requirements from what was proposed.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 10,800 propellers of the affected design in the worldwide fleet. The FAA estimates that 4,600 propellers installed on aircraft of U.S. registry would be affected by ECI action of this AD, that it would take approximately 1 work hour per propeller to accomplish the ECI actions, and that the average ECI rate is $150 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators per ECI is estimated to be $690,000. The FAA estimates that 2,100 propellers installed on aircraft of U.S. registry would be affected by the replacement action, and that it would take approximately 6 work hours to replace a propeller, the average parts cost for a replacement propeller hub is $2,600, and that the average rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for replacement is estimated to be $6,216,000.

Regulatory Impact

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

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 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 final evaluation has been prepared for this action and it 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, 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 a new airworthiness directive (AD), Amendment 39–12505, to read as follows:

2001–23–08 Hartzell Propeller Inc.: Amendment 39–12505. Docket No. 89–ANE–44. Supersedes priority letter AD 90–02–23.

Applicability: This airworthiness directive (AD) is applicable toHartzell Inc ()HC–()2Y()–() propeller models (also known as Y-shank propellers) installed on Piper PA–32 series aircraft with Textron Lycoming 540 series engines that are rated at 300 HP or higher, or installed on Pilatus Britten Norman or Britten Norman BN–2 series aircraft (also known as Islander or Trislander) with Textron Lycoming 540 series engines, or installed on any aircraft certificated in the acrobatic category, or installed on any aircraft that has ever been used for agricultural operations. These propellers have model numbers in the form of ()HC–()2Y()–(), which have no suffix letter or have the suffix letter ''A'' or ''E'' at the end of the hub serial number. This AD does not apply to Hartzell Propeller Inc ()HC–()2Y()–() propeller models with the suffix letter ''B'' at the end of the hub serial number.

The following list of aircraft, type certificated in the acrobatic category or used for agricultural operations, may have Hartzell Y-shank propellers installed, but this list is for reference purposes only: Aermacchi S.p.A. (formerly SIAI–Marchetti) S.205 series aircraft, S.208 series aircraft, F.260 series aircraft; American Champion (formerly Bellanca, Champion) 8KCAB, 8GCBC; Aviat (licensed by Sky International (formerly White International and Pitts)) S–1T, S–2, S–2A, S–2S, S–2B ; Cessna A188A, A188B, T188C; Flugzeugwerke Altenrheim AG (FFA) AS202/18A ''BRAVO'', AS202/18A4'' BRAVO;'' Great Lakes Aircraft Co. or Chaparral Motors 2T–1 series aircraft; Moravan National Corporation Zlin 526 ; Piper PA–25–260, PA–36–300; SOCATA—Groupe Aerospatiale (Morane Saulnier) MS893A, and MS893E.

Note 1: This airworthiness directive (AD) applies to each propeller 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 propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller hub resulting from cracks, that can cause blade separation and subsequent loss of aircraft control, accomplish the following:

Eddy Current Inspection

(a) Perform initial and repetitive eddy current inspections (ECI) of the propeller hub fillet radius for cracks. The initial ECI is for propellers with no suffix letter at the end of the serial number and on propellers with serial numbers DN3607A, DN3609A, DN3613A, DN3615A, DN3628A, DN3630A, DN3641A, DN3940A, DN3944A, DN3949A, and DN3962A. The repetitive ECI is for propellers with the suffix letter ''E'' at the end of the hub serial number. Perform the ECI's in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–227, Revision 2, dated May 8, 2000, as follows:

(1) For propellers previously inspected visually in accordance with AD 90–02–23, perform the initial ECI within 50 hours time-in-service (TIS) since the last visual inspection. For all other applicable propellers, perform the initial ECI within 50 hours TIS after the effective date of this AD.

(i) Prior to further flight, remove from service cracked propeller hubs and replace with a serviceable part.

(ii) If no cracks are found, then permanently mark the end of the hub serial number with the suffix letter ''E'' in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, Revision 2, dated May 8, 2000.

(2) Thereafter, perform the repetitive ECI at intervals not to exceed 150 hours TIS since last ECI. Prior to further flight, remove from service cracked propeller hubs and replace with a serviceable part.

Hub Replacement

(b) Propellers with serial numbers DN3607A, DN3609A, DN3613A, DN3615A, DN3628A, DN3630A, DN3641A, DN3940A, DN3944A, DN3949A, and DN3962A are to be removed from service and replaced with serviceable parts at next overhaul but not to exceed 1,000 hours TIS or 72 months, whichever comes first, after the effective date of this AD and in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, Revision 2, dated May 8, 2000.

(c) Propellers with the suffix ''A'' at the end of the serial number, excluding serial numbers, DN3607A, DN3609A, DN3613A, DN3615A, DN3628A, DN3630A, DN3641A, DN3940A, DN3944A, DN3949A, and DN3962A, are to be replaced in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–227, Revision 2, dated May 8, 2000, as follows:

(1) Propeller hubs on aircraft that have been used for agricultural operations are to be removed from service and replaced with serviceable parts at next overhaul but not to exceed 2,000 hours time-in-service (TIS) or 36 months, whichever comes first, after the effective date of this AD.

(2) Propeller hubs on aircraft certified in the acrobatic category are to be removed from service and replaced with serviceable parts at next overhaul but not to exceed 1,000 hours TIS or 72 months, whichever comes first, after the effective date of this AD.

(3) Propeller hubs installed on Piper PA–32 series aircraft with Textron Lycoming 540 series engines that are rated at 300 HP or higher, or installed on Pilatus Britten Norman or Britten Norman BN–2 series aircraft (also known as Islander or Trislander) with Textron Lycoming 540 series engines, are to be removed from service and replaced with serviceable parts at next overhaul but not to exceed 2,000 hours TIS or 72 months, whichever comes first, after the effective date of this AD.

(d) A propeller hub from an aircraft that is identified in the applicability section of this AD may not be removed and reused on an aircraft for which this AD is not applicable.

Terminating Action

(e) Replacement of an affected propeller hub with a Hartzell propeller hub model with the serial number suffix letter ''B'' constitutes terminating action for the initial and repetitive inspection requirements of paragraph (a) of this AD. The hub replacement must be performed in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, Revision 2, dated May 8, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(h) The inspection and replacement must be done in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, Revision 2, dated May 8, 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 Hartzell Propeller Inc., Product Support Department, One Propeller Place, Piqua, OH 45356; telephone: (937) 778–4379, fax: (937) 778–4391. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(i) This amendment becomes effective on December 24, 2001.

Issued in Burlington, Massachusetts, on November 7, 2001.

Donald E. Plouffe,

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

[FR Doc. 01–28689 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–11–AD; Amendment 39–12503; AD 2001–23–06]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe Aerospatiale (Socata) Model TBM 700 airplanes. This AD requires you to inspect for defective Amendment A fuel tank air vent valves and replace with parts of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent in-flight damage to the wing skins caused by abnormal venting conditions of the wing fuel tank, which could result in severe handling problems or reduced structural capability. Continued operation with such structural deformation or handling problems could result in loss of control of the airplane.

DATES: This AD becomes effective on December 27, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 27, 2001.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894-1160; facsimile: (954) 964–4191. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain Socata Model TBM 700 airplanes. The DGAC reports that Amendment A fuel tank air vent valve floats may block the air vent valve in the closed position making the valve defective. This condition is the result of a change in the manufacturing of the fuel tank air vent valve.

The DGAC reports one occurrence on a Socata Model TBM 700 airplane of abnormal venting conditions of the wing fuel tank due to a fuel tank air vent valve float blocking the air vent valve in the closed position.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in severe handling problems or reduced structural capability. Continued operation with such structural deformation or handling problems could result in loss of control of the airplane.

Has *FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Model TBM 700 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 24, 2001 (66 FR 44558). The NPRM proposed to require you to inspect the fuel tank air vent valve to determine the Amendment level of the part and replace the defective Amendment A fuel tank air vent valve with a part of improved design (Amendment B).

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 38 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	No parts required for the inspection	$120	$4,560

We estimate the following costs to accomplish the replacement:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	No cost for part	$120

Regulatory Impact

Does this AD impact various entities? 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.

Does this AD involve a significant rule or regulatory action? 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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2001–23–06 Socata—Groupe Aerospatiale: Amendment 39–12503; Docket No. 2001–CE–11–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Model TBM 700 airplanes that are certificated in any category:

Serial Numbers

114, 117, 118, 121 through 173, 175 through 177, 179 through 184, 186, and 187

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent in-flight damage to the wing skins caused by abnormal venting conditions of the wing fuel tank, which could result in severe handling problems or reduced structural capability. Continued operation with such structural deformation could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the upper surface of the fuel tank air vent valve for modification stamp ''Amdt A''. (i) If the fuel tank air vent valve is stamped ''Amdt A'' on the uper surface, install a fuel tank air vent valve that incorporates Amendment B modifications. (ii) If modification stamp ''Amdt A'' is not on the upper surface of the fuel tank air vent valve, reinstall the valve and no further action is required by paragraph (d)(1) of this AD.	Inspect within the next 50 hours time-in-service (TIS) after December 27, 2001 (the effective date of this AD). Accomplish the installation or reinstallation prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with paragraph (B) of the ACCOMPLISHMENT INSTRUCTIONS in Socata Service Bulletin SB 70–090, dated December 2000, and the applicable maintenance manual.
(2) Do not install any fuel tank air vent valve that does not have Amendment B incorporated (or FAA-approved equivalent part).	As of December 27, 2001 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata Service Bulletin SB–70–090–28, dated December 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France, or the Product Support Manager, SOCATA Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 27, 2001.

Note 2: The subject of this AD is addressed in French AD 2001–004(A), dated January 10, 2001.

Issued in Kansas City, Missouri, on November 5, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28331 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–01–AD; Amendment 39–12501; AD 2001–23–04]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Models TB 9, TB 10, TB 20, TB 21, and TB 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe Aerospatiale (SOCATA) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This AD requires you to repetitively inspect the lower rudder hinge fitting for cracks. This AD also requires you to repair any crack found in accordance with a repair scheme obtained from the manufacturer through the Federal Aviation Administration (FAA). This AD is the result mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct fatigue cracks in the lower rudder hinge fitting. This condition could cause the lower rudder to detach from the control linkage with consequent loss of control of the airplane.

DATES: This AD becomes effective on January 4, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2002.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all SOCATA Model TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. The DGAC reports an occurrence of the lower rudder separating from the control linkage on a Model TB 9 airplane. A break in the lower rudder hinge fitting caused this problem and was found during a scheduled inspection on the airplane with more than 6,000 hours time-in-service (TIS). The DGAC reports that material fatigue caused cracks in the lower rudder hinge fitting.

What is the potential impact if FAA took no action? If this condition is not detected and corrected, the lower rudder could detach from the control linkage with consequent loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 29, 2001 (66 FR 45648). The NPRM proposed to require you to repetitively inspect the lower rudder hinge fitting for cracks and repair any crack found in accordance with a repair scheme obtained from the manufacturer through the FAA.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 239 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	No parts required to perform the inspection	$180	$180 × 239 = $43,020.

We have no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We estimate the following costs to accomplish any necessary repairs that will be required based on the results of the inspections. We have no way of determining the number of repairs each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections.

Labor cost	Parts cost	Total cost per airplane
7 workhours × $60 = $420	$300	$720

Regulatory Impact

Does this AD impact various entities? 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.

Does this AD involve a significant rule or regulatory action? 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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2001–23–04 Socata—Groupe Aerospatiale: Amendment 39–12501; Docket No. 2001–CE–01–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Model TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracks in the lower rudder hinge fitting. This condition could cause the lower rudder to detach from the control linkage with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the lower rudder hinge fitting for cracks.	Upon accumulating 2,000 hours time-in-service (TIS) on the rudder hinge fitting or within the next 100 hours TIS after January 4, 2002 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 12 calendar months.	In accordance with ACCOMPLISHMENT INSTRUCTIONS section of SOCATA Service Bulletin SB 10–114 55, dated September 2000, and the applicable aircraft maintenance manual.
(2) If any crack is found during any inspection required in paragraph (d)(1) of this AD, accomplish the following: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (ii) Incorporate this repair scheme.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	In accordance with the repair scheme obtained from the SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) 05.62.41.76.68; facsimile: (33) 06.07.32.62.24; or Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1450. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Report any cracks found during the initial inspection required in paragraph (d)(1) of this AD to the FAA with a copy to SOCATA. 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.	Within 10 days after the initial inspection required in paragraph (d)(1) of this AD or within 10 days after the effective date of this AD, whichever occurs later.	Fill out the compliance form in SOCATA Service Bulletin SB 10–11455, dated September 2000. Send it to the FAA at the address specified in paragraph (f) of this AD. Send a copy to SOCATA at the address in paragraph (h) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified,

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with SOCATA Service Bulletin SB 10–114–55, dated September 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 4, 2002.

Note 2: The subject of this AD is addressed in French AD Number 2001–002(A), dated January 10, 2001.

Issued in Kansas City, Missouri, on November 5, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28333 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–62–AD; Amendment 39–12499; AD 2001–23–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce plc model RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75 and RB211–22B–02 turbofan engines. This amendment requires inspection of certain high pressure (HP) turbine disks, manufactured between 1989 and 1999, for cracks in the rim cooling air holes, and, if necessary, replacement with serviceable parts. This amendment is prompted by reports of cracks in two high life Trent 800 disk rim cooling air holes produced at the same manufacturing facility using the same tooling as the RB211 turbofan engine HP turbine disks. The actions specified by this AD are intended to prevent possible disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date December 24, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 2001.

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce plc model RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 turbofan engines was published in the **Federal Register** on July 26, 2001 (66 FR 38961). That action proposed to require inspection of certain high pressure (HP) turbine disks, manufactured between 1989 and 1999, for cracks in the rim cooling air holes, and, if necessary, replacement with serviceable parts, in accordance with Rolls-Royce Mandatory Service Bulletin RB.211–72–C817, Revision 1, dated December 14, 1999 and Rolls-Royce Mandatory Service Bulletin RB.211–72–C817, Revision 2, dated March 7, 2001; and Rolls-Royce Mandatory Service Bulletin RB.211–72–C877, dated January 29, 2000 and Rolls-Royce Mandatory Service Bulletin RB.211–72–C877, Revision 1, dated March 7, 2001.

Comments

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

One commenter notes that a typographical error was made in the serial number range for CQDY, which was incorrectly listed as CDQY. The FAA agrees and the error has been corrected.

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

Economic Analysis

There are approximately 549 engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. No parts are required. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 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 final evaluation has been prepared for this action and it 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, 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 a new airworthiness directive to read as follows:

2001–23–02 Rolls-Royce: Amendment 39–12499. Docket No. 2000–NE–62–AD.

Applicability: Rolls-Royce plc model (RR) RB211–535E4–37 and RB211–535E4–B–37 turbofan engines, with the following high pressure (HP) turbine disks installed: part number (P/N) UL10323, with serial numbers (SN's) CQDY6070 and higher; P/N UL27680, with any serial number; and P/N UL27681, with any serial number. RR model B211–535C–37 turbofan engines, with the following HP turbine disks installed: P/N LK80622, with SN LQDY6316 and higher; P/N LK80623, with SN CQDY5945 and higher; and P/N UL28267, with any serial number. RR model RB211–535E4–B–75 turbofan engines with the following HP turbine disks installed: P/N UL10323, with SN CQDY6070 and higher; and P/N UL27680, with any serial number. RR model RB211–22B–02 turbofan engines with the following HP turbine disks installed: P/N LK80622, with SN LQDY6316 and higher; P/N LK80623, with SN CQDY5945 and higher; and P/N UL28267, having any serial number. These engines are installed on but not limited to Boeing 757, Tupolev Tu204, and Lockheed L–1011 series airplanes.

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

Compliance: Compliance with this AD is required as indicated, unless already done. To prevent possible high pressure (HP) turbine disk failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspection for All Except Model RB211–22B–02

(a) For model RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, and RB211–535E4–B–75 engines, conduct a one-time inspection of the HP turbine disks identified in Section A. (1) and (2), of RR SB No. RB.211–72–C817, Revision 2, dated March 7, 2001, for cracks on the rear face of the cooling air holes.

(1) For disk life at or below 13,700 cycles on the effective date of this AD, inspect at the earlier of the following :

(i) At the next shop visit when the HP turbine blades have been removed from the disk; or

(ii) Prior to exceeding 14,500 cycles-in-service (CIS) since new.

(2) For disk life above 13,700 cycles on the effective date of this AD, inspect at the earliest of the following:

(i) Prior to reaching 15,300 CIS since new; or

(ii) Within 800 cycles after the effective date of this AD; or

(iii) At the next shop visit when the HP turbine blades have been removed from the disk.

(3) Inspect the HP turbine disk for cracks on the rear face of the cooling air holes in accordance with the Accomplishment Instructions, Section 3 of RR SB No. RB.211–72–C817, Revision 1, dated January 24, 2000; or RR SB No. RB.211–72–C817, Revision 2, dated March 7, 2001.

(4) Replace any cracked HP turbine disk with a serviceable part.

Inspections for Model RB211–22b–02

(b) For model RB211–22B–02 engines, conduct a one-time inspection of the HP turbine disks identified in Section A. of RR SB No. RB.211–72–C877, Revision 1, dated March 7, 2001, for cracks on the rear face of the cooling air holes.

(1) For disk life at or below 11,000 CIS on the effective date of this AD, inspect at the earlier of the following:

(i) At the next shop visit when the HP turbine blades have been removed from the disk; or

(ii) Prior to exceeding 11,000 CIS since new.

(2) HP turbine disks with more than 11,000 CIS on the effective date of this AD must be inspected within 300 CIS after the effective date of this AD.

(3) Inspect the HP turbine disk for cracks on the rear face of the cooling air holes in accordance with the Accomplishment Instructions outlined in Section 3 of RR SB No. RB.211–72–C877, dated January 29, 2000, or RR SB No. RB.211–72–C877, Revision 1, dated March 7, 2001.

(4) Replace any cracked HP turbine disk with a serviceable part.

Alternative Methods of Compliance

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

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

Ferry Flights

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

Documents That Have Been Incorporated by Reference

(e) The inspection must be done in accordance with the following Rolls-Royce mandatory service bulletins:

Document No.	Pages	Revision	Date
MSB RB.211–72–C817	1	1	Jan. 24, 2000.
	2–7	Original	Dec. 14, 1999.
	8–11	1	Jan. 24, 2000.
	12–21	Original	Dec. 14, 1999.

Document No.	Pages	Revision	Date
Total pages: 21			
MSB RB.211–72–C817	All	2	Mar. 7, 2001.
Total pages: 6			
MSB RB.211–72–C877	All	Original	Jan. 29, 2000.
Total pages: 17			
MSB RB.211–72–C877	All	1	Mar. 7, 2001.
Total pages: 5			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Civil Aviation Authority (CAA) Airworthiness Directives 003–12–99 and 004–01–2000.

Effective Date

(f) This amendment becomes effective on December 24, 2001.

Issued in Burlington, Massachusetts, on November 5, 2001.

Mark C. Fulmer,

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

[FR Doc. 01–28418 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30279; Amdt. No. 2078]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows: *For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between

these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(i) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on November 9, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*** * * Effective November 29, 2001**

Dalton, GA, Dalton Muni, NDB RWY 14, Amdt 1
Dalton, GA, Dalton Muni, LOC RWY 14, Orig
Dalton, GA, Dalton Muni, LOC RWY 14, Amdt 5A, CANCELLED

*** * * Effective December 27, 2001**

Egegik, AK, Egegik, RNAV (GPS) RWY 12, Orig
Egegik, AK, Egegik, RNAV (GPS) RWY 30, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 22R, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 22L, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 18, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 36, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 4R, Orig
Little Rock, AR, Adams Field, RNAV (GPS) RWY 4L, Orig
Little Rock, AR, Adams Field, ILS RWY 22L, Amdt 3
Little Rock, AR, Adams Field, GPS RWY 18, Orig-B CANCELLED
Little Rock, AR, Adams Field, GPS RWY 36, Orig CANCELLED
Little Rock, AR, Adams Field, GPS RWY 22L, Orig-A CANCELLED
Little Rock, AR, Adams Field, GPS RWY 22R, Orig-A CANCELLED
Little Rock, AR, Adams Field, GPS RWY 4R, Orig-A CANCELLED
Little Rock, AR, Adams Field, GPS RWY 4L, Orig-A CANCELLED
Little Rock, AR, Adams Field, RADAR–1 Amdt 16
Long Beach, CA Long Beach (Daughtery Field), RNAV (GPS) RWY 30, Orig
Sacramento, CA Sacramento Mather, RNAV (GPS) RWY 4R, Orig
Sacramento, CA Sacramento Mather, RNAV (GPS) RWY 22L, Orig
Ottumwa, IA, Ottumwa Industrial, RNAV (GPS) RWY 22, Orig
Ottumwa, IA, Ottumwa Industrial, VOR/DME RNAV OR GPS RWY 22, Amdt 3 CANCELLED
Angola, IN, Tri-State Steuben County, NDB RWY 5, Amdt 7
Angola, IN, Tri-State Steuben County, RNAV (GPS) RWY 5, Orig
Angola, IN, Tri-State Steuben County, RNAV (GPS) RWY 23, Orig
Angola, IN, Tri-State Steuben County, GPS RWY 5, Orig CANCELLED
Indian Head, MD Maryland, VOR–A, Orig
Sand Island, Midway Atoll, MQ, RNAV (GPS) RWY 6, Orig
Sand Island, Midway Atoll, MQ, RNAV (GPS) RWY 24, Orig
Sand Island, Midway Atoll, MQ, GPS RWY 6, Orig-A CANCELLED
Sand Island, Midway Atoll, MQ, GPS RWY 24, Orig-A CANCELLED
West Point, MS McCharen Field, RNAV (GPS) RWY 18, Orig
West Point, MS McCharen Field, RNAV (GPS) RWY 36, Orig
Kalispell, MT Glacier Park Intl, RNAV (GPS) RWY 2, Orig
Kalispell, MT Glacier Park Intl, RNAV (GPS) RWY 30, Orig
Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Orig
Stanley, ND, Stanley Muni, RNAV (GPS) RWY 27, Orig
Columbus, OH, Ohio State University, RNAV (GPS) RWY 9R, Orig
Columbus, OH, Ohio State University, GPS RWY 9R, Orig-C CANCELLED
Tulsa, OK Tulsa Intl, RNAV (GPS) RWY 18L, Orig
Tulsa, OK Tulsa Intl, RNAV (GPS) RWY 18R, Orig
Tulsa, OK Tulsa Intl, RNAV (GPS) RWY 26, Orig
Tulsa, OK Tulsa Intl, RNAV (GPS) RWY 36L, Orig
Tulsa, OK Tulsa Intl, RNAV (GPS) RWY 36R, Orig
Tulsa, OK Tulsa Intl, GPS RWY 8, Orig CANCELLED
Tulsa, OK Tulsa Intl, GPS RWY 18L, Orig CANCELLED
Tulsa, OK Tulsa Intl, GPS RWY 18R, Orig CANCELLED
Tulsa, OK Tulsa Intl, GPS RWY 26, Orig CANCELLED
Tulsa, OK Tulsa Intl, GPS RWY 36L, Orig CANCELLED
Tulsa, OK Tulsa Intl, GPS RWY 36R, Orig CANCELLED
Harrisburg, PA, Harrisburg Intl, RNAV (GPS) RWY 13, Orig
Harrisburg, PA, Harrisburg Intl, RNAV (GPS) RWY 31, Orig
Lancaster, PA, Lancaster, VOR/DME RWY 8, Amdt 4A
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 22, Orig
Lubbock, TX, Lubbock Intl, RNAV (GPS) RWY 8, Orig
Lubbock, TX, Lubbock Intl, RNAV (GPS) RWY 17R, Orig
Lubbock, TX, Lubbock Intl, GPS RWY 26, Orig CANCELLED
Lubbock, TX, Lubbock Intl, RNAV (GPS) RWY 26, Orig
Lubbock, TX, Lubbock Intl, RNAV (GPS) RWY 35L, Orig
Lubbock, TX, Lubbock Intl, GPS RWY 8, Orig-A CANCELLED
Lubbock, TX, Lubbock Intl, GPS RWY 17R, Orig CANCELLED
Lubbock, TX, Lubbock Intl, GPS RWY 26, Orig CANCELLED
Lubbock, TX, Lubbock Intl, GPS RWY 35L, Orig-A CANCELLED
Midland, TX, Midland Intl, RNAV (GPS) RWY 10, Orig
Midland, TX, Midland Intl, GPS RWY 10, Orig CANCELLED
Roanoke, VA, Roanoke Regional/Woodrum Field, RNAV (GPS) RWY 6, Orig
Roanoke, VA, Roanoke Regional/Woodrum Field, RNAV (GPS) RWY 24, Orig
Roanoke, VA, Roanoke Regional/Woodrum Field, RNAV (GPS) RWY 33, Orig
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 32R, Orig
Moses Lake, WA, Grant County Intl, GPS RWY 32R, Orig CANCELLED

The FAA published an Amendment in Docket No. 30276, Amdt No. 2076 to Part 97 of the Federal Aviation Regulations (Vol 66, FR No. 213, Page 55564; dated November 2, 2001) under section 97.27, effective 29 NOV 2001, which is hereby Amended as follows:

Memphis, TN, Memphis *Intl,* NDB RWY 9, Amdt 27

[FR Doc. 01–28866 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30280; Amdt. No. 2079]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Olkahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Date Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on November 9, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC number	Subject
10/16/01	MD	Ocean City	Ocean City Muni	1/1293	VOR–A, Amdt 2.
10/16/01	MD	Baltimore	Baltimore-Washington Intl	1/1334	RNAV (GPS) RWY 33R, Orig.
10/16/01	MD	Baltimore	Baltimore-Washington Intl	1/1335	RNAV (GPS RWY 15L, Orig.
10/16/01	MD	Baltimore	Baltimore-Washington Intl	1/1336	ILS RWY 33R Orig–C.
10/16/01	MD	Baltimore	Baltimore-Washington Intl	1/1337	VOR/DME RWY 15L, Amdt 2.
10/16/01	MD	Baltimore	Baltimore-Washington Intl	1/1338	ILS RWY 15L, Orig–A.
10/17/01	MA	Southbridge	Southbridge Muni	1/1348	VOR/DME–B, Amdt 7.
10/17/01	CT	Danielson	Danielson	1/1349	VOR or GPS–A, Amdt 5.
10/17/01	RI	Pawtucket	North Central State	1/1350	LOC RWY 5, Amdt 5A.
10/17/01	RI	Pawtucket	North Central State	1/1351	VOR or GPS–B, Amdt 6.
10/18/01	CA	San Diego	Montgomery Field	1/1413	NDB or GPS RWY 28R, Amdt 1B.
10/18/01	CA	San Diego	Montgomery Field	1/1414	ILS RWY 28R, Amdt 2A.
10/20/01	KY	Louisville	Louisville Intl-Standiford Field	1/1450	ILS RWY 35L(CAT I, II, III), Amdt 1.
10/22/01	VA	Blacksburg	Virginia Tech	1/1525	NDB or GPS–A, Amdt 3.
10/23/01	MI	Detroit	Detroit Metropolitan Wayne County	1/1556	NDB or GPS RWY 3L, Amdt 12B.
10/26/01	SC	North Myrtle Beach	North Myrtle Beach Grand Strand	1/1659	ILS RWY 23, Amdt 10B.
10/31/01	OH	Lorain/Elyria	Lorain County Regional	1/1810	VOR or GPS–A, Amdt 2A.
10/31/01	VA	Manassas	Manassas Regional/Harry P. Davis Field	1/1817	VOR/DME RNAV or GPS RWY 16R, Amdt 7B.
11/01/01	NJ	Newark	Newark Intl	1/1873	VOR RWY 11, Amdt 2.
11/01/01	TX	Dallas-Fort Worth	Dallas-Fort Worth	1/1885	CONVERGING ILS RWY 31R, Amdt 5.
11/01/01	FL	Gainesville	Gainesville Regional	1/1886	VOR RWY 28, Orig.
11/01/01	FL	Gainesville	Gainesville Regional	1/1887	VOR/DME RWY 6, Orig.
11/01/01	FL	Gainesville	Gainesville Regional	1/1888	VOR RWY 24, Orig.
11/01/01	TX	Dallas-Fort Worth	Dallas-Fort Worth	1/1912	ILS RWY 31R, Amdt 11.
11/01/01	CA	Victorville	Southern California Logistics	1/1913	VOR/DME RWY 17, Orig–A.
11/01/01	NV	Las Vegas	McCarran Intl	1/1915	ILS RWY 25R, Amdt 16E.
11/01/01	CA	Victorville	Southern California Logistics	1/1916	ILS RWY 17, Amdt 1B.
11/01/01	CA	Victorville	Southern California Logistics	1/1918	GPS RWY 17, Orig–A.
11/01/01	WA	Seattle	Seattle-Tacoma Intl	1/1925	ILS RWY 16L, Amdt 1A.
11/01/01	WA	Seattle	Seattle-Tacoma Intl	1/1926	ILS RWY 16R (CAT I, II, III), Amdt 12A.
11/01/01	MD	Leonardtown	Capt. Walter Francis Duke Rgnl at St. Mary's County.	1/1972	VOR or GPS RWY 29, Amdt 6.
11/02/01	AK	Cold Bay	Cold Bay	1/1874	ILS RWY 14, Amdt 16B.
11/05/01	TN	Millington	Millington Muni	1/2094	ILS RWY 22, Amdt 2.
11/05/01	TN	Millington	Millington Muni	1/2109	GPS RWY 4, Orig.
11/06/01	FL	Gainesville	Gainesville Regional	1/2130	ILS RWY 28, Amdt 12.
11/06/01	FL	Gainesville	Gainesville Regional	1/2132	NDB RWY 28, Amdt 9.
11/06/01	FL	Gainesville	Gainesville Regional	1/2133	RNAV (GPS) RWY 6, Orig.
11/06/01	FL	Gainesville	Gainesville Regional	1/2134	VOR/DME RWY 10, Orig.
11/06/01	FL	Gainesville	Gainesville Regional	1/2137	RNAV (GPS) RWY 28, Orig.
11/06/01	AK	Cold Bay	Cold Bay	1/2138	LOC/DME BC RWY 32, Amdt 7B.
11/06/01	FL	Gainesville	Gainesville Regional	1/2140	RNAV (GPS) RWY 10, Orig.
11/06/01	FL	Gainesville	Gainesville Regional	1/2141	RNAV (GPS) RWY 24, Orig.
11/06/01	TN	Millington	Millington Muni	1/2148	VOR/DME RWY 22, Orig.

[FR Doc. 01–28867 Filed 11–16–01; 845 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–8431; Amendment No. 121–287]

RIN 2120–AH15

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is making minor technical amendments to its drug and alcohol regulations final rule, which was effective August 1, 2001. Since publication of the final rule, we have become aware of minor corrections that need to be made to avoid confusion. The effect of this technical amendment will be to correct the rule language to reflect the intent of the final rule.

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, AAM–800, Drug Abatement Division, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Background

On April 29, 1996, the Department of Transportation (DOT) published an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions to change 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, the DOT published a notice of proposed rulemaking (NPRM) (64 FR 69076) proposing a comprehensive revision to 49 CFR part 40, and the DOT published its final rule on December 29, 2000 (64 FR 79462). As a consequence of the DOT's final rule, on April 30, 2001, the FAA published an NPRM (66 FR 21494) proposing to revise its drug and alcohol regulations to integrate, as appropriate, the new DOT procedures and to be consistent with changes made to 14 CFR part 67. On August 9, 2001, we published a final rule (66 FR 41959) consistent with the new DOT procedures and the current 14 CFR part 67.

Since publication of our final rule, we have become aware of minor corrections that need to be made to avoid confusion. Unless these rule sections are revised, the FAA regulations will not be technically accurate.

In our final rule, we inadvertently retained language allowing, but not requiring, employers to follow certain recommendations for follow-up testing. Sections 40.297 and 40.309 of the DOT final rule require the employer to carry out the Substance Abuse Professional's (SAP) follow-up testing requirements. Therefore, the FAA is modifying 14 CFR part 121, appendix I, section V.G.3., to require the employer to direct the employee to have follow-up testing for alcohol, in addition to drugs, if the SAP determines that alcohol testing is necessary for the particular employee. Similarly, the FAA is modifying 14 CFR part 121, appendix J, section III.F.3. to require the employer to direct the employee to have follow-up testing for drugs, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. With the correction to these sections, the FAA requirements for following SAP recommendations are now consistent with the DOT requirements.

In addition, the FAA found an inadvertent omission regarding pre-employment alcohol testing. In our final rule, we adopted language that all the DOT modal administrations proposed. Our adoption provision inadvertently omitted previous language in 14 CFR part 121, appendix J, section III.A. that stated: ''If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of paragraph F of section V of this appendix apply.'' If the language is left as it appears in the final rule, employers might erroneously believe that persons with alcohol concentrations of between 0.02 and 0.04 on a pre-employment test could be put to work immediately. Therefore, we are restoring the missing language to 14 CFR part 121, appendix J, section III.A.

Finally, after publication of the final rule we became aware that some cross-references had become incorrect because of changes made in the final rule. Therefore, we are correcting these cross-references.

Agency Findings

The FAA is making minor technical amendments to its drug and alcohol regulations final rule, which was effective August 1, 2001, to correct minor omissions in the rule language. The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

The FAA has determined that this action does not warrant preparation of a regulatory evaluation since the anticipated impact is minimal. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) will not impose barriers to international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

In addition, this rule imposes no information collection requirements for which Paperwork Reduction Act approval is needed.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this technical amendment are unnecessary and contrary to the public interest. The amendments made in this final rule are corrective and clarifying changes to an existing rule that went through public notice and comment. The corrections in this technical amendment, in and of themselves, do not have a substantial impact upon regulated employers because they merely conform the final rule published August 9, 2001, to current DOT regulations. The amendments do not make significant, substantive changes to 14 CFR part 121, appendices I and J, and we would not anticipate the receipt of adverse comments on them. Furthermore, if the changes are stayed awaiting public notice and comment, regulated persons are likely to become confused about the conflicts between the FAA and DOT regulations on the issues addressed in the amendments. Therefore, the FAA finds that notice and comment are unnecessary and good cause exists for making these technical amendments effective immediately.

It is essential that these technical amendments take effect upon publication of this final rule. Delaying these amendments with a later effective date would result in confusion on the part of the regulated public. These technical amendments are merely intended to correctly implement the August 9 final rule. Therefore, the FAA finds good cause to make the changes effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 121, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105.

2. Amend appendix I to part 121 as follows:

A. In section V., revise paragraph G.3.;

B. In section VII, revise paragraph C.1.

The revisions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

V. Types of Drug Testing Required * * *

* * * * *

G. *Follow-up Testing.* * * *

3. The employer must direct the employee to undergo testing for alcohol in accordance with appendix J of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities * * *

* * * * *

C. Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders

1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 to perform a safety-sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 5, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

* * * * *

3. Amend appendix J to part 121 as follows:

A. In section III, revise paragraphs A.5. and F.3;

B. In section IV, revise paragraphs B.6.(g) and B.7.(d)

C. In section V., revise paragraphs A.1., C.2., and E.

D. In section VI, revise paragraph A.2.(i)

The revisions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

III. Tests Required

A. Pre-employment testing

* * * * *

5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of paragraph F. of section V. of this appendix apply.

* * * * *

F. Follow-up Testing. * * *

3. The employer must direct the employee to undergo testing for drugs in accordance with appendix I of this part, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

* * * * *

IV. HANDLING OF TEST RESULTS, RECORD RETENTION, AND CONFIDENTIALITY

* * * * *

B. Reporting of Results in a Management Information System

* * * * *

6. * * *

* * * * *

(g) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described 49 CFR part 40).

* * * * *

7. * * *

* * * * *

(d) Number of covered employees who engaged in alcohol misuse who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in 49 CFR part 40).

V. CONSEQUENCES FOR EMPLOYEES ENGAGING IN ALCOHOL-RELATED CONDUCT

A. Removal From Safety-sensitive Function

1. Except as provided in 49 CFR part 40, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter or an alcohol misuse rule of another DOT agency.

* * * * *

C. Notice to the Federal Air Surgeon

* * * * *

2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI.C. of this appendix within 2 working days of the employer's receipt of the report.

* * * * *

E. Required Evaluation and Testing

No covered employee who has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

VI. ALCOHOL MISUSE INFORMATION, TRAINING, AND SUBSTANCE ABUSE PROFESSIONAL

A. Employer Obligation to Promulgate a Policy on the Misuse of Alcohol

* * * * *

2. *Required Content.* * * *

* * * * *

(i) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the process in 49 CFR part 40, subpart O.

Issued in Washington, DC, on November 14, 2001.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 01–28868 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for refrigerators, refrigerator-freezers, and freezers. The Commission is also making minor, corrective amendments to the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to Part 305 that contain cost calculation formulas.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov.*

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances: Refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under section 305.10 of the Rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

New Ranges of Comparability for Refrigerators, Refrigerator-Freezers, and Freezers

The Commission has analyzed 2001 submissions of data for refrigerators, refrigerator-freezers, and freezers. Analysis of the submission indicates that the ranges for these products have changed significantly.[3] Therefore, the Commission is publishing new ranges of comparability for refrigerators, refrigerator-freezers, and freezers. Today's publication of the new ranges for refrigerators, refrigerator-freezers, and freezers also means that, after February 19, 2002, manufacturers of these products must calculate the operating cost figures at the bottom of labels for the products using the 2001 cost for electricity (8.29 cents per kilowatt-hour).

Minor Amendments to Appendices H and I

The Commission is also amending the cost calculation formulas appearing in the Appendices (H and I) to part 305 that contain, for central air conditioners and heat pumps, heating and cooling performance costs and the ranges of comparability. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing.

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[3] New DOE energy conservation standards for these products became effective on July 1, 2001. 62 FR 23102 (April 28, 1987).

This amendment corrects some of the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.29 cents per kilowatt-hour—that was published by DOE on March 8, 2001 (66 FR 13917), and by the Commission on May 21, 2001 (66 FR 27856).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household applicances, Labeling Reporting and recordkeeping requirements.

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6249.

2. Appendix A1 to part 305 is revised to read as follows:

APPENDIX A1 TO PART 305.—REFRIGERATORS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	318	338
2.5 to 4.4	319	385
4.5 to 6.4	383	436
6.5 to 8.4	(*)	(*)
8.5 to 10.4	348	380
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	428	428
16.5 and over	318	438

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

3. Appendix A2 to part 305 is revised to read as follows:

APPENDIX A2 TO PART 305.—REFRIGERATORS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5	280	320
2.5 to 4.4	292	345
4.5 to 6.4	296	364
6.5 to 8.4	387	387
8.5 to 10.4	273	379
10.5 to 12.4	286	286
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(396)	(438)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

4. Appendix A3 to part 305 is revised to read as follows:

APPENDIX A3 TO PART 305—REFRIGERATOR-FREEZERS WITH PARTIAL AUTOMATIC DEFROST

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	285	434
10.5 to 12.4	313	313
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

5. Appendix A4 to part 305 is revised to read as follows:

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	356	356
10.5 to 12.4	408	409
12.5 to 14.4	394	440
14.5 to 16.4	372	460
16.5 to 18.4	414	489
18.5 to 20.4	416	509
20.5 to 22.4	457	530
22.5 to 24.4	499	558
24.5 to 26.4	523	560
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

6. Appendix A5 to part 305 is revised to read as follows:

APPENDIX A5 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	623	624
20.5 to 22.4	568	640
22.5 to 24.4	605	643
24.5 to 26.4	591	659
26.5 to 28.4	(*)	(*)

APPENDIX A5 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE—Continued

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
28.5 and over	614	679

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

7. Appendix A6 to part 305 is revised to read as follows:

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	447	500
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	544	544
16.5 to 18.4	502	548
18.5 to 20.4	564	564
20.5 to 22.4	511	572
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

8. Appendix A7 to part 305 is revised to read as follows:

APPENDIX A7 TO PART 305.—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	544	544
12.5 to 14.4	544	544
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	555	555
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effectively July 1, 2001.

APPENDIX A8 TO PART 305.—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh.yr.)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	647	650
20.5 to 22.4	597	686
22.5 to 24.4	617	698
24.5 to 26.4	618	727
26.5 to 28.4	647	751
28.5 and over	691	765

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

Cost Information for Appendices A1 Through A8

When the ranges of comparability in Appendices A1 through A8 are used on EnergyGuide labels for refrigerators and refrigerator-freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2001 Representative Average Unit Cost for electricity (8.29¢ per kilowatt-hour), and the text below the box must identify the cost as such.

10. Appendix B1 to part 305 is revised to read as follows:

APPENDIX B1 TO PART 305.—UPRIGHT FREEZERS WITH MANUAL DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	(*)	(*)
5.5 to 7.4	354	354
7.5 to 9.4	372	372
9.5 to 11.4	392	392
11.5 to 13.4	409	410
13.5 to 15.4	442	442
15.5 to 17.4	477	482
17.5 to 19.4	(*)	(*)
19.5 to 21.4	512	527
21.5 to 23.4	(*)	(*)
23.5 to 25.4	580	580
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	1,748	1,748

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

11. Appendix B2 to part 305 is revised to read as follows:

APPENDIX B2 TO PART 305.—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	482	491
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	564	564
11.5 to 13.4	(*)	(*)
13.5 to 15.4	621	655
15.5 to 17.4	682	683
17.5 to 19.4	742	742

APPENDIX B2 TO PART 305.—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST—Continued

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
19.5 to 21.4	745	763
21.5 to 23.4	796	796
23.5 to 25.4	(*)	(*)
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	2,003	2,033

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

12. Appendix B3 to part 305 is revised to read as follows:

APPENDIX B3 TO PART 305.—CHEST FREEZERS AND ALL OTHER FREEZERS

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5	166	245
5.5 to 7.4	276	280
7.5 to 9.4	294	294
9.5 to 11.4	312	312
11.5 to 13.4	350	362
13.5 to 15.4	394	397
15.5 to 17.4	(*)	(*)
17.5 to 19.4	445	445
19.5 to 21.4	480	480
21.5 to 23.4	512	532
23.5 to 25.4	569	570
25.5 to 27.4	(*)	(*)
27.5 to 29.4	(*)	(*)
29.5 and over	(*)	(*)

* No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

Cost Information for Appendices B1 Through B3

When the ranges of comparability in Appendices B1 through B3 are used on EnergyGuide labels for freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2001 Representative Average Unit Cost for electricity (8.29¢ per kilowatt-hour), and the text below the box must identify the cost as such.

13. In section 2 of Appendix H of Part 305, the formula is revised to read as follows in both places that it appears:

Appendix H to Part 305—Cooling Performance and Cost for Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \frac{\text{Listed average annual}}{\text{operating cost}^{*}} \times \frac{\text{Your cooling load hours}^{**}}{1{,}000} \times \frac{\text{Your electrical rate in cents per KWH}}{8.29¢}$$

* * * * *

14. In section 2 of Appendix I of Part 305, the ''NOTE'' following the EnergyGuide label is amended by removing the figure ''8.31¢'' and by adding, in its place, the figure ''8.29¢''. In addition, the formula in section 2 of Appendix I of Part 305 is revised to read as follows in both places that it appears:

Appendix I to Part 305—Heating Performance and Cost For Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \text{Listed annual heating cost}^{*} \times \frac{\text{Your electrical cost in cents per KWH}}{8.29¢}$$

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–28438 Filed 11–16–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Arsanilic Acid; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the dose range of arsanilic acid for Type C medicated poultry feeds reported by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study in 1972. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212, e-mail: *dmcrae@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect the dose range of arsanilic acid for Type C medicated poultry feeds reported to the agency by the NAS/NRC Drug Efficacy Study in 1972. At this time, the regulations are being amended in 21 CFR 558.62 to reflect a dose range of 45 to 90 grams per ton of medicated poultry feed.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.62 is amended in the table in paragraph (c)(1) by revising entries (i) and (ii) to read as follows:

§ 558.62 Arsanilic acid.

* * * * *

(c) * * *

(1) * * *

Arsanilic acid in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 45 to 90	.....	1. Growing chickens: For growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 days before slaughter; as sole source of organic arsenic.	015565
	.....	2. Growing turkeys: For growth promotion and feed efficiency; improving pigmentation.	.....do	015565
	.....	3. Growing swine: For increased rate of weight gain and improved feed efficiency.	.....do	015565
(ii) 90	.....	Swine: As an aid in control of swine dys entery (hemorrhagic enteritis, bloody dysentery).	.....do	015565

* * * * * * *

* * * * *

Dated: November 6, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–28765 Filed 11–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Fireworks Displays, Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting permanent special local regulations for fireworks displays to be held over the waters of the Atlantic Ocean, Virginia Beach, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action will temporarily restrict vessel traffic during the fireworks displays to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

DATES: This rule is effective December 19, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–013 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 17, 2001, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Fireworks Displays, Atlantic Ocean, Virginia Beach, Virginia, in the **Federal Register** (66 FR 37200). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The City of Virginia Beach sponsors fireworks displays at various times throughout the year over the waters of the Atlantic Ocean, adjacent to the beachfront between 17th Street and 24th Street. The events consist of pyrotechnic displays fired from a vessel positioned in the Atlantic Ocean. Spectator vessels gather nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received. No changes have been made to the proposed regulatory text.

Regulatory Evaluation

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

Although this rule will prevent traffic from transiting a portion of the Atlantic Ocean adjacent to the beachfront during the events, the effect of this regulation will not be significant due to the limited duration of the regulation, the small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the affected portions of the Atlantic Ocean during the events.

Although this regulation prevents traffic from transiting or anchoring in portions of the Atlantic Ocean adjacent to the beachfront during the event, the effect of this regulation will not be significant because of its limited duration, the small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No assistance was requested by any small business, organization, or governmental jurisdiction.

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate 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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or 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 and direct effect on one or more Indian tribes, on the relationship between the Federal Governments 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 considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.522 to read as follows:

§ 100.522 Fireworks Displays, Atlantic Ocean, Virginia Beach, Virginia.

(a) *Regulated Area.* The regulated area is defined as the waters of the Atlantic Ocean enclosed within the arc of a circle with a radius of 850 yards and with its center located at latitude 36°51′35″ N, longitude 075°58′30″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(c) *Special Local Regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the area shall:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander; and

(ii) Proceed as directed by the Coast Guard Patrol Commander.

(d) *Effective Dates:* This section is effective:

(1) Annually from 9 p.m. to 11 p.m. eastern time every Friday, Saturday and Sunday between May 1 and October 31;

(2) Annually from 9 p.m. to 11 p.m. eastern time on July 4; and

(3) As otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

Dated: November 2, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–28833 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–046]

RIN 2115–AE46

Special Local Regulations for Marine Events; Fireworks Displays, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting permanent special local regulations for fireworks displays to be held over the waters of the Patapsco River, Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action will temporarily restrict vessel traffic in the Patapsco River to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

DATES: This rule is effective December 19, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–046 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 13, 2001, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Fireworks Displays, Patapsco River, Baltimore, Maryland, in the **Federal Register** (66 FR 31868). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The Baltimore Office of Promotions sponsors fireworks displays at various times throughout the year over the waters of the Patapsco River, Inner Harbor and Northwest Harbor, near Baltimore, Maryland. The events consist of pyrotechnic displays fired from 2 barges positioned in the Inner Harbor and Northwest Harbor. A large fleet of spectator vessels gathers nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received. No changes have been made to the proposed regulatory text.

Regulatory Evaluation

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

Although this rule will prevent traffic from transiting a portion of the Patapsco River during the events, the effect of this regulation will not be significant due to the limited duration of the regulation, the small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information

broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the effected portions of the Patapsco River during the events.

Although this regulation prevents traffic from transiting or anchoring in portions of the Patapsco River during the event, the effect of this regulation will not be significant because of its limited duration, the small size of the regulated area and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No assistance was requested by any small business, organization, or governmental jurisdiction.

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate 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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or 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 and direct effect on one or more Indian tribes, on the relationship between the Federal Governments 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 prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. § 100.526 is added to read as follows:

§ 100.526 Fireworks Displays, Patapsco River, Baltimore, Maryland.

(a) *Definitions*—(1) *Inner Harbor Regulated Area.* The Inner Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16.9′ N, longitude 076°36.3′ W. All coordinates reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The Northwest Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16.6′ N, longitude 076°35.8′ W. All coordinates reference Datum NAD 1983.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been

designated by the Commander, Coast Guard Activities Baltimore.

(4) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations*—(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the Inner Harbor Regulated Area or the Northwest Harbor Regulated Area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(c) *Effective Dates:* This section is effective: (1) Annually from 8:30 p.m. on July 4 until 9:30 p.m. on July 4; and (2) Annually from 11:45 p.m. on December 31 until 12:45 a.m. on January 1.

(d) *Rain Dates.* If the July 4 fireworks display is cancelled for the evening due to inclement weather, then this section is effective between 8:30 p.m. and 9:30 p.m. on July 5. If the December 31 fireworks display is cancelled for the evening due to inclement weather, then this section is effective from 11:45 p.m. on January 1 until 12:45 a.m. on January 2. Notice of the effective period will be given via Marine Safety Radio Broadcast on VHF-FM marine band radio, Channel 22 (157.1 MHz).

Dated: November 2, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–28832 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects to the temporary final rule with request for comments published in the **Federal Register** of October 4, 2001. That rule temporarily changed notification requirements for vessels bound for or departing from U.S. ports. The rule temporarily lengthened the usual notification period from 24 to 96 hours prior to port entry, required submission of reports to a central national clearinghouse, suspended exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and required submission of information about persons onboard these vessels.

DATE: The temporary final rule published in the **Federal Register** was effective on October 4, 2001. These corrections to that rule are effective on November 19, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LTJG Marcus A. Lines, Coast Guard, at telephone 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION

Need for Correction

As published, the temporary final rule contains errors that create confusion for the National Vessel Movement Center (NVMC) and for vessel owners and operators required to notify the Coast Guard of their arrival at or departure from a U.S. port or place. A discussion of the errors and corrections follows:

Applicability. By error we did not update all of the cross-references in 33 CFR 160.201(g), and inadvertently removed exemptions to this rule. To correct this error, we have revised the remaining cross-references so that certain vessels continue to be exempt from the notification of arrival (NOA) and notification of departure (NOD) requirements.

Ports of arrival and departure. The NVMC needs vessel owners and operators to identify the port their vessel will arrive at so that it knows to which Captain of the Port (COTP) it must send a copy of the NOA or NOD. The language requiring only the name of the port is not sufficiently clear. We are clarifying the port arrival information requirements in 33 CFR 160.T208(c)(1), 160.T212(b)(1), and 160.T214(a)(1) and (10) by including the names of the port or place of destination, of the receiving facility, of the city, and of the state in which the port of arrival is located.

Correction

In the temporary final rule FR Doc. 01–24984, beginning on page 50565 in the issue of October 4, 2001, make the following corrections:

§ 160.201 [Amended]

1. In § 160.201 in paragraph (g) on page 50572, in the first column, remove the cross-references ''160.207, 160.211, and 160.213'' and add in their place ''160.T208, 160.T212, and 160.T214''.

§ 160.T208 [Amended]

2. In § 160.T208 in paragraph (c)(1) on page 50572, in the third column, remove the phrase ''Name of port(s) or place(s) of destination in the United States;'' and add in its place ''For each U.S. port of arrival, provide the names of the receiving facility, the port or place of destination, the city, and state;''.

§ 160.T212 [Amended]

3. In § 160.T212 in paragraph (b)(1) on page 50573, in the second column, remove the phrase ''Name of port(s) or place(s) of destination in the United States;'' and add in its place ''For each U.S. port of arrival, provide the names of the receiving facility, the port or place of destination, the city, and state;''.

4. In § 160.T212 in paragraph (b)(19)(iv) on page 50573 in the third column, remove ''; and'' and add in its place ''.''.

§ 160.T214 [Amended]

5. In § 160.T214 in paragraph (a)(1) on page 50574, in the first column, remove the phrase ''Name of port(s) or place(s) of destination in the United States;'' and add in its place ''For each U.S. port of arrival, provide the names of the receiving facility, the port or place of destination, the city, and state;''.

6. In § 160.T214 in paragraph (a)(10) on page 50574, in the first column, remove the phrase ''name of the port'' and add in its place ''name of the receiving facility, the port or place of destination, the city, and state''.

7. In § 160.T214 in paragraph (a)(19)(iv) on page 50574 in the second column, remove ''; and'' and add in its place ''.''.

Dated: November 13, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–28870 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 73

RIN 1024–AC74

World Heritage Convention

AGENCY: National Park Service, Interior.

ACTION: Interim rule.

SUMMARY: We are promulgating an interim rule to correct elements in two sections of the United States World Heritage Program regulations (Section 7 World Heritage Nomination Process and Section 9 World Heritage Criteria). We are making these changes to eliminate an obsolete calendar for the preparation and submission of United States nominations to the World Heritage List and to replace outdated criteria for nomination of sites. Also the name of the U.S. House of Representatives Resources Committee, the successor to the Committee on Interior and Insular Affairs, is being substituted for its predecessor in the same sections. We intend the changed sections to provide current information to the public and agencies of government at all levels on how the United States nominates sites to the World Heritage List established by the World Heritage Convention.

DATES: This rule becomes effective November 19, 2001. Comments must be received on or before January 18, 2002.

ADDRESSES: You may submit your comments to: Chief, Office of International Affairs, National Park Service, 1849 C Street, NW., Room 2252, Washington, DC 20240. E-mail: *James_Charleton@nps.gov.* Fax: (202) 208–1290.

FOR FURTHER INFORMATION CONTACT: James Charleton, International Cooperation Specialist, 1849 C Street, NW., Room 2252, Washington, DC 20240. Phone: (202) 565–1280. E-mail: *James_Charleton@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The World Heritage Program regulations describe the policies and procedures which the Department of the Interior uses to carry out the program authorized by Congress in accordance with the World Heritage Convention (hereafter known as ''Convention''), a treaty ratified by the United States Senate in 1973. The World Heritage Program is an international listing program for recognizing universally important natural areas and cultural sites in sovereign nations around the world. One of the major national activities under the Convention is the nomination of sites proposed voluntarily by their owners to the World Heritage List. Elements in two sections of the regulations that deal with the United States nomination process are no longer accurate or applicable. We are publishing this revised rule to correct these elements and make current and accurate information available to the public.

The changes eliminate an obsolete calendar for the preparation and submission of United States nominations to the World Heritage List and replace outdated criteria for nominating sites. Both the calendar and the criteria, which the United States has played a role in determining, are established and have been changed by the World Heritage Committee (hereafter known as ''Committee''). First, the United States calendar has been based on a fixed annual nomination submission deadline to the World Heritage Centre of January 1, which beginning in 2002, will be February 1 of a given year for consideration in the summer of the following year. The Committee has altered this date several times for administrative reasons and may again change it. In our revision, therefore, we have set up the U.S. nomination calendar to run independently of the Committee's deadlines for submittal of nominations. That means that we will submit nominations to the World Heritage Centre when the United States has approved them, regardless of when in the calendar that occurs. When we submit them, we will request that the Committee consider them in the next available review cycle. Second, the revision of the criteria for nominating sites means that those who prepare future nominations must use the new criteria.

If this revised rule is not published, those who consult the program regulations will continue to rely on inaccurate information about the program calendar and criteria for consideration. If they do so, consideration of their proposals for nominations might be delayed by as much as a year. The discrepancies between the current regulations and the procedures actually in effect have led to confusion, which we intend the changes in this rule to eliminate.

We intend to make further revisions in the World Heritage regulations to enhance public participation, including more explicit procedures for public participation and more extensive notification to potentially interested parties of the actions we take, than the current regulations require. When we do so, we will use general notice and comment rulemaking with full public involvement.

Authority

We are promulgating this rule pursuant to the Secretary of the Interior's authority under Title IV of the National Historic Preservation Amendments of 1980 (Pub. L. 96–515; 94 Stat. 3000; 15 U.S.C. 470a–1, a–2) which authorizes the Secretary of the Interior, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation, to ensure and direct United States participation in the World Heritage Convention (Convention Concerning the Protection of the World Cultural and Natural Heritage), approved by the United States Senate on October 26, 1973.

Interim Rulemaking

You can find definitive official guidance for the World Heritage Program's policy and procedures only in these program regulations. Information sheets, websites, and other means of presenting this information as informal agency guidelines do not carry the force of law that accompanies formal rules that are published as part of the Code of Federal Regulations. Taking no action in this case means that the public will continue to receive and rely on outdated information.

The purpose of this rulemaking is to provide current information to parties interested in the program as soon as possible. For this reason, the interim rule needs to be effective upon the date of publication.

We intend this rulemaking action to provide current and accurate information to government agencies and the public that is necessary for them to participate in the World Heritage nomination process in a meaningful way.

We are promulgating this interim rule under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) from general notice and comment rulemaking. As discussed above, we believe that this exception is warranted because of the need to inform the public in as timely a manner as possible.

Based upon this discussion, we find pursuant to 5 U.S.C. 533(b)(B) that it would be contrary to the public interest to publish a notice of proposed rulemaking. We are, however, soliciting comments and will review comments and consider making changes to the rule based upon an analysis of comments.

Further, in accordance with the Administrative Procedure Act (5 U.S.C.

531 *et seq.*), we have determined that publishing this interim rule 30 days prior to the rule becoming effective would further delay the dissemination of current information to users of the regulations. This would be contrary to the public interest and the intended purpose of the rule. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), and as discussed above, we have determined that this interim rulemaking is excepted from the 30-day delay of effective date, and shall therefore become effective upon the date published in the **Federal Register**.

Because we are soliciting comments as discussed above, we plan to analyze the comments received and include and consider the results in proposed further rulemaking, as appropriate.

Public Participation

Our policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. However, given the urgent need to disseminate accurate information concerning the schedule for consideration of World Heritage nominations and the criteria for their selection, we have determined that it is contrary to the public interest to delay the effective date of this interim rule pending public comment.

Nevertheless, you are invited to submit written comments or suggestions regarding this interim rule to us at the address noted at the beginning of this rulemaking. Your comments must be received on or before January 18, 2002. We will review comments and consider making changes to the rule based upon the analysis of comments.

Drafting Information

The primary author of this rule is James Charleton, Office of International Affairs, National Park Service, Washington, DC.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget.

(1) This rule will not have an annual economic effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A cost-benefit and economic analysis is not required. The revisions to existing regulations will modestly improve the administration of the World Heritage Program by providing current and accurate information to voluntary participants in the public, other Federal agencies, and other levels of government.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The Department of the Interior has sole direct responsibility to conduct the World Heritage nomination process. The revisions will clear up confusion regarding the schedule for nomination of sites to the World Heritage List and the criteria for eligibility to be considered. Participation by other agencies (and private parties) continues to be strictly voluntary, as before.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Participation in the World Heritage program is strictly voluntary and requires the active cooperation of all owners of nominated property. The changes will provide more accurate and usable information to owners and other interested parties.

(4) This rule does not raise novel legal or policy issues. The changes simply update aspects of the schedule and criteria for consideration and do not alter other aspects of the program.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) A Regulatory Flexibility Analysis is not required. This rule, which only revises the calendar and criteria for consideration, will impact only owners voluntarily seeking to have their sites considered for listing. Nomination and approval of properties for inclusion on the World Heritage List recognizes their universally significant values and enhances public understanding and appreciation of heritage conservation. Only a small number of select U.S. properties will be considered for World Heritage status. Small entities may provide information or assistance in the preparation of nominations, but such participation is completely voluntary on their part. In some instances, small entities may be reimbursed for providing detailed site information and analysis. Designation of a property as a World Heritage site may enhance its tourism value. Any effects would likely be of a very localized nature and may be beneficial to small entities in the surrounding area.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The changes relate solely to providing more accurate information on the World Heritage process to those who request it.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The changes will modestly reduce costs to those who otherwise might have relied on inaccurate information.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The changes place U.S. enterprises at no competitive disadvantage because only U.S. properties are eligible for nomination by the United States and only with their owners' concurrence.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (Executive Order 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this interim rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The World Heritage Program is a voluntary federal program. The interim rule will provide current information on designation procedures that are available to small governments, whose participation is strictly voluntary. No direct financial assistance, benefit, or penalty accompanies the act of nominating a site to the World Heritage List. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The entirely voluntary nature of the program is explained fully in the statute (16 U.S.C. 470a–1, a–2 and in sections 73.7 (b)(ii) and 73.13 (a)(2) of the current regulations), the substance of which are not being modified. A takings implication assessment is not required

Federalism (Executive Order 12612)

In accordance with Executive Order 12612, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Adoption of the rule will permit States to make more informed decisions. The Department may request their assistance in carrying out its World Heritage mandate. However, since the World Heritage Convention provides additional recognition to certain select U.S. properties that usuallly are already committed to preservation; since participation by States and local communities is strictly voluntary; and since no direct Federal financial assistance or penalties accompany the act of nominating a site to the World Heritage List, this revision will simply provide current information to States and local governments for them to weigh in deciding whether to participate. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required. The changes being made impose no information collection or record-keeping requirements on the public.

National Environmental Policy Act (NEPA)

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. Based on this determination, this interim rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). Thus, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Indian lands can be nominated to the World Heritage List only with the voluntary support of their owners. The changes in the regulations will provide current information on nomination procedures to the owners of Indian lands.

Clarity of This Regulation (Executive Order 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it 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, § 73.7 World Heritage nomination process.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Please send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 36 CFR Part 73

Foreign relations, Historic preservation.

Accordingly, we amend 36 CFR part 73 as follows:

PART 73—WORLD HERITAGE CONVENTION

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

Authority: 94 Stat. 3000; 16 U.S.C. 470 a–1,a–2, d.

2. Revise § 73.7 to read as follows:

§ 73.7 World Heritage nomination process.

(a) *What is the U.S. World Heritage nomination process?* (1) The Assistant Secretary for Fish and Wildlife and Parks (''Assistant Secretary'') is the designated official who conducts the United States World Heritage Program and periodically nominates properties to the World Heritage List on behalf of the United States. The National Park Service (NPS) provides staff support to the Assistant Secretary.

(2) The Assistant Secretary initiates the process for identifying candidate properties for the World Heritage List and subsequently preparing, evaluating, and approving U.S. nominations for them by publishing a First Notice in the **Federal Register**. This notice includes a list of candidate sites (formally known as the Indicative Inventory of Potential Future U.S. World Heritage nominations) and requests that public and private sources recommend properties for nomination.

(3) The Assistant Secretary, with advice from the Federal Interagency Panel for World Heritage (''Panel''), may propose for possible nomination a limited number of properties from the Indicative Inventory.

(4) Property owners, in cooperation with NPS, voluntarily prepare a detailed nomination document for their property that has been proposed for nomination. The Panel reviews the accuracy and completeness of draft nominations, and makes recommendations on them to the Assistant Secretary.

(5) The Assistant Secretary decides whether to nominate any of the proposed properties and transmits approved United States nominations, through the Department of State, to the World Heritage Committee to be considered for addition to the World Heritage List.

(b) *What requirements must a U.S. property meet to be considered for nomination to the World Heritage List?* A property in the United States must satisfy the following requirements established by law and one or more of the World Heritage Criteria before the Assistant Secretary can consider it for World Heritage nomination:

(1) The property must be nationally significant. For the purposes of this section, a property qualifies as ''nationally significant'' if it is:

(i) A property that the Secretary of the Interior has designated as a National Historic Landmark (36 CFR part 65) or a National Natural Landmark (36 CFR part 62) under provisions of the 1935 Historic Sites Act (Public Law 74–292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*);

(ii) An area the United States Congress has established as nationally significant; or

(iii) An area the President has proclaimed as a National Monument under the Antiquities Act of 1906 (16 U.S.C. 433).

(2) The property's owner(s) must concur in writing to the nomination.

(i) If a unit of United States government (Federal, State, and/or local) owns or controls the property, a letter from the owner(s) demonstrates concurrence.

(ii) If private parties own or control the property, they must provide the protection agreement outlined in § 73.13(c).

(iii) All owners must concur before the Assistant Secretary can include their property within a World Heritage nomination. For example, a responsible Federal management official can concur for the unit, but cannot concur for any non-Federal property interest within the boundaries of the unit. NPS will seek the concurrence of those who own or control any non-Federal property interest if we determine that the property interest is integral to the entire property's outstanding universal values.

(3) The nomination document must include evidence of such legal protections as may be necessary to ensure the preservation of the property and its environment. Section 73.13 identifies the distinct protection requirements for public and private properties.

(c) *How does the U.S. World Heritage nomination process begin?* The Assistant Secretary, through the NPS, will periodically publish a First Notice in the **Federal Register** to begin the U.S. World Heritage nomination process. This notice, among other things:

(1) Sets forth the schedule and procedures for identifying proposed U.S. nominations to the World Heritage List. It includes specific deadlines for receipt of suggestions and comments, and for preparing and approving nomination documents for properties proposed as U.S. nominations;

(2) Includes the Indicative Inventory of Potential Future U.S. World Heritage Nominations (Indicative Inventory), solicits recommendations on which properties on it should be nominated, and requests suggestions of properties that should be considered for addition to it; and

(3) Identifies any special requirements that properties must satisfy to be considered for nomination.

(d) *What is the Indicative Inventory and how is it used?* (1) The World Heritage Convention (Article 11) requests each signatory nation to submit a list of candidate sites for the World Heritage List. These lists are also known as tentative lists, or Indicative Inventories. The NPS compiles and maintains the U.S. Indicative Inventory, which is formally known as the Indicative Inventory of Potential Future U.S. World Heritage Nominations. It is a list of cultural and natural properties located in the United States that, based on preliminary examination, appear to qualify for the World Heritage List and that the United States may consider for nomination to the List.

(2) Inclusion of a property on the Indicative Inventory does not confer World Heritage status on it, but merely indicates that the Assistant Secretary may further examine the property for possible nomination. The Assistant Secretary selects proposed nominations from among the potential future nominations included on the Indicative Inventory. Thus, the Assistant Secretary uses the Indicative Inventory as the basis for selecting United States nominations, and it provides a comparative framework within which to judge the outstanding universal value of a property. Any agency, organization, or individual may recommend additional properties, with accompanying documentation, for inclusion on the Indicative Inventory. Ordinarily, a property must have been listed on the Indicative Inventory before the Assistant Secretary can consider it for nomination.

(3) The Assistant Secretary, in cooperation with the Panel and other sources as appropriate, decides whether to include a recommended property on the Indicative Inventory. If a property is included, NPS will list it the next time we publish the Indicative Inventory in the **Federal Register**. The Assistant Secretary periodically transmits a copy of the Indicative Inventory, including documentation on each property's location and significance, to the World Heritage Committee for use in evaluation of nominations.

(e) *How are U.S. World Heritage nominations proposed?* (1) After the First Notice's comment period expires, NPS compiles all suggestions and comments. The Assistant Secretary then reviews the comments and suggestions and works in cooperation with the Federal Interagency Panel for World Heritage to decide whether to identify any properties as proposed U.S. nominations. In addition to how well the property satisfies the World Heritage criteria (§ 73.9) and the legislative requirements outlined in paragraph (b)(1) of this section, the Assistant Secretary may consider:

(i) How well the particular type of property (i.e., theme or region) is represented on the World Heritage List;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities that the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation; and

(v) Other relevant factors, including public interest and awareness of the property.

(2) Selection as a proposed nomination indicates that a property appears to qualify for World Heritage status and that the Assistant Secretary will encourage the preparation of a complete nomination document for the property.

(f) *Who is notified when U.S. World Heritage nominations are proposed?* (1) The Assistant Secretary for Fish and Wildlife and Parks publishes notice of decisions on proposed U.S. nominations in the **Federal Register** (Second Notice). If any properties are identified as proposed nominations, the Assistant Secretary also notifies the following parties in writing:

(i) The owner(s) of lands or interests of land that are to be included in the nomination; and

(ii) The House Resources Committee and the Senate Energy and Natural Resources Committee.

(2) The Second Notice advises the recipients of the proposed action, references these rules, and sets forth the process for preparing a nomination. NPS also prepares and issues a press release on the proposed nomination.

(g) *How is a U.S. World Heritage Nomination prepared?* NPS coordinates arrangements for the preparation of a complete nomination document for each proposed property. If you are a property owner(s), you, in cooperation with NPS, are responsible for preparing the draft nomination and for gathering documentation in support of it. NPS oversees the preparation of the nomination and ensures that it follows the procedures contained in these rules and the format and procedural guidelines established by the World Heritage Committee. Each nomination is prepared according to the schedule set forth in the First Notice.

(h) *How is a draft U.S. World Heritage nomination evaluated?* The draft nomination document serves as the basis for the Assistant Secretary's decision to nominate the property to the World Heritage Committee. NPS coordinates the review and evaluation of draft World Heritage nominations. We distribute copies to all members of the Federal Interagency Panel for World Heritage and request comments regarding the significance of the property and the adequacy of the draft nomination. Afterward, we compile the recommendations and comments received from the members of the Panel.

(i) *How is a U.S. World Heritage nomination approved and submitted?* (1) The Assistant Secretary, based on personal evaluation and the recommendations from the Panel, may nominate a property that appears to meet the World Heritage criteria to the World Heritage Committee on behalf of the United States. The Assistant Secretary sends an approved nomination document, through the Department of State, to the World Heritage Committee. The nomination document should be transmitted so that the World Heritage Committee receives it before the deadline established for any given year.

(2) Nomination by the United States does not place a property on the World Heritage List. The World Heritage Committee must consider and approve the nomination, usually at a meeting during the year following its nomination, before it is inscribed as a World Heritage Site.

(j) *Who is notified when a U.S. property has been nominated to the World Heritage List?* (1) Upon approving a nomination, the Assistant Secretary notifies the following parties in writing (Third Notice):

(i) The owner(s) of land or interests in land that are included in the nomination;

(ii) The House Resources Committee; and

(iii) The Senate Energy and Natural Resources Committee.

(2) The Assistant Secretary also publishes notice of the United States World Heritage nomination in the **Federal Register**. In addition, NPS issues a press release on the nomination.

3. Revise § 73.9 to read as follows:

§ 73.9 World Heritage criteria.

(a) *What are the World Heritage criteria and how are they applied?* The World Heritage Committee uses the following criteria to evaluate cultural and natural properties nominated to the World Heritage List. To qualify for addition to the World Heritage List, sites must meet one or more of the criteria. For information on how to apply the criteria, you should consult their annotated text in the Operational Guidelines for the World Heritage Convention. The Operational Guidelines are published periodically by the World Heritage Centre. You may obtain copies of the World Heritage Convention, the Operational Guidelines, and other program information upon request to the Office of International Affairs of the National Park Service, 1849 C Street, NW., Room 2242, Washington, DC 20240. The World Heritage Convention and the Operational Guidelines are also posted on the World Heritage Centre's Web site at *www.unesco.org/whc.*

(b) *What are the cultural criteria?* The criteria for the inclusion of cultural properties in the World Heritage List should always be seen in relation to one another and should be considered in the context of the definition set out in Article 1 of the Convention. A monument, group of buildings or site—as defined in Article 1 of the Convention—which is nominated for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purpose of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity:

(1) Each property nominated should therefore:

(i) Represent a masterpiece of human creative genius; or

(ii) Exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design; or

(iii) Bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared; or

(iv) Be an outstanding example of a type of building or architectural or technological ensemble or landscape which illustrates a significant stage(s) in human history; or

(v) Be an outstanding example of a traditional human settlement or land-use which is representative of a culture (or cultures), especially when it has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance (the Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances and in conjunction with other criteria cultural or natural).

(2) In addition to the criteria in paragraphs (b)(1)(i) through (b)(1)(vi) of this section, the sites should also meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscapes their distinctive character and components (the Committee stressed that reconstruction is only acceptable if it is carried out on the basis of complete and detailed documentation on the original and to no extent on conjecture) and have adequate legal and/or contractual and/or traditional protection and management mechanisms to ensure the conservation of the nominated cultural properties or cultural landscapes.

(c) *What are the natural criteria?* A natural heritage property—as defined in Article 2 of the Convention—which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria specified by the Operational Guidelines and fulfills the conditions of integrity:

(1) Sites nominated should therefore:

(i) Be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features; or

(ii) Be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals; or

(iii) Contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance; or

(iv) Contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

(2) In addition to the criteria in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, the sites should also fulfill the following conditions of integrity:

(i) The sites described in paragraph (c)(1)(i) of this section should contain all or most of the key interrelated and interdependent elements in their natural relationships.

(ii) The sites described in paragraph (c)(1)(ii) of this section should have sufficient size and contain the necessary elements to demonstrate the key aspects of processes that are essential for the long-term conservation of the ecosystems and the biological diversity they contain.

(iii) The sites described in paragraph (c)(1)(iii) of this section should be of outstanding aesthetic value and include areas that are essential for maintaining the beauty of the site.

(iv) The sites described in paragraph (c)(1)(iv) of this section should contain habitats for maintaining the most diverse fauna and flora characteristic of the biogeographic province and ecosystems under consideration.

(3) The sites should have a management plan. When a site does not have a management plan at the time when it is nominated for the consideration of the World Heritage Committee, the State Party concerned should indicate when such a plan will become available and how it proposes to mobilize the resources required for the preparation and implementation of the plan. The State Party should also provide other document(s) (e.g. operational plans) which will guide the management of the site until such time when a management plan is finalized.

Dated: June 28, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28256 Filed 11–16–01; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. MT–001–0032; FRL–7102–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Transportation Conformity; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The EPA published in the **Federal Register** on September 21, 2001 a document that, among other things, approved Montana's transportation conformity rule into the State Implementation Plan (SIP). In the regulatory text of the September 21, 2001, rule, EPA inadvertently incorporated by reference (IBR) sections of the rule which were not submitted for approval. EPA is correcting the regulatory text with this document.

EFFECTIVE DATE: This rule is effective December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA, Region VIII, (303) 312–6493.

SUPPLEMENTARY INFORMATION: In our September 21, 2001 (66 FR 48561) (FR Doc. 01–23596) rulemaking, we approved Montana's transportation conformity rules (Sub-Chapter 13). In the regulatory text of the September 21, 2001, rule, we inadvertently incorporated by reference sections of sub-chapter 13 which were not submitted for approval. These references to sub-chapter 13 were sections ''reserved'' by Montana for future rule adoption. We are correcting the regulatory text of that rulemaking, (on page 48564, second column, Subpart BB—Montana, § 52.1370 Identification of Plan, paragraph (c)(47)(i)(A)) to read as follows: ''Administrative Rules of Montana 17.8.1301, 17.8.1305, 17.8.1306, 17.8.1310 through 17.8.1313, effective June 4, 1999; and 17.8.1304 effective August 23, 1996.''

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in the IBR section of a previous rulemaking. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the September 21, 2001, rule, approving Montana's transportation conformity rules.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 19, 2001. 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 correction to the identification of plan for Montana is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 40 CFR part 52, subpart BB of chapter I, title 40 is corrected by making the following amendments:

PART 52—[CORRECTED]

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

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

§ 52.1370 Identification of plan.

2. Revise § 52.1370(c)(47)(i)(A) to read as follows:

* * * * *

(c) * * *

(47) * * *

(i) * * *

(A) Administrative Rules of Montana 17.8.1301, 17.8.1305, 17.8.1306, 17.8.1310 through 17.8.1313, effective June 4, 1999; and 17.8.1304 effective August 23, 1996.

Dated: November 2, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 01–28853 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2592, MM Docket No. 01–85, RM–9039]

Television Broadcast Service; Boise, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KM Communications, Inc., an applicant for a construction permit for a new television station at Boise, Idaho, substitutes channel 39 for channel 14 at Boise. *See* 66 FR 20127, April 19, 2001. TV channel 39 can be allotted to Boise, Idaho, with a zero offset in compliance with the principle community coverage requirements of Sections 73.610 and 73.698 of the Commission's Rules and with the criteria set forth in the Commission's Public Notice released on November 22, 1999, DA 99–2605. The coordinates for channel 39 at Boise are North Latitude 43–45–18 and West Longitude 116–05–52. With is action, this proceeding is terminated.

DATES: Effective December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–85, adopted November 6, 2001, and released November 14, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Idaho, is amended by removing TV channel 14 and adding TV channel 39 at Boise.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–28882 Filed 11–18–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–18; PR Docket No. 93–253; DA 01–2650]

Interim Licensing Rules for Shared Paging Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerns the interim licensing rules for lower band shared paging channels and the five 929 MHz shared paging channels (Shared Paging Channels). The intended effect is to remove the interim licensing rules with respect to filing applications for licenses at new sites on the Shared Paging Channels and to allow any qualified entity to submit applications for licenses on these channels at any location.

DATES: Effective November 19, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Commission, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order* (''*Order*'') in WT Docket No. 96–18 and PR Docket No. 93–253, DA 01–2650, adopted November 13, 2001, and released November 14, 2001. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW., Room CY–B402, Washington, DC. The complete text is also available under the file name da012650.doc on the Commission's Internet Web site at *www.fcc.gov.*

Synopsis of Order

Under the Commission's current interim licensing rules for lower band shared paging channels and the five 929 MHz shared paging channels (Shared Paging Channels), incumbent licensees may file applications for new sites at any location. Non-incumbent entities may file applications on these Shared Paging Channels, but only for private, internal-use systems. In its *Third Report and Order* (''*Third R&O*'') (64 FR 33762, June 24, 1999) in this proceeding, the Commission directed the Wireless Telecommunications Bureau (Bureau) to remove these interim licensing rules as applied to Shared Paging Channels once warning language about the consequences of failing to meet construction requirements had been added to FCC Form 601, the Application for Wireless Telecommunications Bureau Radio Service Authorization. Having added the language to FCC Form 601, by this Order, the Bureau removes the Commission's interim licensing rules with respect to filing applications for licenses at new sites on the Shared Paging Channels. Any qualified entity may submit applications for licenses on these channels at any location.

I. Interim Licensing Rules and FCC Form 601 Fraud-Warning Language

In early 1996, the Commission suspended acceptance of new applications for paging channels during the pendency of its rulemaking proceeding to establish geographic area licensing and competitive bidding rules for paging services. Mindful, however, that an across-the-board freeze on applications might impair the ability of licensees to maintain adequate services for their customers, the Commission established interim licensing rules initially permitting non-nationwide incumbent licensees to add sites to existing systems or modify existing sites, provided the additions or modifications did not expand the composite interference contour of the licensee's existing system.

Later that same year, in its *First Report and Order* (''*First R&O*'') (61 FR 21380, May 10, 1996), the Commission affirmed its decision to maintain the freeze on paging applications and to retain the interim licensing rules. The Commission, in large part, based its decision to maintain the freeze and, specifically, the limitation on incumbent applications under the interim licensing rules on its concern that lifting the freeze or allowing non-incumbents to file applications on either exclusive frequencies or the Shared Paging Channels would lead to a flood of speculative applications and increase opportunities for application mills to promote fraudulent investment schemes. The Commission, however, did relax the interim licensing rules to allow non-nationwide incumbent licensees on exclusive frequencies or the Shared Paging Channels to file applications for new sites outside the licensee's composite interference contour. Proposed sites that would expand a service area contour had to be located within forty (40) miles of a site for which the licensee had filed an application. Under this 40-mile requirement, the application for the original site must have been filed as of September 30, 1995. The Commission further exempted Special Emergency Radio Service providers from the paging freeze, allowing those providers to file applications on the Shared Paging Channels.

In 1997, in the *Second Report and Order and Further Notice of Proposed Rulemaking* (''*Second R&O*'') (62 FR 11616, March 12, 1997) and (''*FNPRM*'') (62 FR 11638, March 12, 1997), the Commission concluded that the Shared Paging Channels should not be subject to geographic area licensing or competitive bidding procedures. Still concerned about consumer fraud and license application speculation on those channels, however, the Commission sought comment on how to change licensing and frequency coordination procedures to resolve the problems of

consumer fraud and speculative applications. Pending resolution of these issues, and out of caution, the Commission required new applications filed for the Shared Paging Channels to continue to be processed under the interim licensing rules. The Commission, however, again relaxed the interim licensing rules by eliminating the 40-mile requirement and allowing incumbents to file for new sites on the Shared Paging Channels at any location. The Commission also affirmed its decision to allow new applicants to file applications for private, internal-use systems. While the interim licensing rules as developed in Commission decisions apply to all of the Shared Paging Channels, the *Second R&O* specifically revised § 90.494(g) of the Commission's rules to reflect the interim licensing rules for purposes of the five 929 MHz shared paging channels.

In the *Third R&O,* the Commission considered the many comments filed on the issue of application fraud. In response, it determined that adding language to FCC Form 601 warning applicants that failure of a licensee to meet construction or coverage requirements would result in termination of the license would be generally helpful to applicants in all services and might also help deter fraud. The Commission directed the Bureau to remove the interim licensing rules for the Shared Paging Channels, including § 90.494(g) of its rules, once the warning language was added to FCC Form 601.

II. Lifting the Freeze on Applications for Licenses on the Shared Paging Channels

As of November 9, 2001, the following warning language has been added near the signature block on the FCC Form 601 application in Universal Licensing System (ULS), as well as the FCC Form 601 available through Fax-on-Demand and the Bureau's website: ''Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application.''

The Bureau has initiated the process for printing new paper copies of FCC Form 601 that contain the warning language, but those copies will not be available to the public for several weeks. As already noted, where paper copies of FCC Form 601 may be used or are needed, updated applications containing the warning language can be obtained from Fax-on-Demand (202–418–2830) or are currently available for downloading from *http://www.fcc.gov/wtb/csinfo/orderfrm.html.* The Bureau also notes that applications for new licenses on Shared Paging Channels must be filed through certified land mobile frequency coordinators. The Bureau has provided the updated version of FCC Form 601 to each coordinator and has encouraged them to point out the new warning language to applicants for the Shared Paging Channels.

Having added the warning language to FCC Form 601, the Bureau eliminates the interim licensing rules that have applied to lower band shared paging channels and the five 929 MHz shared paging channels. Accordingly, pursuant to the *Third R&O,* the Bureau removes the interim licensing rules developed through Commission decisions as well as § 90.494(g) of the Commission's rules as applied to the Shared Paging Channels. Any qualified entity may file an application for a license on the Shared Paging Channels for new sites at any location. Applications for new sites filed on these Shared Paging Channels continue to require frequency coordination prior to filing the applications with the Commission.

Procedural Matters and Ordering Clauses

Pursuant to §§ 4(i), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 332, and the *Third R&O,* the Commission's interim licensing rules as applied to the Shared Paging Channels are eliminated and § 90.494(g) of the Commission's rules, 47 CFR 90.494(g), is removed as set forth in the *Order.*

This action is taken pursuant to the *Third R&O* and the authority delegated in § 0.331 of the Commission's rules, 47 CFR 0.331.

The provisions of this *Order* and the Commission's rules, as amended in the *Order*, shall become effective November 19, 2001 in accordance with § 1.103 of the Commission's rules, 47 CFR 1.103.

List of Subjects in 47 CFR Part 90

Paging, Radio.

Federal Communications Commission.

Katherine M. Harris,

Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

Rule Changes

For the reasons set forth in the preamble, part 90 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90–PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Section 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.494 [Amended]

2. Section 90.494 is amended by removing paragraph (g).

[FR Doc. 01–28883 Filed 11–16–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 010427105–1260–02; I.D. 011001F]

RIN 0648–AJ82

Magnuson-Stevens Act Provisions; Update of Regulations Governing Council Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule updating regulations governing the operation of Regional Fishery Management Councils (Councils) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule makes amendments by codifying recent administrative and policy changes and by making editorial changes for readability, clarity, and uniformity. The intent of this final rule is to update Council regulations to reflect current policies and procedures.

DATES: Effective December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Surdi, F/SF5, NMFS, 301–713–2337. This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register Web site at *http://www.access.gpo.gov/su--docs/aces/aces 140.tml* .

SUPPLEMENTARY INFORMATION:

Background

Currently, regulations pertaining to general provisions of the Magnuson-Stevens Act related to Council operations are contained in title 50 of the Code of Federal Regulations (CFR). NMFS is updating part 600 (Regional

Fishery Management Councils, subpart B, and Council Membership, subpart C) to codify important provisions of the recently withdrawn Council Operations and Administration Handbook (Handbook), which was a reference guide that compiled various requirements of the Magnuson-Stevens Act and other applicable law, as well as policy guidance. Some of the guidance contained in the Handbook consisted of regulations that were removed from title 50 of the CFR at the time the Handbook was developed. NMFS is reinstating some of those former regulations because they are not contained elsewhere and they are necessary for the Councils to function. Other proposed additions and revisions were not contained in the Handbook, and were not previously in regulation.

On May 25, 2001, NMFS published a proposed rule at 66 FR 28876 to update the regulations governing Council operations; comments were requested through June 25, 2001. The preamble of the proposed rule contained detailed descriptions of the proposed regulations, which are not repeated here. The following section contains the response to the only comment received during the comment period.

Comment and Response

Comment. One commenter objected to the language in the proposed rule that would allow a person who is not a state employee to serve as a designee of a principal state official on a Regional Fishery Management Council. Currently, the principal state official's designee is required to be an employee of the state. This commenter argued that a state employee will best represent the state's and the public's interests in fishery management issues. A non-state employee, on the other hand, may represent narrower interests. Therefore, this commenter proposed maintaining the previous CFR language that addressed this issue.

Response. NMFS maintains the change contained in the proposed rule. NMFS believes that the new language provides additional flexibility that will not compromise the representation of state and public interests in matters taken up by the Councils. This added flexibility was specifically requested by some of the Councils, in part because some states have very small offices and in the past have been limited to a small pool of candidates. Based on prior dealings with states, NMFS believes that the states will exercise this discretion in a responsible manner. It is not in a state's best interest to select someone with very narrow interests or experience, and it is not likely to do so. Essentially, this change will enable state governments to select their designees from a larger pool of candidates, better ensuring that the states' interests will be effectively represented.

Classification

NMFS has determined that this final rule is consistent with the Magnuson-Stevens Act. This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C 601 *et seq*. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

NMFS has analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it provides only an update to agency procedure or practice (i.e., procedures and guidelines for the administration of Councils). NMFS has determined that issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216–6 Administrative Order, Environmental Review Procedures.

This final rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: November 9, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 subparts B and C are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. Section 600.120 of subpart B is revised to read as follows:

§ 600.120 Employment practices.

(a) Council staff positions must be filled solely on the basis of merit, fitness for duty, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, disability, reprisal, sexual orientation, status as a parent, or on any additional bases protected by applicable Federal, state, or local law.

(b) The annual pay rates for Council staff positions shall be consistent with the pay rates established for General Schedule Federal employees as set forth in 5 U.S.C. 5332, and the Alternative Personnel Management System for the U.S. Department of Commerce (62 FR 67434). The Councils have the discretion to adjust pay rates and pay increases based on cost of living (COLA) differentials in their geographic locations. COLA adjustments in pay rates and pay increases may be provided for staff members whose post of duty is located in Alaska, Hawaii, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Puerto Rico.

(1) No pay adjustment based on geographic location shall exceed the COLA and locality pay adjustments available to Federal employees in the same geographic area.

(2) [Reserved]

(c) Salary increases funded in lieu of life and medical/dental policies are not permitted.

(d) Unused sick leave may be accumulated without limit, or up to a maximum number of days and contribution per day, as specified by the Council in its SOPP. Distributions of accumulated funds for unused sick leave may be made to the employee upon his or her retirement, or to his or her estate upon his or her death, as established by the Council in its SOPP.

(e) Each Council may pay for unused annual leave upon separation, retirement, or death of an employee.

(f) One or more accounts shall be maintained to pay for unused sick or annual leave as authorized under paragraphs (d) and (e) of this section, and will be funded from the Council's annual operating allowances. Councils have the option to deposit funds into these account(s) at the end of the budget period if unobligated balances remain. Interest earned on these account(s) will be maintained in the account(s), along with the principal, for the purpose of payment of unused annual and sick leave only. These account(s), including interest, may be carried over from year to year. Budgeting for accrued leave will be identified in the ''Other'' object class categories section of the SF–424A.

(g) A Council must notify the NOAA Office of General Counsel before seeking outside legal advice, which may be for technical assistance not available from NOAA. If the Council is seeking legal services in connection with an employment practices question, the Council must first notify the Department of Commerce's Office of the Assistant General Counsel for Administration, Employment and Labor Law Division. A Council may not contract for the provision of legal services on a continuing basis.

3. Section 600.125 of subpart B is revised to read as follows:

§ 600.125 Budgeting, funding, and accounting.

(a) Each Council's grant activities are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A–122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

(b) Councils may not independently enter into agreements, including grants, contracts, or cooperative agreements, whereby they will receive funds for services rendered. All such agreements must be approved and entered into by NOAA on behalf of the Councils.

(c) Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NMFS Regional Administrator in accordance with applicable Department of Commerce regulations.

4. Section 600.135 is added to subpart B to read as follows:

§ 600.135 Meeting procedures.

(a) Public notice of regular meetings of the Council, scientific statistical committee or advisory panels, including the agenda, must be published in the **Federal Register** on a timely basis, and appropriate news media notice must be given. The published agenda of any regular meeting may not be modified to include additional matters for Council action without public notice, or such notice must be given at least 14 days prior to the meeting date, unless such modification is to address an emergency under section 305 (c) of the Magnuson-Stevens Act, in which case public notice shall be given immediately. Drafts of all regular public meeting notices must be transmitted to the NMFS Headquarters Office at least 23 calendar days before the first day of the regular meeting. Councils must ensure that all public meetings are accessible to persons with disabilities, and that the public can make timely requests for language interpreters or other auxiliary aids at public meetings.

(b) Drafts of emergency public notices must be transmitted to the NMFS Washington Office; recommended at least 5 working days prior to the first day of the emergency meeting. Although notices of, and agendas for, emergency meetings are not required to be published in the Federal Register, notices of emergency meetings must be promptly announced through the appropriate news media.

(c) After notifying local newspapers in the major fishing ports within its region, having included in the notification the time and place of the meeting and the reason for closing any meeting or portion thereof:

(1) A Council, SSC, AP, or FIAC shall close any meeting, or portion thereof, that concerns information bearing on a national security classification.

(2) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns matters or information pertaining to national security, employment matters, or briefings on litigation in which the Council is interested.

(3) A Council, SSC, AP, or FIAC may close any meeting, or portion thereof, that concerns internal administrative matters other than employment. Examples of other internal administrative matters include candidates for appointment to AP, SSC, and other subsidiary bodies and public decorum or medical conditions of members of a Council or its subsidiary bodies. In deciding whether to close a portion of a meeting to discuss internal administrative matters, a Council or subsidiary body should consider not only the privacy interests of individuals whose conduct or qualifications may be discussed, but also the interest of the public in being informed of Council operations and actions.

(d) Without the notice required by paragraph (c) of this section, a Council, SSC, AP, or FIAC may briefly close a portion of a meeting to discuss employment or other internal administrative matters. The closed portion of a meeting that is closed without notice may not exceed 2 hours.

(e) Before closing a meeting or portion thereof, a Council or subsidiary body should consult with the NOAA General Counsel Office to ensure that the matters to be discussed fall within the exceptions to the requirement to hold public meetings described in paragraph (c) of this section.

(f) Actions that affect the public, although based on discussions in closed meetings, must be taken in public. For example, appointments to an AP must be made in the public part of the meeting; however, a decision to take disciplinary action against a Council employee need not be announced to the public.

(g) A majority of the voting members of any Council constitute a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(h) Decisions of any Council are by majority vote of the voting members present and voting (except for a vote to propose removal of a Council member, see 50 CFR 600.230). Voting by proxy is permitted only pursuant to 50 CFR 600.205 (b). An abstention does not affect the unanimity of a vote.

(i) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal state officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file such a statement, it should be submitted to the Secretary at the same time the majority report is submitted.

5. Section 600.150 is added to subpart B to read as follows:

§ 600.150 Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they may not take the original or file copies of records with them.

(b) [Reserved]

6. Section 600.155 is added to subpart B to read as follows:

§ 600.155 Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD–244, ''FOIA Request and

Action Record'', with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the ''Foreseeable Harm'' Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD–244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

7. Section 600.205 of subpart C is revised to read as follows:

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be appointed by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson-Stevens Act, must be a resident of the state and be knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in the fishery resources of the geographic area of concern to the Council.

(c) New or revised appointments by state Governors of principal state officials and new or revised designations by principal state officials of their designees(s) must be delivered in writing to the appropriate NMFS Regional Administrator and the Council chair at least 48 hours before the individual may vote on any issue before the Council. A designee may not name another designee. Written appointment of the principal state official must indicate his or her employment status, how the official is employed by the state fisheries agency, and whether the official's full salary is paid by the state. Written designation(s) by the principal state official must indicate how the designee is knowledgeable and experienced in fishery resources of the geographic area of concern to the Council, the County in which the designee resides, and whether the designee's salary is paid by the state.

§ 600.245 [Amended]

8. In § 600.245 of subpart C, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively.

[FR Doc. 01–28880 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 223
Monday, November 19, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO–368–A29; DA–01–06]

Milk in the Pacific Northwest Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling provisions of the Pacific Northwest order. One proposal calls for eliminating certain supply plant qualification standards that currently allow cooperative associations which operate supply plants to include milk delivered direct from farms to pool distributing plants as a qualifying shipment for determining pool eligibility; prohibiting a pool plant operator from including milk diverted to pool distributing plants as a qualifying shipment for pooling; adding a provision that would provide for two or more cooperative pool manufacturing plants to operate as a system for meeting the shipment requirements for pooling; and establishing qualification standards for manufacturing plants located within the marketing area.

A second proposal would reduce the amount of milk that a pool plant may divert during the months of March through August and add a ''touch base'' provision that would require at least 6 days milk production of a dairy farmer be physically received at a pool plant in order to be eligible for diversion.

Proponents have requested that the proposals be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on December 4, 2001.

ADDRESSES: The hearing will be held at the Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle WA 98188, (206) 246–8600.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366, e-mail address Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact James Daugherty at (425) 487–6009; e-mail *fmmaseattle@fmmaseattle.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, beginning at 8:30 a.m., on December 4, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals No. 1 through 3.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (3) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

PART 1124—[AMENDED]

The authority citation for 7 CFR part 1124 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the USDA.

Submitted by Northwest Milk Marketing Federation, Northwest Dairy Association, and Tillamook County Creamery Association

Proposal No. 1

1. Amend § 1124.7 by removing paragraphs (c)(2) and (c)(3), redesignating paragraph (c)(4) as (c)(2), adding paragraphs (d) and (f), and revising paragraph (g) to read as follows:

§ 1124.7 Pool Plant.

* * * * *

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective. * * *

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more handlers may qualify for pooling by meeting the above shipping requirements subject to the following additional requirements:

(1) The handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraph (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

* * * * *

Proposal No. 2

1. Amend § 1124.13 by redesignating paragraphs (e)(1) through (5) as paragraphs (e)(2) through (6), adding a new paragraph (e)(1), and revising redesignated paragraphs (e)(2) and (e)(5) to read as follows:

§ 1124.13 Producer Milk

* * * * *

(e) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 6 days' production of such dairy farmers production is physically received at a pool plant during the month.

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent. * * *

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in

writing at least one day before the effective date.

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Pacific Northwest Milk Marketing Area, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Office of the Market Administrator for the Pacific Northwest Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: November 14, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–28905 Filed 11–15–01; 12:47 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that applies to British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes. This proposed AD would supersede Airworthiness Directive (AD) 98–13–03, which currently requires repetitive inspections of the main landing gear (MLG) hinge fittings, support angles, and attachment bolts and requires eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. AD 98–13–03 specifies repetitive inspections of the support angles for those airplanes with the improved design MLG hinge fittings installed and exempts from the applicability those airplanes with the improved design MLG hinge fittings installed. The earlier NPRM would have retained the requirements of AD 98–13–03 and would have removed the applicability exemption of those Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes with the improved design MLG hinge fittings installed. British Aerospace has informed us that it will not provide the improved design MLG hinge fittings free of charge. Since the cost burden has changed from the manufacturer to the owners/operators of the affected airplanes, we are reopening the comment period to allow the public the chance to comment on this additional cost burden.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 21, 2001.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–58–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–58–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action on the main landing gear (MLG) hinge fittings, support angles, and attachment bolts on British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes to this point? On June 8, 1998, FAA issued

AD 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998). This AD currently requires the following on the above-referenced airplanes:

—Repetitive inspections of the MLG hinge fitting, support angles, and attachment bolts, and repairing or replacing any part that is cracked; and

—Eventual installation of improved design MLG hinge fittings, part number (P/N) 1379133B1 and 1379133B2 (Modification 5218), as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. This AD specifies repetitive inspections of the support angles for those airplanes with the improved design MLG hinge fittings installed. However, the applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed from the actions of the AD.

Accomplishment of these actions is required in accordance with the following service information:

—British Aerospace Jetstream Mandatory Service Bulletin (MSB) No. 7/5, which includes procedures for inspecting the left and right main landing gear hinge attachment nuts to the auxiliary and aft spars for signs of relative movement between the nuts and hinge fitting on Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2 and 4	Original Issue	Mar. 31, 1982.
1 and 3	Revision 1	May 23, 1988.

—British Aerospace MSB No. 7/8, which includes procedures for inspecting the MLG hinge fitting for cracks, and repairing cracked hinge fittings on Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes. This MSB incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	Jan. 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

—Jetstream Alert Service Bulletin (ASB) 32–A–JA 850127, which includes procedures for inspecting the MLG hinge fitting and support angle for cracks on Jetstream Series 3101 airplanes. This ASB incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	Nov. 11, 1994.

—Jetstream Service Bulletin (SB) 57–JM 5218, which includes procedures for installing improved design MLG hinge fittings, P/N 1379133B1 and 1379133B2 (Modification 5218), on Models HP.137 Jetstream Mk.1, Jetstream Series 200, and certain Jetstream Series 3101 airplanes. This SB incorporates the following effective pages:

Pages	Revision level	Date
11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31	Revision 1	Sept. 29, 1987.
20	Revision 3	Jan. 29, 1990.
13 and 14	Revision 4	Oct. 31, 1990.
1 through 10, 15, 16, 25, and 26	Revision 5	July 28, 1997.

The actions of AD 98–13–03 are consistent with our aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

The alternative to installing improved design MLG hinge fittings would be to repetitively inspect this area for the life of the airplane.

What has happened since AD 98–13–03 to initiate this action? Since AD 98–13–03 became effective, FAA has received comments regarding the applicability. The applicability of AD 98–13–03 exempts those airplanes with the improved design MLG hinge fittings installed as of the effective date of the AD. However, those airplanes that have the improved design MLG hinge fittings incorporated after the effective date of the AD are subject to repetitive inspections of the MLG support angles. Our intent was to require the inspections of the MLG support angles regardless of when the improved design MLG hinge fittings are incorporated.

Therefore, we then determined that the exemption of those airplanes with the improved design MLG hinge fittings installed should be removed, and that all affected airplanes should have the MLG support angles repetitively inspected.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 18, 2001 (66 FR 37435). The NPRM proposed to supersede AD 98–13–03. The NPRM also proposed to:

—Retain the requirement of repetitively inspecting the main landing gear (MLG) hinge fittings, support angles, and attachment bolts and the

requirement of repairing any cracked part;

—Require eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts; and

—Require repetitive inspections of the MLG support angles on all affected airplanes, even those with the improved design MLG hinge fittings installed.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change or Clarify the Applicability for the Model Jetstream 3101 Series Airplanes

What is the commenter's concern? Two commenters question FAA's intent for the Model Jetstream 3101 Series airplanes, as follows:

—One commenter states that the AD should not require repetitive inspections of the support angles on the Model Jetstream 3101 Series airplanes once Modification JM5218 is incorporated. This commenter explains that this is explained in the most recent revised pages (Revision 5) of Jetstream SB 57–JM 5218.

—Another commenter states that we should have extended the applicability to all serial numbers of the Jetstream 3101 Series airplanes if we wanted the support angles of all post-modification 5218 MLG fittings inspected. British Aerospace incorporated these fittings at the factory beginning with serial number 696. The applicability of the NPRM covered Model Jetstream 3101 Series airplanes up to serial number 695.

What is FAA's response to the concern? We concur that the AD should reflect that the repetitive inspections of the support angles do not apply to Model Jetstream Series 3101 airplanes that have Modification JM5218 incorporated. At the time of issuing the NPRM, we did not have the revised pages (Revision 5) of that service bulletin.

We are changing this proposed AD to reflect this change.

Making this change also takes care of the concern for requiring the inspections on those Model Jetstream Series 3101 airplanes that have serial number of 696 or higher. Since these airplanes had Modification JM5218 incorporated at the factory, the repetitive inspections of the support angles are not necessary.

The need for the repetitive inspections of the support angles on Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes still exists.

Comment Issue No. 2: Change the Cost Information To Reflect That British Aerospace Will Not Provide MLG Fittings Free of Charge

What is the commenter's concern? One commenter states that, because British Aerospace considers Modification JM5218 optional, the company is not providing the MLG fittings at no cost, as indicated in the NPRM. The current cost of these parts is $14,000 per airplane.

What is FAA's response to the concern? The FAA will revise the Cost Impact section of the final rule AD to reflect this change. Because this shifts the cost burden of these improved design MLG hinge fittings from the manufacturer to the owner/operator, we will reopen the comment period for this proposed AD.

Comment Issue No. 3: Require the Incorporation of Modification JM5218 to Reflect the Aging Aircraft Policy

What is the commenter's concern? One commenter states that FAA should mandate the incorporation of Modification JM5218 in order to be consistent with the agency's aging aircraft policy. This policy briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. The policy is based on FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections.

What is FAA's response to the concern? Paragraph (d)(3) of the NPRM currently requires installing improved design MLG hinge fittings, part number (P/N) 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N) upon accumulating 20,000 landings on each MLG hinge fitting or within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03), whichever occurs later. These installations are Modification JM5218 so the commenter's concern is already incorporated in the NPRM.

We will add a statement in this proposed AD to indicate that these installations and Modification JM5218 are the same.

The FAA's Determination

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition exists or could develop on British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes;

—The comment period should be reopened to allow the public the opportunity to comment on the change in the cost impact; and

—AD action should still be taken in order to correct this unsafe condition.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Since British Aerospace is not providing the MLG fittings free of charge as indicated in the NPRM, the $14,000 burden for these parts is on the owners/operators of the affected airplanes. Because this shifts the cost burden of these improved design MLG hinge fittings from the manufacturer to the owner/operator, we will reopen the comment period for this proposed AD.

What are the provisions of the supplemental NPRM? The provisions of this supplemental NPRM are the same as previously published.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 236 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? The FAA estimates that this AD will affect 71 airplanes in the U.S. registry. We estimate the following costs to accomplish the actions:

	Labor cost	Parts cost	Per airplane cost	Fleet cost
Initial Inspection	61 workhours × $60 per hour = $3,660	Not Applicable	$3,660 per airplane	71 airplanes × $3,660 = $259,860.
Hinge Fitting Installation	210 workhours × $60 per hour = $12,600	$14,000 per airplane	$26,600 per airplane	71 airplanes × $26,600 per hour = $1,888,600.

	Labor cost	Parts cost	Per airplane cost	Fleet cost
Repetitive Support Angle Inspections	10 workhours × $60 per hour = $600 per inspection	Not applicable	$600 per airplane per inspection	71 airplanes × $600 = $42,600 per inspection.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) 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 has been placed 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, under 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–13–03, Amendment 39–10591 (63 FR 33532, June 19, 1998), and by adding a new AD to read as follows:

British Aerospace: Docket No. 2000–CE–58–AD; Supersedes AD 98–13–03, Amendment 39–10591.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial No.
HP.137 Jetstream Mk.1	All serial numbers.
Jetstream Series 200	All serial numbers.
Jetstream Series 3101	601 through 695 that do not have Jetstream Service Bulletin 57–JM 5218 incorporated (using the applicable Revision 4 or Revision 5 pages).

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent future fatigue cracking of the main landing gear (MLG), which could result in structural failure of the MLG and consequent loss of airplane control during takeoff, landing, or taxi operations.

Note 1: The compliance times of this AD are presented in landings. If you do not keep the total number of landings, then you may multiply the total number of airplane hours time-in-service (TIS) by 0.75.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For the Models HP.137 Jetstream Mk.1 and Jetstream 200 Series airplanes, accomplish the following if part number (P/N) 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N) MLG hinge fittings are not installed. These installations are Modification 5218: (i) Inspect the MLG hinge attachment nuts to auxiliary and aft spars on both the left and right MLG for signs of fuel leakage or signs of relative movement between the nuts and hinge fitting. (ii) If any signs of fuel leakage or relative movement between the nuts and hinge fitting are found during any inspection required by paragraph (d)(1)(i) of this AD, resecure the MLG hinge fitting to auxiliary spar. (iii) You may terminate the above inspections when Modification 5218 is incorporated. The repetitive inspections of the MLG hinge support angles as required by paragraph (d)(2) of this AD are still required.	Inspect within the next 50 landings after June 8, 1998 (the effective date of this AD 98–13–03) or within 200 landings after the last inspection required by AD 98–13–03, whichever occurs later, and thereafter at intervals not to exceed 200 landings. Resecure the MLG hinge fitting prior to further flight after the applicable inspection.	Use the service information presented in paragraph (e)(1) of this AD.

Actions	Compliance	Procedures
(2) For all airplanes regardless of the MLG hinge fitting installed, inspect the MLG hinge support angles for cracks. If any crack(s) is/are found in the support angles, replace the cracked MLG hinge fitting(s) with a P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 1379133B2 (or FAA-approved equivalent P/N) fitting. (i) For all airplanes: you may terminate the repetitive inspection requirement of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD after incorporating Modification JM5218 on both sides of the airplane. (ii) For the Jetstream 3101 Series airplanes: the repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are no longer required after incorporating Modification JM5218 on both sides of the airplane. (iii) If Modification JM5218 is incorporated on both sides of a Jetstream 3101 Series airplane in accordance with the provisions of AD 98–13–03, then the intent of paragraph (d)(3) of this AD is met and paragraph (d)(4) of this AD is the only paragraph that applies. (iv) For the affected Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes: the repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are still required after incorporating Modification JM5218.	Inspect upon accumulating 4,000 landings on the MLG fitting or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 400 hours TIS. Accomplish any necessary replacement prior to further flight after the inspection where the cracked support angle(s) is/are found.	Inspect in accordance with the service information presented in paragraph (e)(2) or (e)(3) of this AD, as applicable. Replace in accordance with the service information presented in paragraph (e)(4) of this AD.
(3) For all airplanes, install improved design MLG hinge fittings, P/N 1379133B1 (or FAA-approved equivalent P/N) and P/N 1379133B2 (or FAA-approved equivalent P/N). These installations are Modification JM5218. (i) For all airplanes: you may terminate the repetitive inspection requirement of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD after incorporating Modification JM5218 on both sides of the airplane. (ii) For the Jetstream 3101 Series airplanes: the repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are no longer required after incorporating Modification JM5218 on both sides of the airplane. (iii) If Modification JM5218 is incorporated on both sides of a Jetstream 3101 Series airplane in accordance with the provisions of AD 98–13–03, then the intent of paragraph (d)(3) of this AD is met and paragraph (d)(4) of this AD is the only paragraph that applies. (iv) For the affected Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes: the repetitive inspections of the MLG support angles required by paragraph (d)(2) of this AD are still required after incorporating Modification JM5218.	Upon accumulating 20,000 landings on each MLG hinge fitting or within the next 50 landings after June 8, 1998 (the effective date of AD 98–13–03), whichever occurs later, unless already accomplished.	In accordance with the service information presented in paragraph (e)(4) of this AD.
(4) Do not install, on any affected airplane, MLG hinge fittings that are not P/N 1379133B1 (or FAA-approved equivalent P/N) or P/N 13790133B2 (or FAA-approved equivalent P/N).	As of the effective date of this AD	Not applicable.

(e) *What service information applies to this AD?* You must accomplish the actions of this AD in accordance with the following service bulletins:

(1) British Aerospace Jetstream Mandatory Service Bulletin No. 7/5, which applies to the affected Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes and incorporates the following pages:

Pages	Revision level	Date
2 and 4	Original Issue	Mar. 31, 1982.
1 and 3	Revision 1	May 23, 1988.

(2) British Aerospace Mandatory Service Bulletin No. 7/8, which applies to the affected Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
2, 5, 6, 7, and 8	Revision 2	Jan. 6, 1983.
1, 3, and 4	Revision 3	May 23, 1988.

(3) Jetstream Alert Service Bulletin 32-A-JA 850127, which applies to the affected Jetstream Series 3101 airplanes and incorporates the following effective pages:

Pages	Revision level	Date
5 through 14	Original Issue	April 17, 1985.
1 through 4	Revision 2	Nov. 11, 1994.

(4) Jetstream Service Bulletin 57-JM 5218, which applies to all of the affected airplanes and incorporates the following effective pages:

Pages	Revision level	Date
11, 12, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, and 31	Revision 1	Sept. 29, 1987.
20	Revision 3	Jan. 29, 1990.
13 and 14	Revision 4	Oct. 31, 1990.
1 through 10, 15, 16, 25, and 26	Revision 5	July 28, 1997.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with

AD 98–13–03, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph(f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 671715.You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–13–03, Amendment 39–10591.

Issued in Kansas City, Missouri, on November 13, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28809 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–322–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 B4–600R Series Airplanes, and Model A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes, that would have superseded an existing AD. The existing AD requires repetitive inspections to detect cracks of certain attachment holes, installation of new fasteners, and follow-on inspections or repair if necessary. The proposed AD would have reduced the inspection threshold and repetitive intervals and expanded the area to be inspected. This supplemental notice of proposed rulemaking (NPRM) would further expand the area to be inspected, and would require a modification of the angle fittings of frame FR47. This

supplemental NPRM would also remove certain airplanes from the applicability. The actions specified by this supplemental NPRM are intended to prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the frame.

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. 99–NM–322–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. 99–NM–322–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 99–NM–322–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 99–NM–322–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 20, 2000 (65 FR 44991). That original NPRM proposed to supersede AD 97–16–06, amendment 39–10097 (62 FR 41257, August 1, 1997), which is applicable to all Airbus Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes. A correction to AD 97–16–06 was published in the **Federal Register** on August 25, 1997 (62 FR 44888). The original NPRM proposed to continue to require repetitive inspections to detect cracks of certain attachment holes, installation of new fasteners, and follow-on inspections or repair if necessary. The original NPRM would have reduced the inspection threshold and repetitive intervals and expanded the area to be inspected. The original NPRM was prompted by reports of cracking in the internal angle fittings of the wing center box at fuselage frame FR47 on airplanes that had not reached the inspection threshold required by AD 97–16–06, and cracking around certain fastener holes that were not required to be inspected by AD 97–16–06. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the frame.

Actions Since Issuance of Original NPRM

Since the issuance of the original NPRM, the FAA has been advised by the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, of recent inspection results that warrant a revision of the existing inspection program for certain areas of fuselage frame FR47. Specifically, an investigation of new crack findings indicates the need for an inspection of additional holes (holes A, B, C, D, E, F, G, P, Q, and S) of the baseplate/horizontal section of the angle fittings of the wingbox. The investigation further revealed fatigue sensitivity of additional holes (holes Y, U, V, W, and X) of the angle web fitting on airplanes on which a particular modification had not been correctly embodied in production.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–57–6049, Revision 4, dated July 27, 2000, which describes procedures for repetitive rotating probe inspections to detect cracking of holes in the left and right internal angles of the wing center box. Corrective actions include reaming, drilling, drill-stopping holes, chamfering, follow-on inspections, and installing new or oversize fasteners. The original version of this service bulletin was cited as the appropriate source of service information for the inspections required by AD 97–16–06. Revision 3 was described in the original NPRM and cited as the appropriate source of service information for the proposed inspections. Revision 4 includes minor procedural changes not included in Revision 3, and includes procedures for the inspection of additional holes (holes Y, U, V, W, and X) on certain airplanes.

Airbus has also issued Service Bulletin A300–57–6086, dated June 6, 2000, which describes procedures for repetitive rotating probe inspections to detect cracking of ten holes (holes A, B, C, D, E, F, G, P, Q, and S) in the horizontal flange of the internal corner angle fitting at frame FR47. For crack repair, this service bulletin provides corrective actions that include inspecting hole T if any cracking is found around hole G, reaming the holes, and installing oversize fasteners.

Airbus has also issued Service Bulletin A300–57–6050, Revision 02, dated February 10, 2000, which describes procedures for a modification of the angle fittings at frame FR47, which involves performing a rotating probe inspection to detect cracking of fasteners holes most sensitive to fatigue, cold expanding the holes, and installing new medium interference fitting bolts. The modification is intended to improve the fatigue life of the subject area.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–533–328(B), dated December 27, 2000, to ensure the continued airworthiness of these airplanes in France.

Comments

Due consideration has been given to comments received in response to the original NPRM.

Request To Remove Certain Airplanes From Applicability

One commenter requests that Model A300 F4–622R airplanes be removed from the applicability of the original NPRM to correspond to the revised French airworthiness directive, which was issued specifically to exclude those airplanes.

The FAA concurs. Model A300 F4–622R airplanes are not subject to the identified unsafe condition. The applicability of this supplemental NPRM has been revised to remove those airplanes.

Request To Revise Compliance Times

Several commenters request that the grace periods for inspection of holes H, I, K, L, M, and N, as specified in the original NPRM, be revised to correspond to the grace periods specified in Airbus Service Bulletin A300–57–6049. The commenters state that the grace periods provided in the service bulletin are intended to allow operators to properly plan the required work, and will ensure safety via a longer grace period for newer airplanes and a shorter grace period for older airplanes. One commenter, an operator, states that its newest airplanes would be subject to out-of-sequence inspections and potential modifications, at significant cost to the operator. The operator contends that the grace periods provided in the service bulletin would provide an ''equivalent level of safety.''

The FAA concurs, for the reasons provided by the commenters. Paragraphs (a) and (b) of this supplemental NPRM refer to the compliance thresholds and repetitive intervals specified in paragraph 1.A.(2), Planning Information, of the service bulletin.

Request To Remove Restriction on Flight With Cracks

One commenter requests that the original NPRM be revised to remove the exception to Service Bulletin A300–57–6049 regarding flight with cracks. The original NPRM had included a provision that would prohibit further flight with cracking detected in the attachment holes. The commenter states that the service bulletin does not allow flight with a free crack but rather recommends corrective action to eliminate the crack immediately or repair it temporarily until it can be eliminated.

The FAA partially concurs. In the section titled ''Differences Between the Proposed Rule and Relevant Service Information,'' the original NPRM incorrectly interpreted the service bulletin as allowing flight with cracks, in contrast to FAA policy. The service bulletin does provide for temporary repair with follow-up repetitive inspections, but specifies that, for certain conditions, operators must contact the manufacturer for further instructions prior to further flight. The original NPRM specified that corrective actions be performed in accordance with the service bulletin. To clarify the requirements for repair, this supplemental NPRM specifies that repair of cracking be done by ''applicable corrective actions'' in accordance with the service bulletin.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Explanation of Proposed Requirements of This Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this supplemental NPRM would require accomplishment of the actions specified in the service bulletins described in this supplemental NPRM, except as discussed below.

Differences Between This Supplemental NPRM and the Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this supplemental NPRM would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (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 supplemental NPRM, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this supplemental NPRM.

Furthermore, Airbus Service Bulletins A300–57–6049 and A300–57–6086 specify that operators need not count touch-and-go landings in determining the total number of landings between consecutive inspections, when those landings represent less than five percent of the landings between inspection intervals. However, fatigue cracking, which was found on the forward fitting of fuselage frame FR47 at the level of the last fastener of the external angle fitting, is aggravated by landing. Therefore, the FAA has determined that all touch-and-go landings must be counted in determining the total number of flight cycles between two consecutive inspections.

Cost Impact

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD. The average labor rate is $60 per work hour. The FAA provides the following cost estimates for the actions proposed by this supplemental NPRM:

Action	Work hours	Parts cost	Per-airplane cost
Inspection per paragraph (a)	7 or 13 (depending on configuration).	$0	$420 or $780, per inspection.
Inspection per paragraph (b)	30	6,637 or 19,091, depending on kit required.	8,437 or 20,891, per inspection.
Modification per paragraph (c)	65 to 365	3,370	7,270 to 25,270.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10097 (62 FR 41257, August 1, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–322–AD. Supersedes AD 97–16–06, Amendment 39–10097.

Applicability: All Model A300 B4–600 and A300 B4–600R series airplanes and all Model A300 F4–605R 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 (f)(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 prevent fatigue cracking of the forward fitting of fuselage frame FR47, which could result in reduced structural integrity of the frame, accomplish the following:

Inspections

(a) Perform a rotating probe inspection to detect cracking of the applicable attachment holes on the left and right internal angles of the wing center box, in accordance with Airbus Service Bulletin A300–57–6049, Revision 4, dated July 27, 2000. Do the inspection at the applicable time specified by paragraph 1.A.(2), Planning Information, of the service bulletin, except as required by paragraph (e) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable interval specified in the service bulletin, except that all touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

(1) If no cracking is found: Prior to further flight, install new fasteners in accordance with the service bulletin.

(2) If any cracking is found: Prior to further flight, perform applicable corrective actions (including reaming, drilling, drill-stopping holes, chamfering, follow-on inspections, and installing new or oversize fasteners) in accordance with the service bulletin, except as required by paragraph (d) of this AD.

(b) Perform a rotating probe inspection to detect cracking of the applicable attachment holes in the horizontal flange of the internal corner angle fitting of frame FR47, in accordance with Airbus Service Bulletin A300–57–6086, dated June 6, 2000. Do the inspection at the applicable time specified by the service bulletin, except as required by paragraph (e) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable interval specified in the service bulletin, except that all touch-and-go landings must be counted in determining the total number of flight cycles between consecutive inspections.

(1) If no cracking is detected: Prior to further flight, install new fasteners in accordance with the service bulletin.

(2) If any cracking is detected: Prior to further flight, perform applicable corrective actions (including inspecting hole T, reaming the holes, and installing oversize fasteners) in accordance with the service bulletin, except as required by paragraph (d) of this AD.

Modification

(c) Modify the left and right internal angle fittings of the wing center box. The modification includes performing a rotating probe inspection to detect cracking, repairing cracks, cold expanding holes, and installing medium interference fitting bolts. Perform the modification in accordance with and at the applicable time specified by paragraph 1.B.(4), Accomplishment Timescale, of Airbus Service Bulletin A300–57–6050, Revision 02, dated February 10, 2000; except as required by paragraphs (d) and (e) of this AD.

Note 2: Modification prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6050, dated September 9, 1994, or Revision 01, dated May 31, 1999, is acceptable for compliance with the requirements of paragraph (c) of this AD.

Exception to Specifications in Service Bulletins

(d) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and the applicable service bulletin specifies to contact the manufacturer for disposition of certain corrective actions: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

(e) Where the service bulletins specified in paragraphs (a), (b), and (c) of this AD specify a grace period relative to receipt of the service bulletin, this AD requires compliance within the grace period following the effective date of this AD, if the threshold has been exceeded.

Alternative Methods of Compliance

(f)(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, International Branch, ANM–116. 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–16–06, amendment 39–10097, are not considered to be approved as alternative methods of compliance with any requirements of this AD.

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–533–328(B), dated December 27, 2000.

Issued in Renton, Washington, on November 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28794 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and Model A310 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 Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. This proposal would require repetitive overhaul, including associated modifications, of the ram air turbine (RAT). This action is necessary to prevent failure of the RAT to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–253–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–253–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–253–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 2001–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Gánérale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. The DGAC advises that the life limit of the ram air turbine (RAT) has been recently justified to 60,000 flight hours. Although the life limit of the RAT itself has been extended, the life limit of the grease must also be considered because of the possible development of corrosion. Therefore, periodic overhaul of the RAT has been recommended to ensure its proper functioning. In addition, the DGAC has identified certain modifications to the RAT or its associated systems that need to be incorporated to ensure a properly functioning RAT system in the event of an emergency. Failure of the RAT to deploy or operate properly, if not corrected, could result in reduced hydraulic pressure or electrical power on the airplane in the event of an emergency.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–29–0118, dated April 20, 2001 (for Model A300 B2 and A300 B4 series airplanes); A300–29–6049, Revision 02, dated September 10, 2001 (for Model A300–600 series airplanes); and A310–29–2087, dated April 20, 2001 (for Model A310 series airplanes). These service bulletins describe procedures for repetitive overhaul of the RAT.

The service bulletins refer to Hamilton Sundstrand Service Bulletins 730816–29–12, ERPS26T–29–4, and 732365–29–4 as additional sources of service information for the overhaul actions.

Airbus Service Bulletin A300–29–0118 recommends the prior or concurrent accomplishment of modifications described in the following Airbus Service Bulletins:

• A300–29–0106, Revision 04, dated March 22, 2001, which describes procedures for installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring. Service Bulletin A300–29–0106 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–1 as an additional source of service information for the actions.

• A300–29–0115, Revision 01, dated June 28, 2000, which describes procedures for replacing the RAT with a modified RAT. Airbus Service Bulletin A300–29–0115 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–2 as an additional source of service information for modification of the RAT.

Airbus Service Bulletin A300–29–6049 recommends the prior or concurrent accomplishment of modifications described in the following Airbus Service Bulletins:

• A300–29–6003, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987; which describes procedures for replacing the RAT blade release cable and sheath and modifying the RAT identification plate. Service Bulletin A300–29–6003 refers to Sundstrand Service Bulletin 732365–29–1 as an additional source of service information for the actions.

• A300–29–6005, Revision 1, dated September 2, 1986, which describes procedures for modifying the RAT. Service Bulletin A300–29–6005 refers to Sundstrand Service Bulletin 732365–29–2 as an additional source of service information for the modification.

• A300–29–6039, Revision 04, dated March 22, 2001, which describes procedures for installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring. Service Bulletin A300–29–6039 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–1 as an additional source of service information for the actions.

• A300–29–6046, Revision 02, dated June 28, 2000, which describes procedures for replacing the RAT with a modified RAT. Service Bulletin A300–29–6046 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–2 as an additional source of service information for the replacement.

Service Bulletin A310–29–2087 recommends the prior or concurrent accomplishment of modifications described in the following Airbus Service Bulletins:

• A310–29–2003, dated January 20, 1984, which describes procedures for reidentifying RATs and RAT assemblies that are in good condition, performing functional tests, and modifying and reidentifying certain RATs.

• A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987; which describes procedures for replacing the blade release cable and sheath and modifying the RAT identification plate. Service Bulletin A310–29–2008 refers to Sundstrand Service Bulletin 730816–29–9 as an additional source of service information for the actions.

• A310–29–2011, Revision 1, dated September 2, 1986, which describes procedures for modifying the RAT. Service Bulletin A310–29–2011 refers to Sundstrand Service Bulletin 730816–29–10 as an additional source of service information for the modification.

• A310–29–2078, Revision 04, dated March 22, 2001, which describes procedures for installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring. Service Bulletin A310–29–2078 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–1 as an additional source of service information for the actions.

• A310–29–2084, Revision 02, dated June 28, 2000, which describes procedures for modifying the RAT. Service Bulletin A310–29–2084 refers to Hamilton Sundstrand Service Bulletin ERPS26T–29–2 as an additional source of service information for the modification.

The following table summarizes the service information for the primary action, the concurrent actions, and secondary references:

SUMMARY OF SERVICE BULLETINS

For the overhaul, Airbus Service Bulletin—	Refers to Hamilton Sundstrand service bulletin(s)—	And specifies the concurrent modification specified by Airbus Service Bulletin—	Which refers to—
A300–29–0118	ERPS26T–29–4	A300–29–0106	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
		A300–29–0115	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
A300–29–6049	ERPS26T–29–4 and 732365–29–4.	A300–29–6003	Sundstrand Service Bulletin 732365–29–1.
		A300–29–6005	Sundstrand Service Bulletin 732365–29–2.
		A300–29–6039	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
		A300–29–6046	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
A310–29–2087	ERPS26T–29–4 and 730816–29–12.	A310–29–2003	[reserved]
		A310–29–2008	Sundstrand Service Bulletin 730816–29–9.
		A310–29–2011	Sundstrand Service Bulletin 730816–29–10.
		A310–29–2078	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
		A310–29–2084	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.

Accomplishment of the actions specified in the Airbus service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified the Airbus service bulletins as mandatory and issued French airworthiness directive 2001–212(B), dated May 30, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of 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 Airbus service bulletins described previously.

Cost Impact

The FAA estimates that 153 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 4 work hours per airplane to remove and replace the RAT, at an average labor rate of $60 per work hour. Incorporation of the various modifications that would be required to complete the proposed overhaul at the overhaul facility would cost an average of approximately $67,500 per airplane, based on vendor-supplied information. Based on these figures, the average cost impact of the proposed AD on U.S. operators is estimated to be $67,740 per airplane, per overhaul.

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:

Airbus Industrie: Docket 2001–NM–253–AD.

Applicability: Model A300 B2 and A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and Model A310 series airplanes; certificated in any category; equipped with Dowty or Hamilton Sundstrand ram air turbines (RATs).

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 failure of the RAT to deploy or operate properly in the event of an emergency, which could result in reduced hydraulic pressure or electrical power on the airplane, accomplish the following:

Overhaul

(a) Prior to the accumulation of 20 years since the date of manufacture of the airplane, or within 2 years after the date of this AD, whichever occurs later: Overhaul the RAT in accordance with Airbus Service Bulletin A300–29–0118, dated April 20, 2001 (for Model A300 B2 and A300 B4 series airplanes); A300–29–6049, Revision 02, dated September 10, 2001 (for Model A300–600 series airplanes); or A310–29–2087, dated April 20, 2001 (for Model A310 series airplanes); as applicable. Thereafter, repeat the overhaul at least every 20 years, in accordance with the applicable service bulletin.

Note 2: Accomplishment prior to the effective date of this AD of the overhaul in accordance with Airbus Service Bulletin A300–29–6049, dated April 20, 2001, or Revision 01, dated July 23, 2001, is acceptable for compliance with the initial overhaul requirement of paragraph (a) of this AD.

Note 3: The service bulletins identified in paragraph (a) of this AD refer to Hamilton Sundstrand Service Bulletins 730816–29–12, ERPS26T–29–4, and 732365–29–4 as additional sources of service information for the overhaul actions.

Concurrent Modification Requirements

(b) Prior to or concurrently with the overhaul required by paragraph (a) of this AD: Perform the applicable modifications specified in the following table:

TABLE 1.—CONCURRENT MODIFICATIONS

For Model—	Modify the airplane by—	In accordance with—	Which refers to the following additional source of service information:
(1) A300 series airplanes.	(i) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	Airbus Service Bulletin A300–29–0106, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(ii) Replacing the RAT with a modified RAT.	A300–29–0115, Revision 01, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(2) A300–600 series airplanes.	(i) Replacing the RAT blade release cable and sheath and modifying the RAT identification plate.	A300–29–6003, dated January 31, 1985, including Change Notice O.A., dated June 9, 1987.	Hamilton Sundstrand Service Bulletin 732365–29–1.
	(ii) Modifying the RAT	A300–29–6005, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 732365–29–2.
	(iii) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	A300–29–6039, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(iv) Replacing the RAT with a modified RAT.	A300–29–6046, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.
(3) A310 series airplanes	(i) Reidentifying RATs and RAT assemblies that are in good condition, performing functional tests, and modifying and reidentifying certain RATs.	A310–29–2003, dated January 20, 1984.	[reserved].
	(ii) Replacing the blade release cable and sheath and modifying the RAT identification plate.	A310–29–2008, dated January 31, 1985, including Change Notice O.A., dated October 6, 1987.	Hamilton Sundstrand Service Bulletin 730816–29–9.
	(iii) Modifying the RAT	A310–29–2011, Revision 1, dated September 2, 1986.	Hamilton Sundstrand Service Bulletin 730816–29–10.
	(iv) Installing a grease nipple and a scraper seal assembly and replacing the locking rod spring with a stronger spring.	A310–29–2078, Revision 04, dated March 22, 2001.	Hamilton Sundstrand Service Bulletin ERPS26T–29–1.
	(v) Modifying the RAT	A310–29–2084, Revision 02, dated June 28, 2000.	Hamilton Sundstrand Service Bulletin ERPS26T–29–2.

Note 4: The following Airbus service bulletins are also acceptable for compliance with the applicable requirements of paragraph (b) of this AD:

A300–29–0106, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–0115, dated September 14, 1998.

A300–29–6003, dated January 31, 1985.

A300–29–6005, dated June 21, 1985.

A300–29–6039, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A300–29–6046, dated September 14, 1998; and Revision 01, dated December 16, 1998.

A310–29–2008, dated January 31, 1985.

A310–29–2011, dated June 21, 1985.

A310–29–2078, Revision 01, dated September 8, 1997; Revision 02, dated January 26, 1999; and Revision 03, dated June 28, 2000.

A310–29–2084, dated September 14, 1998; and Revision 01, dated December 16, 1998.

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

Special Flight Permits

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

Note 6: The subject of this AD is addressed in French airworthiness directive 2001–212(B), dated May 30, 2001.

Issued in Renton, Washington, on November 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28795 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes Powered by Pratt & Whitney JT9D Series 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 certain Boeing Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series engines. This proposal would require replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half, with new, improved components. This action is necessary to prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–268–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. 2001–NM–268–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–268–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–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of partial deployments of improperly deactivated thrust reversers during landing on Boeing Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines. Subsequent investigation revealed that, in each event, the thrust reverser had been improperly deactivated. This allowed hydraulic pressure to be available to the actuators when the reverse thrust levers were activated on landing. The pin insert for the deactivation pin was not able to withstand the load of a powered deployment and failed. The deactivation pin, as well as the pin insert flange, are subject to an adverse tolerance stack-up, that reduces their load carrying capability, and the pin and insert flanges may not prevent a deactivated thrust reverser sleeve from moving during a powered deployment. This condition, if not corrected, could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane.

The deactivation pins, pin bushings, and insert flanges on Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series engines are the same as those on the affected airplanes. Therefore, those airplanes may be subject to the same unsafe condition.

Other Relevant Rulemaking

On December 7, 1999, we issued AD 99–26–02, amendment 39–11462 (64 FR 71007, December 20, 1999). That AD applies to certain Boeing Model 747–400 and 767 series airplanes powered by Pratt & Whitney PW4000 series engines. That AD requires replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–78A0089, dated July 19, 2001, which describes procedures for replacement of the existing deactivation pin, aft cascade pin bushing, and pin insert on each thrust reverser half, with new, improved components. 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.

Difference Between the Proposed AD and Alert Service Bulletin

The service bulletin recommends incorporation of the specified actions at the earliest opportunity where facilities and manpower are available. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of all of these factors, the FAA finds a 24-month compliance time for accomplishing the required actions on all affected airplanes to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours (6 work hours per engine) per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,108 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $333,528, or $12,828 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–268–AD.

Applicability: Model 767–200 and –300 series airplanes powered by Pratt & Whitney JT9D series 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and pin insert on each thrust reverser half, with new, improved components, according to Boeing Alert Service Bulletin 767–78A0089, dated July 19, 2001.

Note 2: The new, improved insert flange and pin bushing does not preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in the event of a full powered deployment. Therefore, thrust reversers modified per this AD should be installed with the new, longer deactivation pins having P/N 315T1604–6, as specified in the applicable service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Issued in Renton, Washington, on November 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28796 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 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 DHC–8–400 series airplanes. This proposal would require two actions—a modification and a replacement—affecting the fuel tanks in the wings. All affected airplanes would require modification of the clearance of the fuel tank vent lines to the left and the right wing fuel tanks. Some affected airplanes would also require replacement of three existing fuel probes from the center fuel tank on the left and right wings with new production fuel probes. This action is prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. This action is necessary to prevent inadequate clearance between the fuel tank vent lines and the adjacent rib structures of the wings or failure of certain temporary, reworked fuel probes in the center fuel tanks in the wings. Either condition could compromise the airplane's lightning protection system, possibly resulting in a fire or explosion if the airplane were hit by lightning. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–140–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. 2001-NM–140-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., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, 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: James Delisio, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; 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–140–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–140–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 DHC–8–400 series airplanes. TCCA advises that two problems have been identified with the wing fuel tanks which, if not corrected, could compromise the lightning protection of the airplanes. The first problem is a possible lack of clearance between the fuel tank vent lines and the adjacent wing rib structures. The second is possible failure of temporary, re-worked fuel probes in the wing center fuel tanks. Either condition, if not corrected, could compromise the airplane's lightning protection system, possibly resulting in a fire or explosion if the airplane were hit by lightning.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A84–28–02, dated February 7, 2001, which describes procedures for modification of the fuel tank vent lines by adding Teflon tubing and band clamps to insulate and separate the fuel tank vent lines from the adjacent wing rib structures. Bombardier has also issued Service Bulletin 84–28–01, Revision 'A', dated February 8, 2001, which describes procedures for replacement of existing fuel probes numbers 1, 2, and 5 with new production fuel probes. The existing fuel probes were previously reworked as a temporary solution to potential inadequate clearance between the fuel probes and the structure of the center fuel tanks in the wings. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. TCCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–2001–14, dated March 21, 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 bulletins described previously.

Cost Impact

There are approximately 32 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry would be affected by the proposed AD with 13 airplanes affected by the proposed modification of the clearance of the fuel tank vent line and 7 airplanes affected by the proposed replacement of the numbers 1, 2, and 5 fuel probes.

It would take approximately 12 work hours to accomplish the proposed modification of the clearance of the fuel tank vent line, at an average labor rate of $60 per work hour. Required parts would cost approximately $440 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $15,080, or $1,160 per airplane.

It would take approximately 2 work hours to accomplish the proposed replacement of fuel probes numbers 1, 2, and 5, at an average labor rate of $60 per work hour. The required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $840, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD, 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 de Havilland, Inc.): Docket 2001–NM–140–AD.

Applicability: Model DHC–8–400 series airplanes; certificated in any category; serial numbers 4005, 4006, 4008 through 4010 inclusive, 4012 through 4015 inclusive, and 4018 through 4040 inclusive.

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 inadequate clearance between the fuel tank vent line and the adjacent rib structures of the wings or failure of certain temporary, reworked fuel probes in the center fuel tanks in the wings, either of which could compromise the airplane's lightning protection system, possibly resulting in a fire or explosion if the airplane were hit by lightning, accomplish the following:

Modification of Clearance of Fuel Tank Vent Lines

(a) For airplanes having serial numbers 4005, 4006, 4008 through 4010 inclusive, 4012 through 4015 inclusive, and 4018 through 4040 inclusive: Within 120 days after the effective date of this AD, modify the clearance of the fuel tank vent lines to the left and the right wing fuel tanks by wrapping 1 piece of Teflon tube around the vent line at each of 10 stations (2 pieces at station 191.200) and securing it with a clamping band (2 clamping bands at station 191.200), in accordance with the Accomplishment Instructions (including Table 1) and Figure 1 of Bombardier Alert Service Bulletin A84–28–02, dated February 7, 2001.

Replacement of Fuel Probes Numbers 1, 2, and 5

(b) For airplanes having serial numbers 4006, 4008, 4012 through 4015 inclusive, and 4018 through 4027 inclusive: Prior to the accumulation of 4,000 flight hours after the effective date of this AD, or within 120 days after the effective date of this AD, whichever occurs later: Replace existing fuel probes numbers 1, 2, and 5 from the center fuel tank on the left and the right wings with new production fuel probes, in accordance with Bombardier Service Bulletin 84–28–01, Revision ''A,'' dated February 8, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–14, dated March 21, 2001.

Issued in Renton, Washington, on November 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28797 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–359–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes. The existing AD currently requires repetitive inspections for cracking and corrosion of the pressure bulkhead at body station (BS) 1016, and follow-on actions. This action would expand the applicability of the existing AD to include additional airplanes and require new repetitive inspections to detect cracking and corrosion of the aft pressure bulkhead at BS 1016, and follow-on actions. This action is necessary to detect and correct corrosion or cracking of the aft pressure bulkhead at BS 1016, which could result in loss of the aft pressure bulkhead web and stiffeners and consequent rapid decompression of the fuselage. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–359–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–359–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–359–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–359–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 6, 1985, the FAA issued AD 84–20–03 R1, amendment 39–5183 (50 FR 51235, December 16, 1985), applicable to certain Boeing Model 737 series airplanes, to require repetitive inspections for cracking and corrosion of the pressure bulkhead at body station (BS) 1016, and follow-on actions. That action was prompted by reports indicating that cracking or corrosion and cracking had been found on several Boeing Model 737–200 series airplanes at the lower central web and stiffeners of the pressure bulkhead at BS 1016. The requirements of that AD are intended to detect and correct such corrosion and cracking, which could result in reduced structural integrity of the aft pressure bulkhead.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, we have received reports of severe corrosion in the area affected by the existing AD on other Model 737 series airplanes which are not included in the applicability of the existing AD. In addition, we have determined that the instructions for the inspections required by the existing AD are not adequate in defining the inspection level and area, nor are the instructions adequate for gaining access and preparing for the inspection.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000. (The existing AD shows Boeing Service Bulletin 737–53–1075, Revision 1, dated September 2, 1983, as the appropriate source of service information for accomplishment of the actions required by that AD.) Revision 3 of the service bulletin describes procedures for repetitive detailed visual inspections for cracking and corrosion of the aft pressure bulkhead at BS 1016, including inspections of the following items: Forward and aft sides of the pressure web, forward and aft sides of the pressure chord, pressure chord radius, forward and aft sides of the angle stiffener, forward and aft chord, stringer end fitting, system penetration doublers, channel stiffeners and fasteners, ''Z'' stiffeners and fasteners, and fasteners common to the pressure

chord and pressure web. The service bulletin also describes follow-on actions to these inspections, which involve repair, if necessary, as well as clearing the drain path to ensure that it is free of debris, enlarging the drain hole, and replacing existing leveling compound, if necessary. Accomplishment of the actions shown in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 84–20–03 R1 to continue to require repetitive detailed visual inspections for cracking and corrosion of the pressure bulkhead at BS 1016, and follow-on actions. This action would require new repetitive inspections to detect cracking and corrosion of the aft pressure bulkhead at BS 1016 and follow-on actions, and would require these inspections to be accomplished on airplanes not subject to the existing AD. The actions would be required to be accomplished according to Revision 3 of the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

This proposed AD differs from Revision 3 of the service bulletin in this way: The service bulletin states that the manufacturer must be contacted for disposition of certain repair conditions, but this proposed AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Explanation of Changes to Requirements of Existing AD

We have revised the requirements of the existing AD, as restated in this proposed AD, to remove all references to the use of ''later FAA-approved revisions of the applicable service bulletin.'' This change is consistent with FAA policy in that regard. In place of this language, we have revised the existing requirements restated in this proposed AD to provide for accomplishment of actions per Revision 1, Revision 2, or Revision 3 of the service bulletin. We have determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the proposed AD.

Explanation of Repetitive Interval

For certain airplanes, the proposed AD would require repetitive inspections at least every two years. For other airplanes, the repetitive interval is four years. This difference is due to design changes to improve corrosion resistance in the subject area. For example, airplanes with line numbers 1 through 929 inclusive have a single 0.25-inch drain hole (which the existing AD requires to be expanded to 0.5 inch), and airplanes with line numbers 930 through 1042 inclusive have a single 0.5-inch drain hole. This proposed AD would require repetitive inspections on these airplanes at least every two years. However, airplanes with line numbers 1043 through 3132 have TWO 0.5-inch drain holes. We find that the addition of a second drain hole on these airplanes, as well as improvements to the leveling compound and finishes that are present on airplanes with line numbers 930 through 3132 inclusive provides additional corrosion resistance. Thus, this proposed AD would require repetitive inspections on these airplanes at least every four years.

Cost Impact

There are approximately 2,920 airplanes of the affected design in the worldwide fleet.

We estimate that 337 airplanes of U.S. registry are subject to the existing AD. The inspections that are currently required by AD 84–20–03 R1 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $40,440, or $120 per airplane, per inspection cycle.

The drain hole enlargement that is currently required by AD 84–20–03 R1 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $40,440, or $120 per airplane.

We estimate that 1,143 airplanes of U.S. registry would be affected by this proposed AD. The new inspections that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new proposed requirements on U.S. operators is estimated to be $274,320, or $240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 removing amendment 39–5183 (50 FR

51235, December 16, 1985), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–359–AD. Supersedes AD 84–20–03 R1, Amendment 39–5183.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; line numbers (L/N) 1 through 3132 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 (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion or cracking of the aft pressure bulkhead at Body Station (BS) 1016, which could result in loss of the aft pressure bulkhead web and stiffeners and consequent rapid decompression of the fuselage, accomplish the following:

Restatement of Requirements of AD 84–20–03 R1

Initial Inspection

(a) For Model 737 series airplanes with L/N 1 through 929 inclusive, with more than 20,000 hours time-in-service or 7 years since date of manufacture, whichever occurs first: Within 120 days after January 20, 1986 (the effective date of AD 84–20–03 R1, amendment 39–5183), unless already accomplished within the 21 months before January 20, 1986, visually inspect the BS 1016 pressure bulkhead for cracking and corrosion; according to Boeing Alert Service Bulletin 737–53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000. Remove any obstruction to the drain hole in the frame chord and replace any deteriorated leveling compound as noted in the service bulletin. Treat the area of inspection with corrosion inhibitor BMS 3–23, or equivalent.

Drain Hole Enlargement

(b) For airplanes identified in paragraph (a) of this AD: Within 1 year after January 20, 1986, accomplish the drain hole enlargement as shown in Boeing Alert Service Bulletin 737–53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000.

Corrective Action

(c) If cracking or corrosion is found during any inspection required by paragraph (a) or (d) of this AD, before further flight, repair according to paragraph (c)(1) or (c)(2) of this AD.

(1) According to Boeing Alert Service Bulletin 737–53A1075, Revision 1, dated September 2, 1983; Revision 2, dated July 13, 1984; or Revision 3, dated June 8, 2000.

(2) According to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Repetitive Inspections

(d) For airplanes identified in paragraph (a) of this AD: Repeat the visual inspections and corrosion inhibitor treatment in paragraph (a) at intervals not to exceed 2 years, until paragraph (e) of this AD has been done.

New Requirements of This AD

Initial Inspection

(e) Do a detailed visual inspection for cracking or corrosion of the aft pressure bulkhead at BS 1016 (including the forward and aft sides of the pressure web, forward and aft sides of the pressure chord, pressure chord radius, forward and aft sides of the angle stiffener, forward and aft chord, stringer end fitting, system penetration doublers, channel stiffeners and fasteners, ''Z'' stiffeners and fasteners, and fasteners common to the pressure chord and pressure web), according to Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000. Do this inspection at the applicable time shown in paragraph (e)(1), (e)(2), or (e)(3) of this AD.

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

(1) For airplanes on which an inspection has previously been done according to the requirements of paragraph (a) of this AD: Do the inspection within 2 years since the most recent inspection according to paragraph (a) or (d) of this AD, as applicable. Inspection according to paragraph (e) of this AD ends the requirement for inspections according to paragraph (d) of this AD.

(2) For airplanes having L/N 930 through 1042 inclusive, on which an inspection has not previously been done according to paragraph (a) of this AD: Do the inspection within 2 years after the effective date of this AD.

(3) For airplanes having L/N 1043 through 3132 inclusive, on which an inspection has not previously been done according to paragraph (a) of this AD: Do the inspection within 6 years since the airplane's date of manufacture, or within 2 years after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(f) Repeat the inspection in paragraph (e) of this AD at the applicable time shown in paragraph (f)(1) or (f)(2) of this AD.

(1) For airplanes having L/N 1 through 1042 inclusive: Repeat the inspection at least every 2 years.

(2) For airplanes having L/N 1043 through 3132 inclusive: Repeat the inspection at least every 4 years.

Repair

(g) If any corrosion or cracking is found during any inspection according to paragraph (e) or (f) of this AD: Before further flight, repair according to Boeing Alert Service Bulletin 737–53A1075, Revision 3, dated June 8, 2000. EXCEPTION: If corrosion or cracking of the web and stiffeners is outside the limits specified in the service bulletin, or if corrosion or cracking is found in any structure not covered by the repair instructions in the service bulletin, before further flight, repair according to a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 84–20–03 R1, amendment 39–5183, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Issued in Renton, Washington, on November 9, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28798 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 0138–1138; FRL–7104–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision concerning the Kansas Fuel Volatility rule submitted by the Kansas Department of Health and Environment (KDHE). This action would approve amendments to State controls on the summertime Reid Vapor Pressure (RVP) of gasoline distributed in Wyandotte and Johnson Counties. The amendment changed the RVP limit from 7.2 pounds per square inch (psi) to 7.0 psi, and from 8.2 psi to 8.0 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This is a part of the State's plan to maintain clean air quality in Kansas City.

DATES: Comments must be received on or before December 19, 2001.

ADDRESSES: Written comments should be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

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

What is a SIP?
What is the Federal approval process for a SIP?
What are the criteria for SIP approval?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations limiting emissions and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Are the Criteria for SIP Approval?

In order to be approved into a SIP, the submittal must meet the requirements of section 110. In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and our regulations, as found in section 110 and part D of Title I of the CAA amendments and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

The CAA has additional requirements for the approval of SIPs containing certain state fuel controls. Section 211(c)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce regulations respecting fuel characteristics or components if EPA has adopted Federal controls under section 211(c)(1) applicable to such fuel characteristics or components, unless the state control is identical to the Federal control. Section 211(c)(4) includes two exceptions to this prohibition. First, under section 211(c)(4)(B), California is not subject to the preemption in section 211(c)(4)(A). Second, a State may prescribe or enforce such otherwise preempted fuel controls if the measure is approved into a SIP.

Under section 211(c)(4)(C), we may approve such state fuel controls into a SIP, if the state demonstrates that the measure is necessary to achieve the NAAQS. Section 211(c)(4)(C) specifies that a state fuel requirement is ''necessary'' if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. As discussed in more detail below, the State rule proposed for SIP approval merely amends the State fuel control that has already been approved into the SIP and addresses emissions reductions shortfalls that EPA has already determined are required under the CAA. Therefore, a new demonstration of necessity under section 211(c)(4)(C) is not required.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Background

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the NAAQS for ozone. In accordance with the CAA, KDHE revised the SIP for ozone for the Kansas portion of the Kansas City area to

recognize the area's attainment status. We published final approval of the Kansas SIP resdesignating the area to attainment on June 23, 1992. The SIP and the redesignation became effective on July 23, 1992.

Section 175A of the CAA requires that states requesting redesignation of a nonattainment area to attainment status must also submit a revision to the state implementation plan that commits the state to provide for the maintenance of the standard for which the area is redesignated. The maintenance plan submitted by the State of Kansas and approved by EPA in 1992 included a commitment to ensure continued compliance with the ozone standard. The states and the region committed to implement the following additional air pollution control contingency measures in the event a future violation of the ozone standard occurred: Implement one or more transportation control measures to achieve at least a 0.5 percent reduction in actual area-wide volatile organic compound (VOC) emissions; require VOC emission offsets for new and modified major sources; and implement either a Stage II vapor recovery or enhanced vehicle inspection and maintenance program.

On July 11, 12, and 13, 1995, exceedances of the ozone standard were measured at the Liberty monitoring site. These exceedances, in combination with the exceedance measured on July 29, 1993, constituted a violation of the ozone standard for the three-year time period of 1993–1995. This violation triggered the need for the states to implement the contingency measures in the maintenance plan. By letter dated August 17, 1995, EPA agreed to a request from both Kansas and Missouri to substitute other equivalent control measures for those specified in the maintenance plan, provided the substitute measures would achieve substantially equivalent emission reductions and were submitted as SIP revisions.

In partial fulfillment of the requirement to implement contingency measures, Kansas promulgated K.A.R. 28–19–79 to limit the RVP of the gasoline sold during the summer months (June 1 through September 15) in the Kansas City area to 7.2 psi. This regulation became effective May 2, 1997. We published final approval of Kansas' RVP rule on July 7, 1997 (62 FR 36212). The approval became effective on August 6, 1997. This action addressed a portion of the reductions needed to fulfill the requirement to implement contingency measures. The estimated area-wide reductions needed to maintain the standard was 8.5 tons per day (tpd) of VOC reductions. The 7.2 psi RVP rule would produce an estimated 4.1 tpd of VOC reductions.

An exceedance of the NAAQS for ozone again occurred on July 23, 1997, at the Liberty monitoring site and another on August 28, 1997, at the Kansas City International Airport monitoring site. These exceedances in conjunction with the three exceedances in 1995 resulted in a violation of the ozone standard for the three-year period of 1995–1997, again emphasizing the need to implement additional contingency measures. From 1998 through 2000, seven exceedances have been recorded at the six air quality monitors located in the Kansas City area, although no subsequent violations of the ozone standard have occurred.

In an effort to satisfy the required emissions reductions and address the continuing exceedances, the Governors of Kansas and Missouri opted into the Federal program for reformulated gasoline (RFG) on July 20, 1999. However, on January 4, 2000, the United States Court of Appeals for the District of Columbia Circuit vacated EPA's rule allowing the use of RFG in former nonattainment areas (*American Petroleum Inst.* v. *U.S. Environmental Protection Agency*, 198 F. 3d 275 (D.C. Cir. 2000)). Thus RFG was no longer a viable option for the area.

In January 2000 the Kansas City Chamber of Commerce and then subsequently the Mid-America Regional Council (MARC) convened meetings with interested stakeholders to determine the most appropriate option for reducing the emissions of ozone forming pollutants. The stakeholders concluded that a lower volatility gasoline was the most appropriate option. At its September 2000 meeting, MARC adopted a resolution supporting the use of a lower volatility gasoline. Then on May 2, 2001, we received a SIP revision from Kansas that lowered the volatility of gasoline during the summertime. This notice and the accompanying technical support document provide an analysis of the SIP revision for a lower volatility gasoline.

Fuel Volatility

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs, an ozone forming pollutant. VOCs are an important component in the production of ground-level ozone in the hot summer months. RVP is directly proportional to the rate of evaporation. Consequently, the lower the RVP, the lower the rate of evaporation. Lowering the RVP in the summer months can offset the effect of summer temperatures upon the volatility of gasoline, which, in turn, lowers emissions of VOCs. Reduction of the RVP will help the state's effort to maintain the NAAQS for ozone.

State Submittal

On May 2, 2001, KDHE requested that we revise the SIP to reflect its amendments to the State RVP controls. The amendments further lower the fuel volatility standard from 7.2 psi to 7.0 psi (for certain ethanol blended fuels, the standard was lowered from 8.2 psi to 8.0 psi). Included in the submittal was a letter from Secretary Clyde D. Graeber, KDHE, to William W. Rice, Acting EPA Region 7 Administrator, requesting authorization to implement a lower RVP requirement in the Kansas City area; regulation K.A.R. 29–19–719; and a technical support document demonstrating the need to lower the RVP standard for the area. The state held a public hearing on March 14, 2001; the rule was adopted on April 3, 2001; and the rule became effective on April 27, 2001.

Analysis of the SIP

As mentioned above, section 211(c)(4) of the CAA prohibits States from adopting or attempting to enforce controls or prohibitions respecting certain fuel characteristics or components unless the SIP for the State so provides.[1] The CAA specifies that EPA may approve such State fuel controls into a SIP only upon a finding that the control is ''necessary'' to achieve a NAAQS as defined under section 211(c)(4)(C). Section 211(c)(4)(C) does not, however, address the ability of States to modify fuel control programs that have already been deemed necessary and approved into a SIP.

Here Kansas does not seek approval of a new control or prohibition respecting a fuel characteristic or component. Instead, Kansas seeks approval of a change to the approved RVP control to adjust the level of the standard. Given the original 1997 determination that the State RVP control was necessary to respond to the violations of the NAAQS, the violation and the additional exceedances which occurred after the implementation of the 7.2 psi RVP control, and the fact that the necessary reductions called for in the State's maintenance plan have still not been

[1] Under sections 211(h) and 211(c)(1) of the CAA, we have promulgated nationally applicable Federal standards for the RVP level of summertime gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls on summertime RVP are prohibited under section 211(c)(4)(A).

achieved, we believe it is reasonable to approve the amendments to the RVP standard without a new demonstration of necessity under section 211(c)(4)(C).[2]

As explained above, when the area experienced violations of the NAAQS in 1995 and 1997, Kansas was required to implement contingency measures as necessary to assure the area's ozone levels continued to meet national standards. By an August 17, 1995 letter, EPA had affirmed that Missouri and Kansas could substitute other equivalent control measures for the contingency measures specified in the approved SIP provided the substitute measures would achieve substantially equivalent emission reductions and that the substitute measures were submitted as SIP revisions.

In 1997, the State adopted a low RVP fuel regulation which required fuel sold between June 1 and September 15 of each year to have an RVP level not higher than 7.2 psi. As part of the SIP submittal, Kansas demonstrated that additional control measures necessary to provide emissions reductions required to meet the contingency plan commitments were unreasonable or impracticable for implementation. EPA found the RVP control was therefore necessary under section 211(c)(4)(C) and approved the 7.2 psi RVP gasoline requirement into the SIP (62 FR 36212, July 7, 1997).

The control adopted into the SIP in 1997, however, was insufficient to meet the VOC reductions required by the contingency measures of the maintenance plan. (See 64 FR 3896, January 26, 1999.) As a result, full approval of the SIP submittal addressing the 1995 and 1997 one-hour ozone violations was made contingent upon Kansas implementing one of the following in lieu of the contingency measures in the 1992 SIP which were not implemented: (1) Opting in to the Federal reformulated gasoline (RFG) program; (2) adopting regulations implementing either Stage II Vapor Recovery or Enhanced Inspection and Maintenance Program; or (3) adopting any combination of regulations that achieve the minimum VOC reductions required by the contingency measures identified in the 1992 SIP (8.4 tpd)(64 FR 28757, May 27, 1999).

In its current SIP submittal, Kansas quantifies the additional VOC reductions needed to make up the shortfall left from the 1997 SIP revision. Kansas estimates that the control measures approved into the SIP in 1997 provide approximately 4.0 of the 8.4 tpd of VOC reductions required. As a result the area needs to achieve approximately 4.4 tpd of additional VOC reductions to replace the reductions that were to be achieved by implementing the required contingency measures.

After unsuccessfully attempting to opt-in to the Federal RFG program, the governor of Kansas committed to implement a 7.0 psi RVP fuel program in Johnson and Wyandotte Counties with a target implementation date of the summer of 2001. Reducing the fuel volatility limit from 7.2 to 7.0 psi will reduce VOC emissions by another 2.43 tpd in the Kansas City area. Kansas and Missouri are working to establish control measures for stationary sources to provide the additional emissions reductions called for in the maintenance plan. Kansas committed to implementation of a phased program to reduce the vapor pressure of cold cleaning solvents to less than or equal to 1.0 mmHg. We expect this SIP revision will be submitted early next year. Missouri submitted additional control measures on May 17 and July 19, 2001, for the control of petroleum liquid storage, loading, and transfer and another for the control of emissions from solvent cleanup operations. We expect another control measure reducing the vapor pressure of cold cleaning solvents to be submitted by Missouri later this year. EPA action on these submissions will be addressed in future rulemaking.

This action proposes approval of the State's amendments to its RVP standards. We are approving these amendments without making a new determination of necessity under section 211(c)(4)(C) because the adjustment in the RVP level from 7.2 psi to 7.0 psi is a continuation of the previous requirement for the area to address the 1995 and 1997 air quality violations. The CAA requirements for approving a State fuel control into a SIP were met with our rulemaking in 1997 when it was demonstrated that a fuel control measure is necessary to achieve the NAAQS. The changes to the level of control do not represent new controls respecting fuel characteristics or components that are not already approved in a SIP.

It is important to note that Kansas could have adopted a 7.0 psi RVP control measure and received SIP approval for such a control in the 1997 SIP revision. While this measure provided some VOC reductions, it did not provide all of the reductions considered necessary to respond to the violations of the ozone NAAQS. The 7.2 psi RVP control was adopted in 1997 as an interim control measure that could be implemented quickly while the State contemplated other control measures to make up the further reductions required. This decision, however, was not compelled by the CAA and, in 1997, Kansas could have made the decision it is making now that the appropriate RVP level is 7.0 psi.

Analysis of the Rule

The Kansas rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles in Johnson and Wyandotte Counties and that has an RVP greater than 7.0 psi, or 8.0 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less are exempt from this regulation.

Gasoline that is separately stored in Johnson or Wyandotte Counties, sealed, and clearly labeled as a motor vehicle fuel that is not to be dispensed, sold, supplied, offered for supply or transport, or exchanged in trade within the regulated area until a designated date when such activity will be in compliance with this regulation is exempt from this regulation.

Gasoline that is separately stored in Johnson or Wyandotte Counties, sealed, and clearly labeled as a motor vehicle fuel that is to be dispensed, sold, supplied, offered for supply or transport, or exchanged in trade outside of the regulated area shall be exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA recommendations as described in 40 CFR part 80, appendices D, E, and F.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51,

[2] The Technical Support Document submitted by the State (see 217/KS–68 in the docket) supports a conclusion that the amendments to the RVP standard are necessary as defined under section 211(c)(4)(C) of the CAA. Because we conclude that such a demonstration is not necessary, we have not conducted our own analysis of the State's submittal.

appendix V. In addition, as explained above and in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and part D of Title I, and implementing regulations.

What Action Is EPA Taking?

We are proposing to approve this revision to the Kansas SIP concerning K.A.R. 28–19–719 as it meets the requirements of the CAA. We are also proposing to revoke K.A.R. 28–19–79 as it has been revised and replaced.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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), 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 CAA. 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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 5, 2001.

Martha R. Steincamp,

Acting Regional Administrator, Region 7.

[FR Doc. 01–28858 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 080–0041; FRL–7105–2]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a full disapproval of revisions to the Pinal County Air Quality Control District's (PCAQCDs) portion of the Arizona State Implementation Plan (SIP). These revisions concern definitions and the incorporation by reference of external documents into the SIP. We are also proposing a full approval of a revision to the PCAQCD portion of the Arizona SIP concerning definitions and a removal of rules previously approved in error. We are proposing action on local rules under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 19, 2001.

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

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

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

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	1–2–110	Adopted Documents	07/29/98	10/07/98
PCAQCD	1–3–130	Adopted Documents	05/14/97	10/07/98
PCAQCD	1–3–140	Definitions	07/29/98	10/07/98
PCAQCD	3–1–020	Adopted Documents	05/14/97	10/07/98
PCAQCD	4–1–010	Adopted Documents	05/14/97	10/07/98

On April 24, 1999, these rule submittals were found by default to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

Table 2 lists rules that we previously approved into the SIP in error and are now proposing to remove from the SIP.

TABLE 2.—SIP RULES FOR REMOVAL (PREVIOUSLY APPROVED ON APRIL 9, 1996 (61 FR 15717), AS CLARIFIED ON DECEMBER 20, 2000 (65 FR 79742))

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	1–3–130	Adopted Documents	10/12/95	11/27/95
PCAQCD	3–1–020	Adopted Documents	06/29/93	11/27/95

B. Are There Other Versions of These Rules?

We approved a version of Rules 1–2–110, 1–3–130, 1–3–140, and 3–1–020 into the SIP on April 9, 1996 (61 FR 15717), as clarified on December 20, 2000 (65 FR 79742). There are no previous versions of Rule 4–1–010 in the SIP.

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

The purposes are as follows:

- Rule 1–2–110 adds a reference to EPA test methods and protocols and incorporates by reference Arizona Administrative Code (AAC), title 18, chapter 2 (July 1, 1996), including appendices 9 and 10, into the PCAQCD portion of the Arizona SIP.
- Rule 1–3–130 removes the adoption date of AAC Rule R18–2–101, Definitions, which is incorporated by reference.
- Rule 1–3–140 removes two unnecessary paragraphs relating to section 111 and 112 of the Clean Air Act (CAA) from definition 79, Major Source, and adds four compounds to definition 89, Non-Precursor Organic Compound. The submittal also requests that definition 81, Maximum Achievable Control Technology, not be included in the SIP.
- Rule 3–1–020 removes the adoption date of AAC Rule R18–2–301, Definitions, which is incorporated by reference.
- Rule 4–1–010 is a new rule that incorporates by reference AAC, title 18, chapter 2, article 6 (July 1, 1996) into the PCAQCD portion of the Arizona SIP. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

B. Do the Rules Meet the Evaluation Criteria?

Rule 1–3–140 improves the SIP by updating certain definitions and is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Definition 81 is excluded from approval into the SIP at the request of PCAQCD. Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010 contain provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 of the CAA and prevent full approval of the SIP revision.

- Submitted Rule 1–2–110 incorporates by reference Arizona Administrative Code (AAC), title 28, chapter 2 (July 1, 1996), which is not contained in the Arizona SIP. This would imply that all of the AAC rules in chapter 2 were SIP-approvable, which is not necessarily the case. Also certain AAC rules may be inconsistent with PCAQCD rules.
- Submitted Rules 1–3–130 and 3–1–020 incorporate by reference AAC Rules R18–2–101 and R18–2–301, which are not contained in the Arizona SIP. Enforceability of definitions in these incorporated AAC rules would be limited, unless these AAC rules were approved into the Arizona SIP. Also certain AAC rules may be inconsistent with PCAQCD rules.
- The present SIP-approved versions of Rule 1–3–130 and 3–1–020 also incorporate by reference AAC Rules R18–2–101 and R18–2–301, which are not contained in the Arizona SIP.
- Submitted Rule 4–1–010 incorporates by reference AAC, title 18, chapter 2, article 6 (July 1, 1996), which is not contained in the SIP. This would imply that all of the AAC rules in chapter 2, article 6 were SIP-approvable, which is not necessarily the case. Also certain AAC rules may be inconsistent with PCAQCD rules.

D. EPA Recommendations to Further Improve the Rules.

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

E. Proposed Action and Public Comment.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a full approval of submitted Rule 1–3–140.

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a full disapproval of submitted Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010. If this disapproval is finalized, no sanctions would be imposed under section 179 of the CAA. The SIP-approved version of Rule 1–2–110 would be retained in the Arizona SIP.

As authorized in section 110(k)(6) of the CAA, EPA is proposing a removal from the SIP of present SIP-approved Rules 1–3–130 and 3–1–020.

We will accept comments from the public on today's proposed actions for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13211

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.

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

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

This proposed 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. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

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

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its

actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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 proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 01–28859 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7105–1]

RIN 2060–AH75

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed national emission standards for hazardous air pollutants for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The EPA originally requested comments on the proposed rule by November 19, 2001 (66 FR 48174, September 18, 2001). We are extending the deadline to December 19, 2001, and are now requesting written comments by that date because we have received requests for a 30-day extension from the Chlorine Institute, Incorporated, and the Dow Chemical Company. The reasons given for these requests were: to assess comprehensively the implications of the many nuances of the proposed rule; and the need for HCl producers to address increased security issues resulting from the incidents of September 11 which kept key personnel from focusing on the proposed rule within the original 60-day period. We find these requests reasonable.

DATES: Comments may be submitted by December 19, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–41, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–41, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Comments may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect'' version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must be identified by the docket number A–99–41. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, C404–02, Attention: Mr. Bill Maxwell, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. Information related to the proposed standards is available for inspection at the Air and Radiation Docket and Information Center, Docket No. A–99–41. The docket is located at the U.S. EPA, 401 M Street, SW, Room M–1500 (ground floor, Waterside Mall), Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Maxwell, Combustion Group, Emission Standards Division, C439–01, U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5430; facsimile number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov.*

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–28857 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7103–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan), to exclude (or ''delist'') a certain hazardous waste from the list of hazardous wastes under RCRA regulation. Nissan will generate the petitioned waste by treating wastewater from Nissan's automobile assembly plant when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. Nissan petitioned EPA to grant a generator-specific delisting, because Nissan believes that its F019 waste does not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by Nissan, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. Today's proposed rule proposes to grant Nissan's petition to delist its F019 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, Nissan's petitioned waste will no longer be classified as F019, and will not be subject to regulation as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until January 3, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by December 4, 2001. The request must contain the information prescribed in section 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Send one copy to Nina Vo, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. Identify your comments at the top with this regulatory docket number: R4–01–01–NissanP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8190; and Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535. The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Tennessee Department of Environment and Conservation is located in downtown Nashville near the intersection of Church Street and 4th Avenue North, about 0.2 mile northwest of Riverfront Park and 0.2 mile southwest of Bicentennial Park. Documents are also available for viewing and downloading at the Web site of EPA, Region 4: *http://www.epa.gov/region4/index.html.* At this site, click on ''Waste,'' ''Resource Conservation and Recovery Act (RCRA),'' ''RCRA Program, and then on ''New'' under ''Enforcement and Compliance.''

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
- A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
- B. How did EPA Evaluate this Petition?
- 1. What is the EPACML model that EPA used in the past for determining delisting levels?
- 2. What is the DRAS that uses the new EPACMTP model to calculate not only delisting levels, but also to evaluate the effects of the waste on human health and the environment?
- 3. Why is the EPACMTP an improvement over the EPACML?
- 4. Where can technical details on the EPACMTP be found?
- 5. What methods is EPA proposing to use to determine delisting levels for this petitioned waste?

II. Disposition of Delisting Petition
- A. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)
- B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?
- C. Should the Multiple Extraction Procedure (MEP) be Used to Evaluate this Delisting Petition?
- D. Conclusion

III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?

IV. Effective Date

V. Paperwork Reduction Act

VI. National Technology Transfer and Advancement Act

VII. Unfunded Mandates Reform Act

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

IX . Executive Order 12866

X. Executive Order 13045

XI. Executive Order 13084 Affecting Indian Tribal Governments

XII. Submission to Congress and General Accounting Office

XIII. Executive Order 13132

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in Sec. 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA, 950 F.2d 741 (D.C. Cir. 1991).* On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F019. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms relating to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the New EPACMTP Model to Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a new model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of Nissan's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Register**s, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. Nissan's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors*, U.S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist Nissan's F019 waste, Nissan must meet the delisting levels and dispose of the waste in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML.

The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide*, Office of Solid Waste, U.S. EPA, Washington, DC, September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov.*

The EPACML accounts for: One-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm.*

2. Delisting Risk Assessment Software (DRAS) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.*

3. DRAS Technical Support Document (DTSD) *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm.*

4. DRAS Users Guide *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf.*

Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills*, Westat, 1987.

following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations. The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: Transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

Nissan submitted to the EPA analytical data from its Smyrna, Tennessee plant. Samples of wastewater treatment sludge were collected from roll-off containers over a one-month period, in accordance with a sampling and analysis plan approved by EPA and the Tennessee Department of Environment and Conservation. A summary of analytical data is presented in Table 1 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and raw materials that Nissan submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for Nissan's petitioned waste.

EPA also requests comment on three additional methods of evaluating Nissan's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320[4], to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste that are more conservative than results obtained by DRAS for total concentrations; and (3) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for Nissan's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l TCLP; Nickel: 11 mg/l TCLP; Silver: 0.14 mg/l TCLP; Vanadium: 1.6 mg/l; Zinc: 4.3 mg/l TCLP; Acetone: 160 mg/kg; Bis-2-ethylhexyl phthalate: 28 mg/kg; 2-Butanone: 36 kg/kg; Isobutyl alcohol: 170 mg/kg; 4-Methyl phenol: 5.6 mg/kg; Di-n-octyl phthalate: 28 mg/kg; Phenol: 6.2 mg/kg; and Xylenes: 30 mg/kg.

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by Nissan North America, Inc., Smyrna, Tennessee (Nissan)

Nissan manufactures light-duty vehicles and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the vehicle bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only vehicle bodies are manufactured. However, the wastewater treatment sludge generated at manufacturing plants where aluminum is used as a component of vehicle bodies, meets the listing definition of F019 in Section 261.3.[5]

Nissan petitioned EPA, Region 4, on October 12, 2000, to exclude this F019 waste, on an upfront, generator-specific basis, from the list of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan does not believe that the waste meets the criteria of the listing.

Nissan claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. Nissan also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as

[4] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

[5] "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process."

the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Nissan's petition.

In support of its petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for the chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium ; (5) results of analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in this waste; (7) results of determinations of hexavalent chromium and percent solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

The Nissan assembly plant in Smyrna, Tennessee, manufactures light-duty vehicles. Nissan's Standard Industrial Classification (SIC) code is 3711. The manufacturing process that will cause F019 to be generated is conversion coating, when applied to vehicles that contain aluminum. Conversion coating takes place in three of Nissan's four paint plants and treats the metal surface of each vehicle body before painting to provide resistance to corrosion and to prepare the metal surface for optimum paint adhesion. Wastewater from all plant operations is treated at Nissan's industrial wastewater pretreatment plant. The wastewater is monitored for compliance with Nissan's Significant Industrial User's permit before discharging to the Town of Smyrna publicly owned treatment works. Treatment results in the formation of insoluble metal hydroxides. Wastewater treatment sludge is generated when these metal hydroxides are dewatered in a filter press. The sludge that exits from the filter press will be classified as F019 when the vehicle bodies contain aluminum, and the exit from the filter press will be the point of generation of F019.

Nissan currently generates from 1,000 to 1,500 tons of wastewater treatment sludge per year at its Smyrna, Tennessee assembly plant, and estimated a future maximum annual generation rate of 2,000 tons.

Table 1 below summarizes the hazardous constituents and their concentrations in Nissan's wastewater treatment sludge generated from the manufacture of steel-only vehicle bodies at the Smyrna, Tennessee plant.

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Metals								
Arsenic	4.2 3.0	3.2U	4.3	4.3	4.3	3.8	0.64	17
Arsenic—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Barium	6,200 6,600	3,400	2,100	3,400	6,600	4340	1959	45.1
Barium—TCLP	0.14 0.15	0.14	0.11	0.13	0.15	0.134	0.0152	11.3
Cadmium	0.61U 0.60U	0.81	0.71U	0.81U	0.81	0.708	0.103	14.5
Cadmium—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Chromium—Total	100 120	130	160	150	160	132	23.9	18.1
Chromium—Total TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Hexavalent Chromium	0.80UN* 6.7N*	2.6U	2.9UN	3.2U	6.7	3.24	2.15	66.3
Hexavalent Chromium—TCLP	0.25U 0.25U	0.050U	0.050U	0.050U	0.25U	NA	NA	NA
Cobalt	22 24	21	8.7	16	24	18.3	6.14	33.5
Cobalt—TCLP	0.19 0.16	0.13	0.062	0.080	0.19	0.12	0.053	43.0
Copper	820* 870*	1,600	750	820	1,600	972	354	36.4
Copper—TCLP	0.050U	0.050U	0.050U	0.050U	0.05U	NA	NA	NA
Lead	210 230	390	320	320	390	294	73.7	25.1
Lead—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Nickel	3,000 3,100	4,200	4,100	4,100	4,200	3,700	595.8	16.1
Nickel—TCLP	32 33	46	41	31	46	36.6	6.58	18.0

TABLE 1.— NISSAN NORTH AMERICA, INC., SMYRNA, TENNESSEE: WASTEWATER TREATMENT SLUDGE PROFILE—Continued

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Silver	0.61U 0.60U	0.68	0.71U	0.81U	0.81U	0.682	0.0853	12.5
Silver—TCLP	0.010U 0.010U	0.010U	0.010U	0.010U	0.010U	NA	NA	NA
Tin	700 710	590	600	810	810	682	90.4	13.2
Tin—TCLP	0.10U 0.01U	0.10U	0.10U	0.10U	0.10U	NA	NA	NA
Vanadium	190 190	52	18	48	190	99.6	83.6	83.9
Vanadium—TCLP	0.050U 0.050U	0.050U	0.050U	0.050U	0.050U	NA	NA	NA
Zinc	15,000 17,000	15,000	20,000	17,000	20,000	16,800	2,049	12.2
Zinc—TCLP	17 16	17	16	7.2	17	14.6	4.19	28.6
Inorganic Non-Metals								
Total Cyanide	3.2 3.1	2.9	1.4	1.0	3.2	2.32	1.04	44.7
Total Cyanide—TCLP	0.0095 0.0073	0.0050U	0.0050U	0.0050U	0.0095	0.00636	0.00202	31.7
Fluoride—TCLP	0.23 0.22	2.1	1.7	1.8	2.1	1.21	0.911	75.3
Hazardous Waste Characteristics								
Corrosivity: Measured pH [Regulatory limit: ≤2.0 or ≥12.5].	8.2 8.0	9.1	9.0	9.2	9.2 Minimum: 8.0	8.7	0.56	6.4
Ignitability: Measured Flash Point, °F [Regulatory limit: <140°F].	>212 >212	>212	>212	>212	>212	>212	0	0
Reactive Sulfide: Measured hydrogen sulfide released, mg/kg [Interim Guidance Level: 500 mg/kg].	260 210	66U	280U	320	320	227	98.4	43.3
Reactive Cyanide: Measured hydrogen cyanide released, mg/kg [Interim Guidance Level: 250 mg/kg].	0.61U 0.60U	0.66U	0.71U	0.81U	0.81U	NA	NA	NA
Other Properties								
Percent Solids	41 42	38	35	31	42	37.4	4.51	12.0

Parameters [1]	NS–01b NS–02b	NS–03b	NS–04b	NS–05b	Max.	Mean	S.D.	C.V. [3]
Volatile Organic Compounds								
Acetone	0.570 0.530	4.500	0.130J	0.015U	4.500	1.15	1.89	164
Acetone—TCLP	0.120D	0.160D	0.093JD	0.240BD	0.240BD	0.137	0.0663	48.4
2-Butanone	0.150J 0.230J	1.000	0.028U	0.029U	1.000	0.287	0.407	142
2-Butanone—TCLP	0.020U 0.020U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Isobutyl alcohol	0.024U 0.024U	7.4	0.73	0.029U	7.4	1.64	3.24	198
Isobutyl alcohol—TCLP	0.020UD 0.020UD	0.020UD	0.830D	0.020UD	0.830	0.182	0.362	199
Xylenes (all isomers)	0.320 0.440	2.700	0.270	0.0029U	2.700	0.746	1.10	148
Xylenes (all isomers)—TCLP	0.0020U 0.0020U	0.033D	0.007JD	0.011JD	0.033	0.0110	0.0129	117
Semi-volatile Organic Compounds								

Parameters [1]	NS–01a NS–02a [2]	NS–03a	NS–04a	NS–05a	Max.	Mean	S.D.	C.V. [3]
Bis(2-ethylhexyl) phthalate	520JD 430JD	45.0J	92.0J	22.0U	520	222	235	106
Bis(2-ethylhexyl) phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
Di-n-octyl phthalate	390D 320D	110	150	22.0JD	390	198	152	76.8
Di-n-octyl phthalate—TCLP	0.004U 0.004U	0.020U	0.020U	0.020U	0.020U	NA	NA	NA
4-Methylphenol	17.0JD 5.1JD	4.2U	5.1U	3.4U	17.0	6.96	5.66	81.3
4-Methylphenol—TCLP	0.100D 0.096D	0.040U	0.040U	0.040U	0.100	0.0632	0.0318	50.3
Phenol	10.0JD 3.40JD	2.10U	2.60U	1.70U	10.0	3.96	3.44	86.8
Phenol—TCLP	0.036D 0.038D	0.028JD	0.015JD	0.010U	0.038	0.0254	0.0125	49.1

[1] Parameters are the chemicals or properties analyzed.

[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg). The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by ''—TCLP.'' B = Compound detected in blank; D = Sample had to be diluted; E = Parameter concentration estimated due to matrix interference; J = Estimated result; the actual result is likely to be greater than zero but less than the estimated value; N = Predigested spike recovery not within control limits; NA = Not applicable; U = Not detected above the method detection limit, which is the value preceding the U; * = Duplicate analysis was not within control limits. The metals, antimony, beryllium, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Xylene (including all its isomers), 2-butanone (methyl ethyl ketone or MEK), isobutyl alcohol, and acetone were the only volatile organic compounds (VOCs) found at a level equal to or greater than 1 part per million by total analysis of the waste and are the only VOCs included in the table. For the same reason, bis(2-ethylhexyl) phthalate, di-n-octyl phthalate, 4-methylphenol (p-cresol) [6], and phenol are the only semi-volatile organic compounds included in the table. Columns 2 through 4 in the table heading contain sample identification numbers. ''NS'' stands for Nissan samples; numbers 01 through 05 are sequential numbers linking samples to the roll-offs from which they were collected. Numbers 01 and 02 were from the first roll-off sampled (see Note 4 below), and Numbers 03 through 05 were from roll-offs two through four, respectively. The letter ''a'' denotes a composite sample and the letter ''b'' denotes a grab sample. As described in the petition, four randomly selected roll-offs were sampled over the time period, by collecting one composite sample per roll-off. Each composite sample was a mixture of twelve vertical core samples. Each vertical core sample was approximately six to ten inches in depth and one inch in diameter; three vertical core samples were collected at each of four randomly selected locations per roll-off. Grab samples of each roll-off were collected for VOC analysis (see Note 4 below).

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean)divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

[4] One of the four composite samples was collected from a roll-off that was representative of plant maintenance activities and split into two samples for analysis: Sample Number NS–01a and its field duplicate, NS–02a. NS–01b was a grab sample from this roll-off, for VOC analysis, and NS–02b was a field duplicate of this sample. Composite samples NS–03a, NS–04a, and NS–05a were collected from three roll-offs that were representative of routine plant operations. Grab samples NS–03b, NS–04b, and NS–05b were collected from these three roll-offs for VOC analysis.

EPA concluded after reviewing Nissan's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in Nissan's petitioned waste. In addition, on the basis of test results and other information provided by Nissan, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of Nissan's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Nissan's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of Nissan's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at municipal solid waste landfills can effectively control runoff, as Subtitle D regulations (*see* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. While some contamination of surface water is possible through runoff from a waste disposal area, EPA believes that the dissolved concentrations of hazardous constituents in the runoff are likely to be lower than the TCLP results reported in today's proposed rule, because of the aggressive acidic medium used for extraction in the TCLP. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Subtitle D controls would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

In order to account for possible variability in the generation rate, EPA calculated delisting levels using Nissan's estimated maximum generation rate of 2,000 tons of wastewater treatment sludge per year. EPA converted the 2,000 tons to a waste volume of 2,400 cubic yards, by using the density of water for the density of the sludge. While the sludge is certainly more dense than water, using the lower density results in a higher value for the waste volume, and a lower, more conservative, Dilution Attenuation Factor (DAF).

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and the majority of the delisting and risk levels for the TCLP leachate of the waste were calculated based on that pathway. EPA requests public comment on using DRAS-calculated values based on MCLs, when these would result in more conservative delisting levels. The input values required by DRAS were the chemical constituents in Nissan's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (*See* Table 1, Preamble Section II.A.); the maximum annual volume to be disposed (2,400 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents detected in the waste are cadmium, hexavalent chromium, and bis(2-ethylhexyl) phthalate. Cadmium also has non-carcinogenic toxic effects. Allowable total concentrations in the waste, as calculated by DRAS for the waste, itself, not the TCLP leachate, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste, and are not included in Table 2, since many amount to metal or cyanide concentrations of several per cent. However, in addition to limits on the concentrations of constituents in the TCLP leachate of the petitioned waste, EPA does propose to set the following limits on total concentrations, in units of milligrams of constituent per kilogram of unextracted waste (mg/kg): Barium: 20,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. EPA asks for public comment on these limits which were chosen to be both protective of human health and the environment and to be realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The maximum reported total concentrations for Nissan's petitioned waste were all well below these limits. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

TABLE 2.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR NISSAN'S PETITIONED WASTE

Constituent	Delisting Level (mg/l TCLP)/ Delisting level in TCLP Based on MCL	DAF	DRAS-Calculated Risk for Maximum Concentration of Carcinogen in Waste	DRAS-Calculated Hazard Quotient for Maximum Concentration of Non-Carcinogen in Waste
Inorganic Constituents				
Arsenic	2.63×10^{-3}/2.70	54	9.5×10^{-6}	
Barium	206*/157*	78.2		8.98×10^{-4}.
Cadmium	1.58*/0.422	84.4	5.78×10^{-15}	0.00316.
Chromium	6.10×10^{5}*/1.08×10^{3}*		1.08×10^{4}	1.23×10^{-7}.
Hexavalent Chromium	Not Calculable; Risk Based on Inhalation of Particles in Air.	43.6	9.11×10^{-14}	
Copper	2.96×10^{4}/2.56×10^{4}▼	1.97×10^{4}		3.23×10^{-5}.
Cyanide	38.0/10.1	50.6		2.50×10^{-4}.
Lead	211*	1.41×10^{4}		Not Calculable; No Reference Dose for Lead.
Nickel	79.4	106		0.579.
Zinc	789	70		0.0216.
Organic Constituents				
Acetone	201	53.4		0.00125.
Bis(2-ethylhexyl)phthalate	0.0787/0.321	53.4	1.64×10^{-7}	
4-Methylphenol	10	53.4		0.0119.
Di-n-octyl phthalate	0.0984	75.9		0.102.
Isobutyl alcohol	602	53.4		0.00145.
Phenol	1,200	53.4		3.47×10^{-5}.
Xylenes	2,810/534	53.4		2.23×10^{-5}.
Total Hazard Quotient for All Waste Constituents.				0.726.
Total Carcinogenic Risk for the Waste (due to Arsenic, Cadmium, Hexavalent Chromium, and Bis(2-ethylhexyl) phthalate).			9.66×10^{-6}.	

* These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; and 5.0 for Lead.

▼ The Safe Drinking Water Act standard for copper is a recommended secondary standard, rather than an enforceable MCL.

EPA proposes to use the delisting levels in the TCLP leachate calculated by the DRAS, using the EPACMTP (Table 2), in combination with the limits on total concentrations proposed in the paragraph preceding Table 2. These proposed delisting levels are summarized in Table 3, below. EPA is proposing to base the delisting levels for chromium on analysis for total chromium, not hexavalent chromium, for the following reasons: (1) Hexavalent chromium was undetected in the TCLP leachate of the petitioned waste; (2) the maximum reported concentration of total chromium in the unextracted waste was only 160 mg/kg; and (3) the maximum reported concentration of hexavalent chromium in the unextracted waste was only 6.7 mg/kg. EPA is not proposing delisting levels for cobalt, copper, silver, tin, vanadium, zinc, acetone, isobutyl alcohol, phenol, and xylenes, because the DRAS-calculated TCLP levels for these constituents are at least two orders of magnitude greater than the maximum reported concentrations in the TCLP leachate of the petitioned waste. EPA is not proposing delisting levels for arsenic for the following reasons: (1) TCLP leachate concentration was non-detect; (2) total concentration in the unextracted waste was below the background soil concentration for most of Tennessee, below the national average background, and three orders of magnitude below the DRAS allowable total concentration; and (3) DRAS found no ecological risk at the maximum reported concentrations and a human cancer risk within the range of 10^{-4} to 10^{-6} assuming a TCLP concentration equal to one-half the reporting limit of the analytical laboratory.

TABLE 3.—SUMMARY OF DELISTING LEVELS FOR NISSAN'S PETITIONED WASTE

Constituent	DRAS-Calculated Delisting Level (mg/l TCLP)	Proposed Total Concentrations (mg/kg in unextracted waste)
Inorganic Constituents		
Barium	*100.0	20,000
Cadmium	0.422	500.
Chromium	*5.0	1,000
Cyanide	10.1	200 (Total, not Amenable)
Lead	*5.0	2,000
Nickel	79.4	20,000
Organic Constituents		
Bis(2-ethylhexyl) phthalate	0.0787	
Di-n-octyl phthalate	0.0984	
4-Methylphenol	10	

* DRAS-calculated delisting level was higher than the TC level; therefore, the delisting level was set at the TC level.

C. Should the Multiple Extraction Procedure (MEP) Be Used To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these extractions simulate approximately 1,000 years of rainfall. (*See* 47 FR 52687, Nov. 22, 1982.)

MEP data can be used to indicate whether a petitioned waste would be expected to leach hazardous constituents over the life of a landfill.[7] The average life of a landfill is approximately 20 years. (*See* 56 FR 32993, July 18, 1991; and 56 FR 67197, Dec. 30, 1991.)

EPA requests public comment on whether the MEP should be used in the evaluation of Nissan's petitioned waste.

D. Conclusion

After reviewing Nissan's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in Nissan's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that Nissan's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels for land disposal as proposed in Preamble section II.B. are met.

EPA proposes to exclude Nissan's petitioned waste from being listed as F019, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that Nissan's petitioned waste must meet proposed delisting levels before disposal. Thus, EPA's proposed decision is based on verification testing conditions. If the proposed rule becomes effective, the exclusion will be valid only if the petitioner demonstrates that the petitioned waste meets the verification testing conditions and delisting levels in the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves that demonstration, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain

[7] This estimate would be based on the following type of calculation for a 100-gram sample, using nickel as an example: % nickel leached out over a long period of time = 100 × (total number of milligrams of nickel in all the sample MEP extracts) ÷ the number of milligrams of nickel originally present in the 100-gram sample.

a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, Nissan must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

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

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have

a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Executive Order 12866

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

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

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

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084 Affecting Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XII. Submission to Congress and General Accounting Office

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 Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, etc. Section 804 exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

XIII. 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 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 5, 2001.

James S. Kutzman,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261–IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	*	* * * *
Nissan North America, Inc	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North America, Inc. (Nissan) generates by treating wastewater from the automobile assembly plant located at 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 2,400 cubic yards of waste (hereinafter referred to as ''Nissan Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [insert date of final rule.] Nissan must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-10.1, Lead-5.0; and Nickel-79.4; Bis(2-ethylhexyl) phthalate-0.0787; Di-n-octyl phthalate -0.0984; and 4-Methylphenol-10.0. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium-20,000; Cadmium-500; Chromium-1,000; Lead-2,000; and Nickel-20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). (A) *Initial Verification Testing:* Nissan must collect and analyze a representative sample from each of the first eight rolloff boxes of Nissan sludge generated in its wastewater treatment system after [insert date of final rule]. Nissan must analyze for the constituents listed in Condition (1). Nissan must report analytical test data, including quality control information, no later than 60 days after generating the first Nissan Sludge to be disposed in accordance with the delisting Conditions (1) through (7). (B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful, i.e., delisting levels of condition (1) are met for all of the eight rolloffs described in Condition (2)(A), Nissan must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must store as hazardous all Nissan Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of Nissan Sludge do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. This submission is due no later than 60 days after generating the first batch of Nissan Sludge to be disposed in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 01–28624 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 062501B]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearing notice; extension of public comment period.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, will extend the public comment period, through December 31, 2001, for the purpose of receiving comments on the proposed rule to amend the regulations protecting sea turtles to enhance their effectiveness

in reducing sea turtle mortality resulting from shrimp trawling in the Atlantic and Gulf Areas of the southeastern United States, published in the **Federal Register** on October 2, 2001.

DATES: Written comments should be received by December 31, 2001.

ADDRESSES: Written comments should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail *Robert.Hoffman@noaa.gov*), or Therese A. Conant (ph. 301–713–1401, fax 301–713–0376, e-mail *Therese.Conant@noaa.gov*).

SUPPLEMENTARY INFORMATION: Turtle excluder devices (TEDs) have proven to be effective at excluding sea turtles from shrimp trawls; however, NMFS has determined that modifications to the design of TEDs need to be made to exclude leatherbacks and large, sexually mature loggerhead and green turtles; several approved TED designs are structurally weak and do not function properly under normal fishing conditions; and modifications to the trynet and bait shrimp exemptions to the TED requirements are necessary to decrease lethal take of sea turtles. These proposed amendments are necessary to protect endangered and threatened sea turtles in the Atlantic and Gulf Areas.

Dated: November 13, 2001.

David Cottingham

Deputy Director, Office of Protected Resources, National marine Fisheries Service.

[FR Doc. 01–28877 Filed 11–14–01; 2:50 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 223

Monday, November 19, 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

Natural Resources Conservation Service

Upper Tygart Valley River Watershed, Randolph and Pocahontas Counties, West Virginia; Notice of Availability

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: William J. Hartman, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Upper Tygart Valley River Watershed Project is available. Single copies of the Record of Decision may be obtained from William J. Hartman at the address shown below.

For further information, contact William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26508, phone (304) 284–7545.

Note: (This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 12, 2001.

William J. Hartman,

State Conservationist.

[FR Doc. 01–28874 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue a revision to Conservation Practice Standard 393, Filter Strip, in Section IV of the State Technical Guide in Oregon. This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing with this date of publication. Once the review and comment period is over and the standard is finalized, it will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Roy M. Carlson, Jr., Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to *roy.carlson@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Roy M. Carlson, Jr., 503–414–3231.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes will be made. In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: November 1, 2001.

Bob Graham,

State Conservationist, Portland, Oregon.

[FR Doc. 01–28873 Filed 11–16–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Covering the Mining Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patricia L. Horning, U.S. Census Bureau, Manufacturing and Construction Division, (301) 457–4680, Room 2229, Building #4, Washington, DC 20233 (or via the Internet *patricia.l.horning@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13, U.S.C., is the

primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public. The 2002 Economic Census Covering the Mining Sector (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of almost 25,000 mineral establishments.

The information collected from establishments in this sector of the economic census will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, size of establishments and other industry-specific measures.

Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires and other electronic data collection.

II. Method of Collection

The mining industry sector of the economic census will select establishments for their mail canvass from a frame given by the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the mining sector; (ii) it must be an active operating establishment of a multi-establishment firm (including operations under exploration and development), or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states, offshore areas, or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active mineral establishments of multi-establishment firms to the mail component of the potential respondent universe, except for those in industries classified in the Support Activities for Mining subsector. In these selected industries, where activities are not easily attributable to individual locations or establishments, firms will be asked to report their basic data for several establishments at a nationwide level on a consolidated report form . Approximately 7 percent of establishments of multi-establishment firms will not be required to file separate reports because they will be included in consolidated company reports. We estimate that the census mail canvass for 2002 will include approximately 7,000 establishments of multi-establishment firms.

B. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe for mining. The study of potential respondents will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Firms

Selection procedures will assign large single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the census mail canvass for 2002 will include approximately 5,200 firms in this category. These firms will receive a standard form.

2. Small Single-Establishment Firms

We will send a short form to small single-establishment firms in the crushed stone, sand and gravel, and crude petroleum and natural gas industries where application of the cutoff for nonmail establishments results in a larger number of small establishments included in the mail canvass. The short form will collect basic statistics and other essential information that is not available from administrative records.

The short form will be mailed to approximately 2,300 single-establishment firms in these industries which are larger than the nonmail cutoff for their industry, but which have annual payroll under a certain criteria. In terms of employment, this criteria will identify establishments with approximately 5 to 19 employees.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. We will not include approximately 10,000 of these small employers in the census mail canvass.

III. Data

OMB Number: Not available.

Form Number: The forms used to collect information from establishments in this sector of the economic census are tailored to specific mining operations and are too numerous to list separately in this notice. You can obtain information on the proposed content of the forms by calling Patricia L. Horning on (301) 457–4680 (or via the Internet at *patricia.l.horning@census.gov*).

Type of Review: Regular review.

Affected Public: Business or Other for Profit, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.

Estimated Number of Respondents:	
Standard Form	12,200.
Short Form	2,300.
Total	14,500.
Estimated Time Per Response:	
Standard Form	4.1 hours.
Short Form	2.2 hours.
Estimated Total Annual Burden Hours:	
Standard Form	50,020.
Short Form	5,060.
Total	55,080.

Estimated Total Annual Cost: $843,826.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–28820 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 4, 2001, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Update on implementation of multilateral agreements.
5. Update on Wassenaar Arrangement.
6. Working group activity reports.
7. Discussion on status of Automated Export System regulations.
8. Discussion on intracompany transfer of technology license exception proposal.
9. Status of encryption regulations review.
10. Commerce Control List user-friendliness/simplification recommendations.

Closed Session

11. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS:3876, 14th St. & Constitution Ave., NW., U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 12, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(b)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(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 the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: November 13, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–28818 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate From France: Amended Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of antidumping administrative review.

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

SUMMARY: On October 22, 2001, the Department of Commerce published the final results of the administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 2000, through December 31, 2000. However, we neglected to identify Rhodia HCPII (formerly known as Rhone Poulenc, S.A.), which is now the entity manufacturing subject merchandise in France. The purpose of these amended final results is to correct this ministerial error.

Amendment to the Final Results

On October 22, 2001, the Department of Commerce (the Department) published the final results of the administrative review of this order in the **Federal Register** (66 FR 53387). See *Notice of Final Results of Antidumping Duty Administrative Review* (October 22, 2001). In the final results, we determined the weighted-average dumping margin for the period January 1, 2000, through December 31, 2000, to be 60.00 percent for Rhone-Poulenc, S.A. However, we did not correctly identify Rhodia HCPII (Rhodia), formerly Rhone Poulenc, S.A. Rhodia was formed as a result of a merger between Rhone Poulenc, S.A., and Hoechst. Rhodia is now the entity manufacturing the subject merchandise in France. In our preliminary results, Rhodia was correctly identified as the sole producer/exporter of subject merchandise covered by the review. *See* **Federal Register** (66 FR 42199). The purpose of these amended final results is to correct this omission.

Furthermore, the Department will issue appraisement instructions for Rhodia directly to the Customs Service. Regarding all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 22, 2001, as provided for by section 751(a)(1) of the Act of 1930, as amended: (1) The cash deposit rate for Rhodia will be 60.00 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980). These deposit rates shall remain in effect until publication of the final

results of the next administrative review.

We are issuing and publishing this amendment to the final results in accordance with section 751(h) of the Tariff Act of 1930, as amended.

Dated: November 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–28862 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 4, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate (CTL plate) from Canada (66 FR 46258). This review covers one manufacturer/exporter of CTL plate, Clayson Steel Inc. (Clayson), for the period August 1, 1999 through December 31, 1999.

We gave interested parties an opportunity to comment on our preliminary results. No interested parties filed comments on the preliminary results and no request for a hearing was received by the Department. We have not changed the results from those presented in the preliminary results of review, and we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for Clayson at the rate determined in the preliminary results (*see* ''Final Results of Review'' section below).

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley at (202) 482–0666 or Julio Fernandez at (202) 482–0190, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On September 4, 2001, the Department published the preliminary results of the administrative review of the antidumping duty order on CTL plate from Canada. *See Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 46258 (September 4, 2001) (*Preliminary Results*). We invited parties to comment on our preliminary results of review. We received no comments on our preliminary results and have made no changes to our calculations. This review covers imports of subject merchandise from Clayson, a Canadian manufacturer/exporter. The period of review (POR) for Clayson is August 1, 1999 through December 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Antidumping Duty Order

CTL plate includes hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.03 to 0.08 (maximum).

The HTSUS item numbers are provided for convenience and U.S. Customs Service (Customs) purposes. The written description remains dispositive of the scope of this review.

Period of Review

The POR is August 1, 1999 through December 31, 1999. *See* the ''Cash Deposit Requirements'' section below for an explanation of this truncated POR.

Comments From Interested Parties and Changes Since the Preliminary Results

We received no comments from interested parties in response to our preliminary results. We have made no changes in the margin calculations.

Final Results of Review

The Department has not altered its determination from the *Preliminary Results.* The weighted-average margin for Clayson is 1.37 percent for the period August 1, 1999 through December 31, 1999.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We will direct Customs to assess the resulting percentage against the entered Customs values for the subject merchandise on each entry of subject merchandise during the POR.

Cash Deposit Requirements

As a result of a sunset review by the ITC, the Department has revoked the antidumping duty order for CTL plate from Canada, effective January 1, 2000. *See Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden,* 65 FR 78467 (December 15, 2000) (*Revocation Notice*). Therefore, we have instructed Customs to terminate suspension of liquidation for all entries of CTL plate made on or after January 1, 2000, and further calculation of antidumping cash deposit requirements for this merchandise is no longer necessary.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of our regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: November 9, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–28863 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: Pursuant to section 736(a) of the Act, the Department of Commerce is issuing an anti-dumping duty order on pure magnesium in granular form from the People's Republic of China.

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Gehr or Michael Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1779 or (202) 482–0629, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to 19 CFR part 351 (2000).

Scope of Order

There is an existing antidumping duty order on pure magnesium from the People's Republic of China (PRC). *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995). The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS).

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: Lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al_2O_3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department published its final determination that pure magnesium in granular form from the PRC is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345, (Sept. 27, 2001). On November 13, 2001, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of pure magnesium in granular form from the PRC. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after April 30, 2001, the date on which the Department

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

published its notice of affirmative preliminary determination in the **Federal Register** (66 FR 21314).

On or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''PRC-Wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Minmetals Precious & Rare Minerals Import and Export/ China National Nonferrous Metals Industry Trading Group Corp	24.67
PRC-Wide Rate	305.56

This notice constitutes the antidumping duty order with respect to pure magnesium in granular form from the People's Republic of China, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: November 13, 2001.

Faryar Shirzad,

Assistant Secretary for, Import Administration.

[FR Doc. 01–28865 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Sophie Castro at (202) 482–0588, or David J. Goldberger at (202) 482–4136, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from Chile, which covers the period December 1, 1999, through November 30, 2000.

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to 19 CFR part 351 (April 2000).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

On July 19, 2001, the Department partially extended the time limit for the preliminary results until November 15, 2001 (*see Certain Preserved Mushrooms from Chile: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review,* 66 FR 37640). The Department now finds that, given the complexity of the issues involved in this case and the need to analyze further the information provided by the parties, it must extend the deadline for a total of 120 days, the maximum extension allowed under the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of this review until January 2, 2002.

Dated: November 13, 2001.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–28864 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council; Membership

AGENCY: International Trade Administration, Commerce Department.

ACTION: Notice.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce has reestablished and will monitor the activities of the U.S.-Egypt Presidents' Council. This notice announces membership opportunities for American business representatives on the U.S. side of the Council.

DATES: In order to receive full consideration, requests must be received no later than: Friday, December 28, 2001.

ADDRESSES: Please send your requests for consideration to Ms. Maram Talaat, Egypt Desk Officer, Office of the Middle East, U.S. Department of Commerce either by fax on 202–482–0878 or by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Ms. Maram Talaat, Office of the Middle East, Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230, Phone 202–482–3752.

SUPPLEMENTARY INFORMATION: The U.S. Department of Commerce established the U.S.-Egypt Presidents' Council in April 1995 as part of the U.S.-Egypt Partnership for Economic Growth and Development. Following their April 2001 meeting at the White House, President Bush and Egyptian President Mubarak agreed to continue the Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to their respective governments that reflect their views, needs and concerns regarding private sector business development in Egypt and enhanced bilateral commercial ties. The Council exchanges information and encourages bilateral discussions that address the following areas:

—Factors that affect the growth of private sector business in both countries, including disincentives to trade and investment, and regulatory obstacles to optimal job creation and economic growth;

—Initiatives that both governments might take to promote joint private sector business growth in Egypt;

—Identification and promotion of business opportunities in both countries;
—Attracting U.S. businesses to opportunities in Egypt and serving as a catalyst for Egyptian private sector growth.

The U.S. section of the Council, chaired by the U.S. Secretary of Commerce, consists of fifteen members, all drawn from the private sector. They represent the diversity of American business with emphasis on: Agribusiness and food processing, tourism, banking and insurance, energy, pharmaceuticals, services (such as accounting, management, engineering/construction), information technology, electronics and other high technology industries, and manufacturing industries. Private sector members will serve in a representative capacity presenting the views and interests of their particular industry and as senior business representatives whose expertise on international business issues can be shared. Private sector members are not special government employees, and will receive no compensation for their participation in Council activities. Members participating in Council meetings and events will be responsible for their travel, lodging, and other personal expenses. Only appointed members may attend official Council meetings. Council members serve for three-year terms at the discretion of the Department of Commerce.

In order to be eligible for membership in the U.S. section, potential candidates should be:
—A U.S. citizen residing in the United States, or able to travel to the United States to attend official Council meetings;
—The President or CEO (or comparable level of responsibility) of a private sector company (or, in the case of very large private sector companies, the head of a sizeable operating unit), or head of a non-profit organization such as a trade or industry association that has a unique technical expertise and outstanding reputation; and
—Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:
—Experience and interest in the Egyptian market;
—Industry or service sector represented; Export/investment experience;
—Contribution to diversity based on industry sector, company size, location, and demographics; and
—Readiness to initiate and be responsible for activities in which the Presidents' Council will be active.

Members will be selected who will best carry out the objectives of the Council as stated in the Terms of Reference establishing the U.S.-Egypt Presidents' Council.

To be considered for membership, please provide the following: Name or names and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service or technical expertise; size of the company or organization; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership on the Council.

Dated: November 13, 2001.

Cherie A. Loustaunau,

Director, Office of the Middle East.

[FR Doc. 01–28810 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111301C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) and its advisory committees will hold public meetings.

DATES: The meetings will be held on December 2–10, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The NPFMC's Individual Fishery Quota (IFQ) and Cost Recovery Committee will meet on Sunday, December 2, between 1 p.m. and 5 p.m.. The NPFMC's Advisory Panel will begin at 8 a.m., Monday, December 3, and continue through Friday, December 7, 2001. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, December 3, and continue through Thursday, December 6, 2001.

The NPFMC will begin its plenary session at 8 a.m. on Wednesday, December 5, continuing through Monday, December 10, 2001. All meetings are open to the public except executive sessions which may be held during the week at which the Council may discuss international issues, personnel, and/or current litigation.

Council: The agenda for the NPFMC's plenary session will include the following issues. The NPFMC may take appropriate action on any of the issues identified.

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Dept. of Fish and Game.
(c) NMFS Management Report.
(d) Enforcement and Surveillance reports by NMFS and the U.S. Coast Guard.

2. Community Development Program (CDQ):
(a) Final action on regulatory amendment for changes to the halibut CDQ program for regulatory areas 4E/4D.
(b) Initial review of amendment package for CDQ policy changes.

3. Seabird Avoidance Measures: Final action on revisions to regulations for seabird avoidance measures.

4. Rationalization of the Bering Sea/Aleutian Islands (BSAI) Crab Fisheries: Review progress on analysis and provide direction as appropriate.

5. American Fisheries Act (AFA):
(a) Review and comment on AFA Environmental Impact Statement (EIS) and proposed rule.
(b) Review discussion paper on extension of the AFA.
(c) Review co-op agreements and preliminary annualco-op reports.
(d) Review industry response to request from Alaska Department of Fish and Game for ownership information necessary to finalize the Council's AFA report to Congress; consider approving submission of final report.

6. Halibut/Sablefish IFQ Program:
(a) Review report of IFQ Committee; staff direction as necessary.
(b) Initial review of analysis for Gulf of Alaska community purchase of quota shares.

7. Essential Fish Habitat (EFH) EIS: Receive Committee report and results of recent workshop and discuss alternatives for designating EFH and Habitat Areas of Particular Concern.

8. Programmatic Groundfish Supplemental EIS: Receive report from

NPFMC Ecosystem Committee, review public comments, and consider process for selecting a Preferred Alternative.

9. Groundfish Management:

(a) Final Review of Stock Assessment and Fishery Evaluation (SAFE) documents for BSAI and Gulf of Alaska (GOA) groundfish fisheries for 2002.

(b) Set Total Allowable Catch and bycatch levels for BSAI and GOA groundfish fisheries for 2002.

(c) Receive report on Halibut Excluder Device research; provide comment or staff direction as appropriate.

(d) Review tasking and problem statement for differential gear impact analysis for Pacific cod.

(e) Discuss tasking an independent review of the Council's F40 harvest strategy.

(f) Review discussion paper on catch and bycatch disclosure (if material is available); provide staff direction as appropriate.

(g) Review discussion paper on bycatch implications of Steller sea lion measures for 2002 (if data available).

10. Staff Tasking:

(a) Review existing tasking and provide direction as necessary.

(b) Receive status report on agency initiative to collect socio-economic data.

Scientific and Statistical Committee: The SSC agenda will include the following issues:

a. Seabird Avoidance Measures (Item #3 on the Council agenda)

b. BSAI Crab Rationalization (Item #4 on the Council agenda)

c. Halibut/Sablefish IFQ issues (Item #6 on the Council agenda)

d. Essential Fish Habitat (Item #7 on the Council agenda)

e. Groundfish SEIS (Item ı8 on the Council agenda)

f. Bering Sea/Aleutian Islands and Gulf of Alaska SAFE documents (Item ı9(a) on the Council agenda)

g. Independent review of the Council's F40 harvest strategy (Item ı9 (e) on the Council agenda)

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Item 1 of the Council agenda.

IFQ Implementation/Cost Recovery Committee: The committee will address the following issues:

1. Review NMFS's estimated IFQ fee and budget costs for 2002.

2. Review enforcement issues (prior notice of landing; offload ''window''; shipment report; and vessel clearance).

Other impromptu workgroup or committee meetings may be scheduled during the meeting week; such meetings will be announced in the various meetings and posted in the hotel.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the NPFMC's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 14, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–28878 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110801A]

Marine Mammals; File No. 481–1623–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that LGL Limited, Environmental Research Associates, 22 Fisher Street, POB 280, King City, Ontario, Canada L7B 1A6 (Principal Investigator: Dr. John W. Lawson) has applied in due form for a permit to take ringed seals (*Phoca hispida*) and incidentally take bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 19, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant has requested a permit to take ringed seals and incidentally take bearded and spotted seals annually. Researchers will use trained dogs within the fast ice distant from and near to industrial activities during winter to locate seals. LGL proposes to:

(a) take 150 seals by harassment during on-ice searchers for breathing holes and resting lairs, and during setup and recovery of the VHF receiver stations, 20 ringed seals will be captured and tagged with VHF transmitters and implant PIT (Passive Integrated Transponder) tags;

(b) take up to 5 accidental mortalities, over a 5–year period;

(c) take an unlimited number of seals during four aerial survey transects, each survey requiring two days. Two days of surveys constitutes one of four complete survey coverages of the study area. These surveys had been conducted under Letter of Confirmation No. 481–1626 issued under authority of the General Authorization for Scientific Research. That authorization will be incorporated into the scientific research permit, if issued;

(d) conduct acoustic characterization of on-ice anthropogenic sounds by employing calibrated hydrophones, microphones and geophones in holes drilled through the ice near an intended path of a vibroseis seismic survey convoy or some other noisy anthropogenic activities and make acoustic recordings as the operation moves past. To characterize received levels for ringed seals, seal lairs will be instrumented with these acoustic recording instruments to measure the characteristics of man-made sounds in a natural seal structure and to obtain concurrent acoustic and behavioral data from the same lair by deploying telemetry devices within the lair (i.e., recording thermistors);

(e) conduct genetic and contaminant studies of ringed seals using teeth and tissue samples acquired from Native hunters during subsistence harvests. Teeth and tissue samples for contaminant studies will also be

acquired from Native hunters for bearded and spotted seals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 13, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–28879 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110501G]

Marine Mammals; Scientific Research Permit (No. 1012-1647-00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Dr. Robert B. Griffin, Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, has been issued a permit to take Atlantic spotted dolphins (*Stenella frontalis*) and bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5312)

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Lynne Barre, 301/713–2289.

SUPPLEMENTARY INFORMATION: On August 6, 2001, notice was published in the **Federal Register** (66 FR 41005) that a request for a scientific research permit had been submitted by the above-named individual to take Atlantic spotted dolphins and bottlenose dolphins in the Gulf of Mexico over a five year period during the conduct of photo-identification, biopsy sampling and suction cup tagging activities. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 13, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–28881 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Technology Opportunities Program Reviewer Information Form

ACTION: Notice.

SUMMARY: The Department of Commerce, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The Technology Opportunities Program (TOP) promotes the widespread availability and use of digital network technologies in the public and non-profit sectors. To accomplish this objective, TOP provides matching grants to state, local, and tribal governments and non-profit entities for model projects that demonstrate innovative uses of digital network technologies in underserved communities. TOP projects address specific challenges and realize opportunities for change in such areas as lifelong learning, community and economic development, government and public services, safety, health, culture, and the arts.

Since 1994, TOP has made matching grants to state, local and tribal governments, health care providers, schools, libraries, police departments, and community-based non-profit organizations. To date, TOP has awarded 530 grants, in all 50 states, Puerto Rico, the District of Columbia, and the U.S. Virgin Islands, totaling $192.5 million and leveraging $268 million in local matching funds.

As part of TOP's process to select projects for funding, external experts are used to review applications. Collection of information about potential reviewers is used to determine their eligibility and availability and to facilitate payment for services rendered if they are selected to review.

Currently, TOP is exploring options to redesign the processes for becoming a reviewer of grant applications. The goals of the redesign process are to improve the ease for registering to become a reviewer and reduce the cost (to the agency) of the identification, selection, and notification of an individual's review status. To accomplish these goals, TOP proposes to offer both an Internet-based and a paper-based form for the submission of reviewer information.

II. Method of Collection

Electronic and paper form.

III. Data

OMB Number: 0660–0010.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: State and local government, not-for-profit institutions, and business and for-profit organizations.
Estimated Number of Respondents: 130.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 42.
Estimated Total Annual Cost: 0.
IV. Request for Comments
Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the program, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection; they also become a matter of public record.

Dated: November 13, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–28793 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 011109273–1273–01]

RIN 0660–XX13

Notice, Request for Comments on Deployment of Broadband Networks and Advanced Telecommunications

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Request For Comments on Deployment of Broadband Networks and Advanced Telecommunications Services.

SUMMARY: The National Telecommunications and Information Administration (NTIA) invites interested parties to comment on broadband deployment in the United States. NTIA invites the public to submit comments on several issues including: supply and demand for broadband services; and the technical, economic, or regulatory barriers to broadband deployment. Comments should be submitted on paper and, where possible, in electronic form as well. All comments submitted in response to this Notice will be posted on the NTIA Web site.

DATES: Interested parties are invited to submit comments no later than December 14, 2001.

ADDRESSES: Comments may be mailed to Josephine Scarlett, Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713 HCHB, 1401 Constitution Ave., NW., Washington, DC 20230. Parties should submit an original and five (5) copies. Where possible, parties should include a diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name and organizational affiliation of the filer, and the name version of the word processing program used to create the document. In the alternative to a diskette, comments may be submitted electronically to the following electronic mail address: *broadband@ntia.doc.gov.* Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: Josephine Scarlett, Office of the Chief Counsel, telephone: (202) 482–1816. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy. NTIA is the principal advisor to the President on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

On October 12, 2001, NTIA held informal discussions with the public and telecommunications companies to gather information about the status of broadband deployment in the United States. The participants discussed cable open access, broadband deployment in underserved rural areas, demand and supply for advanced services, technical and economic roadblocks to broadband deployment, and regulatory methods for stimulating supply and demand.

The request for comment is a part of NTIA's ongoing effort to obtain more information about broadband issues. Information submitted in response to this Notice will be used to assist the Administration in developing a domestic telecommunications policy and to continue NTIA's support for removing obstacles to broadband deployment.

NTIA seeks comment on the following specific questions. Parties are requested to respond to the questions about which they have particular knowledge or information.

II. Questions

A. What should be the primary policy considerations in formulating broadband policy for the country? Please discuss the relative importance of the following: access for all; facilities-based competition; minimal regulation; technological neutrality; intra-modal competition; inter-modal competition; and any other policy consideration.

B. How should broadband services be defined? Please discuss (1) what criteria should be used to determine whether a facility or service has sufficient transmission capacity to be classified as ''broadband;'' (2) how the definition should evolve over time; and (3) the policy implications of how the term is defined.

C. Several studies indicate that the rate of deployment of broadband services is equal to or greater than the deployment rates for other technologies. What is the current status of (1) supply and (2) demand of broadband services in the United States? When addressing supply, please discuss current deployment rates and any regulatory policies impeding supply. When addressing demand, please discuss both actual take rates and any evidence of unserved demand. Please also address potential underlying causes of low subscribership rates, such as current economic conditions, price, cost-structure, impediments to the development of broadband content, or any other factor. To what extent has the growth in competition for broadband and other services been slowed by the existing rates and rate structures for regulated telecommunications services?

D. Should government adopt as a goal ''access for all'' to broadband service? What would be the costs of such a goal? What policy initiatives, if any, should be considered to achieve that goal? Are there areas or persons that are unlikely to be served through marketplace forces?

E. Do the interconnection, unbundling, and resale requirements of the Telecommunications Act of 1996 reduce incumbent local exchange carriers' (ILECs') incentives to invest in broadband facilities and services?

1. Are their investment disincentives attributable to the regulated rates for interconnection, unbundled network elements, and resold services?

2. To what extent are those disincentives due to ILECs' uncertainties about their ability to recover the added network costs needed to accommodate potential requests from competitors? What are the magnitude of those additional costs? What mechanisms could be used to share the risks of those costs efficiently and equitably among ILECs, competitors, or users?

3. To what extent are the returns on ILECs' investments in new infrastructure uncertain? Is the uncertainty of gaining an adequate return on each infrastructure improvement (attributable in part to other firms' ability to use those facilities to offer competing services) significant enough to deter investment?

4. What are the principal strengths and weaknesses of the FCC's total element long run incremental cost (TELRIC) [1] methodology? What changes could be made to render TELRIC an effective deterrent to the exercise of market power and conducive to efficient infrastructure investment? Would it be possible to construct an alternative methodology that would not depend on cost information controlled by regulated firms?

F. Some have suggested that a regulatory dividing line should be drawn between legacy ''non-broadband'' facilities and/or services and new ''broadband'' facilities and/or services. Is this a feasible approach? If so, how would it work?

1. What effects would changes in the regulatory structure for broadband services and facilities have on regulation and competition with respect to voice telephone and other non-broadband services?

2. If ILECs deploy broadband services using a mixture of new and old facilities, will competitors be able to use the older shared facilities that they previously had access to?

3. If ILECs deploy broadband facilities to replace portions of their existing copper plant, will the displaced copper plant give competitors a viable opportunity to offer alternative services? What would be the annual costs to the ILEC (or to a purchaser of the displaced copper plant) of a continuing obligation to maintain that plant?

4. What regulations, if any, should apply to new broadband facilities and/or services to ensure a competitive marketplace?

G. To what extent have competitive firms deployed their own (a) transport, (b) switching, and (c) loop facilities? Are those investments limited to particular areas of the country or to particular portions of communities and metropolitan areas? What market characteristics must exist for competitors to make facilities-based investments? Do competitors have the ability to deploy their facilities in ways that minimize costs and facilitate efficient network design?

H. What cable companies are currently conducting trials to evaluate giving multiple Internet service providers access to broadband cable modem services? Describe the terms and conditions of ISP access in such trials. What technical, administrative, and operational considerations must be addressed to accommodate multiple ISP access? How can cable firms manage the increased traffic load on their shared distribution systems caused by multiple ISPs?

I. What problems have companies experienced in deploying broadband services via wireless and satellite? What regulatory changes would facilitate further growth in such services? Is available spectrum adequate or inadequate? What additional spectrum allocations, if any, are needed?

J. How should the broadband product market be defined? What policy initiatives would best promote intra-modal and inter-modal broadband competition?

K. Would it be appropriate to establish a single regulatory regime for all broadband services? Are there differences in particular broadband network architectures (e.g., differences between cable television networks and traditional telephone networks) that warrant regulatory differences? What would be the essential elements of a unified broadband regulatory regime?

L. Are there local issues affecting broadband deployment that should be addressed by federal policies? Please provide specific information or examples regarding these problems. Should fees for rights of way and street access reflect costs in addition to the direct administrative costs to the municipalities affected? To what extent do state laws and regulations limit municipalities' ability to establish nondiscriminatory charges for carriers' use of public rights-of-way? Please discuss the most appropriate relationship between federal, state, and local governments to ensure minimal regulation while removing disincentives or barriers to broadband deployment.

M. Are there impediments to federal lands and buildings that thwart broadband deployment? Please provide specific data. What changes, if any, may be necessary to give service providers greater access to federal property?

N. With respect to any proposed regulatory changes suggested in response to the above questions, can those changes be made under existing authority or is legislation required?

Nancy J. Victory,

Assistant Secretary for Communications and Information.

[FR Doc. 01–28784 Filed 11–16–01; 8:45 am]

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[1] TELRIC is a method of determining the cost of telephone service based on the forward-looking, incremental cost of equipment and labor without taking into account the historical, or embedded cost. The pricing method is based on a hypothetical network using the most efficient technology available. *See* 47 CFR 51.503, 51.505 (1997); In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96–98 and 95–185, 11 FCC Rcd 15499 (1996), *vacated,* 120 F.3d 753 (8th Cir. 1997), *remanded,* 219 F.3d 744 (8th Cir. 2000), *cert. granted,* General Comm., Inc. v. Iowa Util. Bd., 121 S.Ct. 879 (2001).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Short Supply Provisions of the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

November 13, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined, under the AGOA and CBTPA, that rayon filament yarn, classified in subheading 5403.31 and 5403.32 of the Harmonized Tariff Schedule of the United States (HTS) for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in an eligible country, from fabric formed in the United States containing rayon filament yarn not formed in the United States, as eligible for quota-free and duty-free treatment under the textile and apparel

short supply provisions of the AGOA and the CBTPA, and eligible under HTS subheadings 9819.11.24 or 9820.11.27 to enter free of quotas and duties, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the U.S.

FOR FURTHER INFORMATION CONTACT: Philip J. Martello, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA and Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamations 7350 and 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The short supply provision of the AGOA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7350, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

Similarly, the short supply provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On May 23, 2001, the Committee received a petition alleging that rayon filament yarn, classified in subheading 5403.31 and 5403.32 of the HTS for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and CBTPA and requesting that apparel articles from U.S. formed-fabric containing such yarns be eligible for preferential treatment under the AGOA and CBPTA. On May 31, 2001, the Committee requested public comment on the petition (66 FR 29549). On June 18, 2001, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel (collectively, the ISACs). On June 19, 2001, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On July 9, 2001, the U.S. International Trade Commission (USITC) provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On July 19, 2001, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA and CBTPA.

The Committee hereby designates as eligible for preferential treatment under subheading 9819.11.24 of the HTS (for purposes of the AGOA), and under subheading 9820.11.27 of the HTS (for purposes of the CBTPA), apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more eligible beneficiary sub-Saharan African countries, or one or more eligible CBTPA beneficiary countries, from fabric formed in the United States containing rayon filament yarn not formed in the United States, provided that all other yarns are wholly formed in the United States and that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, that are imported directly into the customs territory of the United States from an eligible beneficiary sub-Saharan African country or an eligible CBTPA beneficiary country.

An ''eligible beneficiary sub-Saharan African country'' means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTS. An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of chapter 98 of the HTS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–28826 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the North American Free Trade Agreement (NAFTA)

November 14, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of request alleging that yarns of cashmere and yarns of camel hair cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On June 14, 2001 the Chairman of the Committee for the Implementation of Textile Agreements (CITA) received a petition from Amicale Industries, Inc., pursuant to Section 7.2 of Annex 300-B of the North American Free Trade Agreement (NAFTA), that certain yarns of camel hair and certain yarns of cashmere, classified in heading 5108.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the

NAFTA rules of origin. The yarns are described as (1) Yarns of cashmere, singles, multiple or plied, of fiber 17.5 to 19 microns average diameter, of natural, bleached, or dyed fiber, of metric count 9.7 or finer (3 run or finer), mule spun or frame spun. (2) Yarns of camel hair, singles, multiple or plied, of fiber 18 microns average diameter or finer, of bleached or dyed fiber, of metric count 16 or finer (5 run or finer), mule spun or frame spun.

Such a proclamation may be made only after reaching agreement with other NAFTA countries on the modification. On June 27, 2001, CITA published a Federal Register notice (66 FR 34156) requesting public comments on this petition, in particular with regard to whether cashmere and camel hair yarn can be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

Background

Under the NAFTA, NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 of the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanies the NAFTA Implementation Act states that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North American of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On June 14, 2001 the Chairman of CITA received a petition from Amicale Industries, Inc. alleging that certain yarns of cashmere and of camel hair classified in heading 5108.10.60 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. Amicale requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the NAFTA.

CITA solicited public comments regarding this request (66 FR 34156) particularly with respect to whether yarn of cashmere and yarn of camel hair, classified in HTSUS heading 5108.10.60, can be supplied by the domestic industry in commercial quantities in a timely manner. The yarns are described as (1) Yarns of cashmere, singles, multiple or plied, of fiber 17.5 to 19 microns average diameter, of natural, bleached, or dyed fiber, of metric count 9.7 or finer (3 run or finer), mule spun or frame spun. (2) Yarns of camel hair, singles, multiple or plied, of fiber 18 microns average diameter or finer, of bleached or dyed fiber, of metric count 16 or finer (5 run or finer), mule spun or frame spun. The referenced yarns would produce woven fabrics for use in suits, coats and suit-type jackets classified under HTS subheadings 6201.11, 6202.11, 6203.11, 6203.31, 6204.11 and 6204.41.

On the basis of the public comments received, yarn of cashmere and yarn of camel hair appears to be spun in the United States and to be available from U.S. producers. One company in its submission claims to be currently spinning these yarns and another company claims to be currently having these yarns spun in both the United States and Mexico and is willing to supply Amicale. A third company claims it is able and willing to supply all but the 5 run camel hair yarn. Moreover, Amicale has the ability to produce these yarns. It appears that there is substantial U.S. production of these yarns and that the yarns can be supplied in commercial quantities.

Based on its review of the petition and public comments received, CITA has determined to deny Amicale's petition. Amicale has not established that these yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In fact, it appears that these yarns can be so supplied. As a result, consultations with Canada and Mexico will not be requested.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–28827 Filed 11–16–01; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Funding Opportunity for Provision of Training and Technical Assistance to the AmeriCorps Promise Fellows Grantees

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding opportunity.

SUMMARY: Subject to the availability of appropriations, the Corporation for National and Community Service (Corporation) will use approximately $250,000 to support an organization selected under this Notice to provide training and technical assistance to the AmeriCorps Promise Fellows Program. The organization selected will, on a national level: (1) Foster a national identity among Fellows based on their participation in a common national endeavor; (2) design and help implement training and technical assistance activities to provide Fellows and sponsors with the skills required to fulfill their mission; and (3) facilitate the exchange of information and effective practices among Fellows, sponsors and others involved in the AmeriCorps Promise Fellows Program.

The Corporation intends to enter into a cooperative agreement of up to three years, beginning on or about March 1, 2002. The funding opportunity announced under this Notice will support the initial phase of the agreement (generally the first year's budget), with additional funding contingent upon need, quality of service, the nature and scope of activities to be supported, and availability of appropriations for this purpose.

Note: This is a notice for selection of an organization to provide training and technical assistance to national service grantees. This is not a notice for program grant proposals.

DATES: Proposals must be received by the Corporation by 3 p.m. Eastern time on January 18, 2002. The Corporation anticipates making an award under this announcement in March 2002.

ADDRESSES: Submit proposals to the Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525, Attention: Cathy Harrison, 9612A.

FOR FURTHER INFORMATION CONTACT: David Bellama at the Corporation for National and Community Service, (202) 606–5000, ext 483, TTY (202) 565–2799; e-mail dbellama@cns.gov . This Notice is available on the Corporation's Web site, *http://www.nationalservice.org/whatshot/notices/*. Upon request, this information will be made available in alternate formats for people with disabilities.

SUPPLEMENTARY INFORMATION:

I. The Corporation for National and Community Service

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in national and community service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial contribution to service. For more information about the Corporation and the activities it supports, go to *http://www.nationalservice.org.*

II. Conditions

A. Legal Authority

Section 198 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12653, authorizes the Corporation to provide, directly or through contracts or cooperative agreements, training and technical assistance in support of activities under the national service laws. Section 125 of the National and Community Service Act and titles I and II of the Domestic Volunteer Service Act provide additional authority.

B. Cooperative Agreements

An award made under this Notice will be in the form of a cooperative agreement. Administration of cooperative agreements is controlled by Corporation regulations, 45 CFR part 2541 (for agreements with state and local government agencies) and 45 CFR part 2543 (for agreements with institutions of higher education, non-profit organizations and commercial entities). The provider must comply with reporting requirements, including submitting semi-annual financial reports and progress reports linking progress on deliverables to expenditures.

Cooperative agreements require substantial involvement on the part of the government. Substantial involvement includes frequent and regular communication with and monitoring by the Corporation's cognizant training officer (COTR). The COTR will confer with the provider on a regular basis to review project status and service delivery, including work plans, budgets, periodic reports, materials developed, preparation for and implementation of training events, targeting of the provider's services, and assessment of the provider's effectiveness.

C. Time Frame

The Corporation expects that activities assisted under the agreement awarded through this Notice will commence on or about March 1, 2002, following the conclusion of the selection and award process. The Corporation will make an award covering a period not to exceed three years. Applications must include a detailed work plan of proposed activities and a line-item budget for year one of the agreement and should note projected changes to proposed activities for years two and three of the award period. If the Corporation approves an application and enters into a multi-year award agreement, funding will be provided for the first year only. Funding for the second and third years of an award period is contingent upon need, quality of service, the nature and scope of activities to be supported, and availability of appropriations for the purpose of the award. The Corporation has no obligation to provide additional funding in subsequent years.

D. Use of Materials

To ensure that materials generated with Corporation funding for training and technical assistance purposes are available to the public and readily accessible to grantees and sub-grantees, the Corporation reserves a royalty-free, non-exclusive, and irrevocable right to obtain, use, reproduce, publish, or disseminate publications and materials produced under the agreement, including data, and to authorize others to do so. The provider must agree to make such publications and materials available to the national service field, as identified by the Corporation, at no cost or at the cost of reproduction. All materials developed for the Corporation must be consistent with Corporation editorial and publication guidelines and must be accessible to individuals with disabilities to the extent required by law.

III. Eligibility

State and local government entities, non-profit organizations, institutions of higher education, Indian tribes, and commercial entities are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S C. 501(c)(4), which engages in lobbying, is not eligible to apply. Organizations that operate or intend to operate Corporation-supported programs are eligible.

The Corporation anticipates making a single award for this purpose. We will consider proposals from single applicants, applicants in partnership and applicants proposing other approaches to meeting the requirement that we consider to be responsive to this Notice.

Organizations may apply to provide training and technical assistance in partnership with organizations seeking other Corporation funds. Based on previous training and technical assistance competitions and our estimate of potential applicants, we expect fewer than ten applications to be submitted.

IV. AmeriCorps Promise Fellows Program

A. Background

The AmeriCorps Promise Fellows Program was created to provide leadership, support, and continued momentum to the campaign initiated by the Presidents' Summit for America's Future. Held in Philadelphia in April 1997, the Presidents' Summit was an historic gathering of then-President Clinton, former Presidents Bush, Carter and Ford, Nancy Reagan representing Ronald Reagan, and over 3,000 business, nonprofit, government, faith, and civic leaders. At the Summit, the Presidents and Ret. General Colin Powell, who chaired the event, challenged these leaders to raise civic power to a new level to solve the problems of American society. They asked them to commit more time, talent, and resources to children and youth using the framework of the five promises, which are:

- Ongoing relationships with a caring adults—parents, mentors, tutors or coaches;
- Safe places with structured activities during nonschool hours;
- Healthy start and future;
- Marketable skills through effective education;

• Opportunities to give back through community service.

In the wake of the Summit, America's Promise—The Alliance for Youth was formed to carry forward the work begun in Philadelphia. As local Summit follow up activities got underway, however, it soon became apparent that to significantly increase the delivery of the five promises, communities would need leaders who could devote full-time energy to these initiatives.

In response to this need, the Corporation for National Service, which co-sponsored the Summit with the Points of Light Foundation, joined with America's Promise to establish the AmeriCorps Promise Fellows Program. Since the inaugural class of Fellows began service in early 1999, nearly 500 Fellows annually have dedicated a year of service to spearhead state and local efforts to deliver the five promises to children and youth. For more information about America's Promise, go to *www.americaspromise.org.*

B. Role of an AmeriCorps Promise Fellow

AmeriCorps Promise Fellows serve in state or local nonprofit organizations, public agencies, colleges and universities, schools and other community-based organizations dedicated to promoting the five promises and engaged in the America's Promise campaign. While direct service to children and youth may be a component of a Fellow's service, Fellows are primarily capacity-builders. Their service activities expand, strengthen and improve a community's ability to deliver the five promises in sustainable ways. For example, a Fellow may:

• Coordinate a Community of Promise campaign to provide a targeted number of young people with all five promises;

• Develop a youth service program at a Volunteer Center;

• Replicate a successful after-school program across the school district;

• Train volunteers to enlist low-income families in health insurance programs;

• Create a job-shadowing program for high school students; or

• Establish a statewide database of effective practices for mentoring programs.

Over the course of their service, Fellows develop specific knowledge of their community's resources related to the five promises placing them in a unique position to promote the importance of *all* children receiving *all five* promises. Therefore, in addition to their specific service assignments, Fellows are expected to become knowledgeable advocates in their communities for the five-promise approach.

C. Provider's Relationship to the AmeriCorps Promise Fellows Program

This Notice seeks a provider to work with the Corporation and with sponsors of the AmeriCorps Promise Fellows program throughout the country. Sponsors receive grants to operate AmeriCorps Promise Fellows programs, and can be state commissions for national and community service, national non-profit organizations and Indian tribes. For the purposes of this notice, the term ''sponsor'' also includes organizations that have been selected by grantees to administer an AmeriCorps Promise Fellows program or to serve as host organizations for an AmeriCorps Promise Fellow(s).

The provider will need to coordinate at the national level with the Corporation and America's Promise. It will also be required to work in a complementary role with the sponsors listed above and, in some instances, directly with AmeriCorps Promise Fellows.

V. Scope of Training and Technical Assistance To Be Supported: Tasks and Delivery Requirements

The Provider selected under this Notice will provide training services and ongoing technical assistance, and develop and disseminate training curricula and materials to the AmeriCorps Promise Fellows Program. The Corporation requires providers to integrate the deliverables and principles listed below into their service delivery.

A. Training and Technical Assistance Tasks

The Corporation expects the provider selected under this Notice to engage in the following activities. Because implementation of the different activities will be subject to availability of funds, separate budgets should be developed for each:

1. Technical Assistance and the Promotion of a National Program Identity. The provider will develop and maintain materials and systems that identify and respond to needs of the AmeriCorps Promise Fellows Program and promote a national AmeriCorps Promise Fellow Identity through:

• Newsletters/periodic communications, peer exchange, electronic and telephone communication and technical assistance, and development and dissemination of materials, identity items, etc.;

• Materials and technical support in content and skill areas relevant to the AmeriCorps Promise Fellows Program, such as community outreach, resource mobilization, community strengthening, developing partnerships, etc.;

• Identification and highlighting of Fellows' and sponsors' achievements.

2. Training Support. The provider will take the lead in designing and delivering training programs, curricula and materials in support of the AmeriCorps Promise Fellows Program. These may include materials and activities such as:

• Training and Technical Assistance Needs Assessment

• Orientation Curriculum and Materials for Both Fellows and Sponsors

• Training Program for Sponsors

• Training Sessions for Fellows at other conferences and events related to the national service field.

3. Program Coordination. The provider will support the implementation of the AmeriCorps Promise Fellow Program by:

Facilitating information exchange through regular communications with and between the Corporation, America's Promise and sponsors, including design and management of an information system, periodic oral, electronic and written reports and other communications about the status of the Fellows Program.

4. Self-Evaluation. The provider will implement a program of continuous improvement, including periodic self-assessments and follow-up to ensure that issues identified in the assessments are addressed, and will share these assessments with the Corporation.

B. Training and Technical Assistance Delivery Requirements

1. Delivery Requirements

a. Ensure that all training and technical assistance and resources including web sites are accessible to persons with disabilities, as required by law, to include the following:

i. Notify potential participants that reasonable accommodations will be provided upon request;

ii. Provide reasonable accommodations when requested to do so, including provision of sign language interpreters, special assistance, and documents in alternate formats;

iii. Use accessible locations for training events;

iv. Provide training and technical assistance materials that are accessible to persons with disabilities, by using accessible technology, providing materials in alternate formats upon request, captioning videos, avoiding

non-voice-over formats, and when indicating a telephone number, including a non-voice telephone alternative such as TDD or e-mail;

2. Evaluation

a. Conduct an evaluation after each training and technical assistance event.

b. Maintain records of these evaluations and provide them to the Corporation, or an authorized representative, upon request.

c. Submit aggregate evaluation summaries of training and technical assistance events as part of progress reports to the Corporation.

The Corporation may conduct an independent assessment of each provider's performance.

3. Reporting Requirements

The provider is responsible for submitting timely progress and financial reports during and at the conclusion of the award period to the Corporation as follows:

a. Semi-annual Progress Reports

Progress reports must be submitted semi-annually and are due on July 31 for the period ending June 30 and January 31 for the period ending December 31 for each budget period during the cooperative agreement. The provider must develop the capacity to submit this information electronically. At a minimum, progress reports must provide the information below:

i. A comparison of accomplishments with the goals and objectives for the reporting period;

ii. An annotated version of the approved budget that compares actual costs with budgeted costs by line item, and explains differences. The explanation should include, as appropriate, an analysis of cost overruns and high-cost units and a description of service requests not anticipated in the provider's original budget;

iii. A description of the services provided to include:

(a) Number of requests received by topic area and stream of service;

(b) Activity conducted to address each request (e.g., training, on-site technical assistance, phone consultation and other electronic communication, and materials development and shipment) and mode of delivery (e.g., staff member, consultant, peer and/or other provider);

(c) Number of participants in each training and technical assistance event;

(d) Client feedback on the services rendered (including the aggregate evaluation of each training event); and

(e) Problems encountered in delivering services with recommendations for correcting them.

iv. List of upcoming activities and events with dates and locations;

v. Recommended training and technical assistance focus areas as suggested by analyses of service activities and trends;

vi. Discussion of developments that hindered, or may hinder, compliance with the cooperative agreement;

vii. List of materials submitted to the National Service Resource Center and National Service-Learning Clearinghouse;

viii. List of practices and supporting documentation or materials submitted to the Effective Practices Information Center database (EpiCenter).

b. Financial reports must be submitted semi-annually and include a summary of expenditures during the period. The reports are cumulative and must be submitted on the Financial Status Report (FSR) form SF 269A.

c. Final Reports

i. Providers completing the final year of their agreement must submit, in lieu of the last semi-annual progress report, a final progress report that is cumulative over the entire award period. The final progress report is due 90 days after the end of the agreement.

ii. Providers completing the final year of their award must submit, in lieu of the last semi-annual FSR, a final FSR that is cumulative over the entire award period. The final FSR is due 90 days after the end of the agreement.

d. Two copies of all financial reports must be submitted to the Office of Grants Management. Three copies of all progress reports must be submitted to the Corporation's cognizant training officer for the award.

e. The provider must meet as necessary with the cognizant training officer or with other staff or consultants designated by the Corporation training official to exchange views, ideas, and information concerning training and technical assistance. The provider must submit such special reports as may be reasonably requested by the Corporation.

4. Other Requirements

a. Assure that provider staff and consultants are fully versed in the background, approach, vocabulary, assets, needs and objectives of the Corporation, each of its program streams, and the AmeriCorps Promise Fellows Program.

b. Participate in the planning and implementation of national provider meetings and training events as requested by the Corporation.

c. Collaborate in materials development and training events organized by other providers or the Corporation, as requested.

d. Share effective practices with other providers through the training and technical assistance listserv, the Effective Practices Information Center database (EpiCenter) and other mechanisms such as the National Service-Learning Clearinghouse and the National Service Resource Center.

e. Use technology creatively and effectively as a cost-effective strategy for reaching large numbers of sponsors, Fellows and others related to the AmeriCorps Promise Fellows Program.

VI. Application Guidelines

A. Proposal Content and Submission

Applicants must submit one unbound, original proposal and two bound copies. Applicants may voluntarily submit two additional bound copies for a total of four copies. Proposals may not be submitted by facsimile. Proposals must include the following:

1. Cover Page

The cover page must include the name, address, phone number, fax number, e-mail address of the contact person and World Wide Web site URL (if available) of the applicant organization; the category for which the application is being submitted; a 250–500 word summary of proposed training and technical assistance activities; and, the total funding amount requested for the first year.

2. List of Activities and Materials

A one-to-two page list of all proposed training and technical assistance activities and materials.

3. Training and Technical Assistance Delivery Plan

A bulleted narrative of no more than 15 double-spaced, single-sided, typed pages in no smaller than 12-point font that includes:

a. The applicant's proposed strategy and rationale for providing training and technical assistance to AmeriCorps Promise Fellows and sponsors for year one, with proposed changes (if any) for years two and three. The applicant should use the specific deliverables and requirements outlined in Section V of this Notice as a starting point for a plan and should present these deliverables in a way that creatively reflects the applicant's areas of expertise and knowledge of national service audiences. It is not appropriate to simply re-list the tasks stated in this Notice. As appropriate, the applicant should also include the following information for each proposed training

and technical assistance activity, product, or event: Type of activity, number, frequency, audience, knowledge and skills learners will gain, estimated audience size, content, skill level, proposed needs assessment and continuous improvement strategies.

b. A detailed one-year work plan and timeline for completing all training and technical assistance activities. The work plan should include all deliverables and the tasks leading to them.

c. A plan for regularly evaluating performance and using findings for continuous improvement.

4. Training Course outline and Description

A 250–500 word description for one face-to-face training course in a content area relevant to the program. The face-to-face course should be considered part of a two-day event for 50–75 AmeriCorps Promise Fellow sponsors or part of a discrete training event for Fellows in a skill development area relevant to their service. Applicant should submit a session description that includes desired learner outcomes and an outline of session content and the activities that will accomplish the desired outcomes.

5. Technology Strategy

A one-page description of how applicant proposes to effectively use technology to broaden the reach of training and technical assistance delivery. Description should include target audience, proposed use of technology, rationale for approach, concepts and skills to be delivered, desired learner outcomes, and how outcomes will be achieved.

6. Organizational Capacity

a. A narrative of no more than three double-spaced, single-sided, typed pages in no smaller than 12-point font which describes:

(1) The organization's capacity to provide training and technical assistance services nationwide, including descriptions of recent work similar to that being proposed;

(2) The organization's knowledge of and experience with national service programs;

b. Names and contact information of references that can be contacted with regard to the above work.

c. A list of proposed staff with areas of expertise (note: final list will be subject to Corporation approval) and resumes of the individuals primarily responsible for the deliverables proposed in the application.

d. If applicable, an organizational chart that clearly shows the relationship of the training and technical assistance service provider(s) to the overall structure of the legal applicant to this notice.

7. Budget

A detailed, line-item budget with costs organized by personnel, task and sub-task and related to the activities and deliverables outlined in the introductory narrative and work plan. Costs in proposed budgets must consist solely of costs allowable under applicable cost principles found in OMB Circulars (OMB Circular A–87 for state and local governments, A–121 for non-profit organizations and A–21 for institutions of higher learning).

Applicants should be mindful that a demonstrated commitment to providing services in the most cost-effective manner possible will be a major consideration in the evaluation of proposals. Provider match is not required. The budget should include:

a. Proposed staff and expert-consultant hours and pay rates by task and sub-task;

b. Types and quantities of other direct costs being proposed by task and subtask (for example, amounts of travel and volume of other task-related resources, such as communications, postage, etc.).

8. Budget Narrative

Provide a budget narrative that corresponds with all items in the line-item budget and that includes an explanation and cost basis for all cost estimates that appear in the line-item budget. The narrative should clearly show the following:

a. How each cost was derived, using equations to reflect all factors considered.

b. The anticipated unit cost (with derivation) of the various deliverables (such as training events, publications and technical assistance interventions).

B. Selection Criteria

To ensure fairness to all applicants, the Corporation reserves the right to take remedial action, up to and including disqualification, in the event a proposal fails to comply with the requirements relating to page limits, line spacing, and font size. The Corporation will assess applications based on the criteria listed below.

1. Quality (35%)

The Corporation will consider the quality of the proposed activities based on:

a. Evidence of the applicant's knowledge of the goals of the Corporation, its program streams, the needs and goals of the AmeriCorps Promise Fellows Program, and the role of training and technical assistance in supporting this program.

b. The soundness of the proposed strategy to carry out the activities proposed, based on the audience appropriateness, strategic nature (*i.e.,* broad reaching and capacity building), effectiveness and creativity of the applicant's approach and workplan; and on evidence of the applicant's knowledge of adult learning and experience in training adults.

2. Organizational and Personnel Capacity (35%)

The Corporation will consider the organizational capacity of the applicant to deliver the proposed services based on:

a. Evidence of the organization's experience in delivering high-quality adult training and technical assistance in the category under consideration in a flexible, responsive, collaborative and creative manner; experience with or knowledge of national or community service as described by applicant; and experience using technology as a teaching tool.

b. Evidence of experience providing training and technical assistance to adults in the appropriate training and technical assistance category on the part of the proposed staff and consultants as demonstrated by annotated staff lists or resumes.

c. Demonstrated ability to manage a federal grant or apply sound fiscal management principles to grants and cost accounting as evidenced by an annotated list of applicant's previous grants experience.

d. Demonstrated ability to provide training and technical assistance services nationwide as evidenced by proposed technology plan, proposed staffing and previous levels of activity and experience.

3. Evaluation (10%)

The Corporation will consider how the applicant:

a. Proposes to assess the effectiveness and need for its services and products delivered under the award.

b. Plans to use assessments of its services and products to modify and improve subsequent services and products.

4. Budget (20%)

The Corporation will consider the budget based on:

a. Scope and cost-effectiveness of the proposed training and technical assistance activities in relation to the scope and depth of the services

proposed (*i.e.,* the number of Fellows, sponsors and host organizations the proposed activities are expected to reach and the degree to which the provider provides a reasonable estimate of the amount of services the organization will be able to provide);

b. The clarity and thoroughness of the budget and budget narrative (see specifications under ''Budget Narrative'').

VII. Glossary of Terms

America's Promise—The Alliance for Youth

The multi-year, national campaign that is taking the mission and goals of the Presidents' Summit for America's Future forward. Launched under the leadership of its founding chairman, Ret. General Colin L. Powell, America's Promise works to ensure that the nation's young people have access to all five promises by mobilizing organizations and individuals from the private, public, and non-profit sectors—both nationally and locally—to make and deliver commitments to youth.

Effective Practices Information Center (EpiCenter)

EpiCenter is the Corporation's online database of effective program practices in national service. Its mission is to support practitioners in developing sustainable programs that lead to positive outcomes for beneficiaries, participants, institutions, and communities and to make this information widely accessible across the national service network. Providers are required to submit effective training and program practices to EpiCenter. The database can be visited at *www.nationalservice.org/resources/epicenter.*

Grantees

Entities funded directly by the Corporation. In the case of the AmeriCorps Promise Fellows program, these may include: state commissions on national and community service, national non-profit organizations, Indian tribes, and entities in states or U.S. Territories that do not have a state commission.

National Service-Learning Clearinghouse

The National Service-Learning Clearinghouse is a center for the collection and dissemination of information on service-learning for national service awardees and the general public engaged in service-learning. The Clearinghouse maintains and operates a Web site (*www.servicelearning.org*) and service-learning listservs, a library of print and media materials related to service-learning, and a toll-free information and referral service. Providers are required to submit copies of service-learning related training materials and training scripts to the National Service-Learning Clearinghouse.

National Service Resource Center (NSRC)

The National Service Resource Center (NSRC) serves as a repository of information on all aspects of national service. The NSRC manages most of the Corporation's listservs and maintains and operates a library of print and media materials related to service and a toll-free information and referral service. Training and technical assistance publications are posted or distributed by the NSRC and its Web site (*www.etr.org/nsrc*) includes a calendar of training events and links to all current providers.

CFDA No. 94.009 Training and Technical Assistance.

Dated: November 14, 2001.

David Rymph,

Acting Director, Department of Evaluation and Effective Practices.

[FR Doc. 01–28839 Filed 11–16–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 19, 2001.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 229, Taxes, and Related Clauses in DFARS 252.22; OMB Number 0704–0390.

Type of Request: Extension.

Number of Respondents: 22.

Response Per Respondent: 1.

Annual Response: 22.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 88.

Needs and Uses: The Department of Defense uses this information to determine if DoD contractors in the United Kingdom have attempted to obtain relief from customs duty on vehicle fuels in accordance with contract requirements. The clause at DFARS 252.229–7010, Relief from Customs Duty on Fuel (United Kingdom), is prescribed at DFARS 229.402–70(j) for use in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels and lubricants in taxis or vehicles other than passenger vehicles. The clause requires the contractor to provide the contracting officer with evidence that the contractor has initiated an attempt to obtain relief from customs duty on fuels and lubricants, as permitted by an agreement between the United States and the United Kingdom.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMD Desk Officer: Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 8, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 01–28769 Filed 11–16–01; 8:45 am]

BILLING CODE 5001–00–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer,

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 13. 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Standards for Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 1. Burden Hours: 1.

Abstract: P.L. 103–227 reauthorized the Office of Educational Research and Improvement (OERI) and required the Assistant Secretary to establish standards for the evaluation of applications for grants and cooperative agreements and proposals for contracts (20 U.S.D. 6011(I)(2)(B)(ii).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28771 Filed 11–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen__F.__Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 13, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Early Childhood Longitudinal Study (ECLS)—Kindergarten Cohort, Third Grade Followup.

Frequency: One time.

Affected Public: Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 22,253. Burden Hours: 14,990.

Abstract: Starting in the Fall and Spring of the 1998–99 school year with a cohort of kindergartners, this cohort was contacted again in the Fall and in the Spring of their first grade year. This clearance is to collect data from the full sample, including a pilot test of the third grade direct assessment, conduct interviews with their parents, their teachers and school administrators during the spring of their third grade school year. This package also requests clearance for field test activities to prepare for the Spring, 2004 assessment when the majority of these students will be in fifth grade.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28772 Filed 11–16–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, December 6, 2001, 9 a.m.–5 p.m.; Friday, December 7, 2001, 8:30 a.m.–3 p.m.

ADDRESSES: Radisson Hotel, 1441 NE 2nd Avenue, Portland, OR 97232 (503–233–2401).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, December 6, 2001

- Introduction and Discussion of Draft Advice on the River Corridor Contract Draft Request for Proposal
- Discussion of the Ad Hoc Task Force who will work with the Tri-Party Agencies on public values and exposure scenarios
- Charter, time frame, and products
- White Paper Discussion: ''Evaluating Hanford Public Involvement; Goals, Activities, and a Framework for Discussion''

Friday, December 7, 2001

- Adoption of Draft Advice on the River Corridor Contract Draft Request for Proposal
- Board Action on White Paper: ''Evaluating Hanford Public Involvement: Goals, Activities and a Framework for Discussion''
- Update on November 5 Tri-Party Agreement Agency Meeting with the Assistant Secretary for Environmental Management
- Updates
- Tank Waste Committee—near term work priorities
- Budgets and Contracts—Update on FY02 Budget
- Board Evaluation

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, PO Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on November 13, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–28824 Filed 11–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 01–47–LNG, 01–53–NG, 01–45–NG, 01–49–NG, 01–52–NG, 01–50–NG, 01–55–NG, 01–57–NG, 01–54–LNG, 01–58–NG, 01–56–NG, 01–66–NG, 01–59–NG, 01–63–NG, 01–62–NG, 99–22–NG, 01–67–NG, 01–69–NG, 01–65–NG, 01–61–NG, 01–64–NG, 01–68–NG, 01–60–NG, 01–72–NG]

Orders Granting, Amending, and Vacating Authority To Import And Export Natural Gas, Including Liquefied Natural Gas, BG Lng Services, Inc., Northeast Gas Markets LLC, Pacific Gas and Electric Company, Avista Energy, Inc., Boundary Gas, Inc., Rochester Gas and Electric Company, American Crystal Sugar Company, Dynegy Marketing and Trade, Small Ventures U.S.A., L.L.C., PanCanadian Energy Services, Inc., NSTAR Gas Company, Masspower, Enbridge Gas Services (U.S.) Inc., PG&E Energy Trading, Canada Corporation, BP Energy Company, Cascade Natural Gas Corporation, Tenaska Marketing Ventures, DEK Energy Company, Pittsfield Generating Company, L.P., Nova Scotia Power Inc., CEG Energy Options Inc., Sierra Pacific Power Company, Cinergy Marketing & Trading, LLC, Vermont Gas Systems, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2001, it issued Orders granting, amending, and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 13, 2001.

Thomas W. Dukes,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

APPENDIX

ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATIONS

DOE/FE
AUTHORITY

ORDER NO.	DATE ISSUED	IMPORTER/EXPORTER FE DOCKET NO.	IMPORT VOLUME	EXPORT VOLUME	COMMENTS
1710	10-2-01	BG LNG Services, Inc. 01-47-LNG	400 Bcf		Import LNG from various international sources over a two-year term beginning on the date of first delivery.
1711	10-2-01	Northeast Gas Markets LLC 01-53-NG	400 Bcf		Import and export a combined total from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1712	10-2-01	Pacific Gas and Electric Company 01-45-NG	600 Bcf		Import from Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1713	10-4-01	Avista Energy, Inc. 01-49-NG	269 Bcf		Import from Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1714	10-4-01	Boundary Gas, Inc. 01-52-NG	60.6 Bcf		Import and export a combined total from and to Canada, beginning on November 20, 2001, and extending through November 19, 2003.
1715	10-10-01	Rochester Gas and Electric Company 01-50-NG	40 Bcf		Import from Canada, beginning on December 1, 2001, and extending through November 30, 2003, and vacating current authority under DOE/FE Order No. 1632.
1716	10-10-01	American Crystal Sugar Company 01-55-NG	10.4 Bcf		Import and export a combined total from and to Canada, beginning on November 1, 2001 and extending through October 31, 2003.
1717	10-16-01	Dynegy Marketing and Trade 01-57-NG	600 Bcf	600 Bcf	Import a combined total from Canada and Mexico and to export a combined total to Canada and Mexico, beginning on October 31, 2001, and extending through October 30, 2003.
1718	10-16-01	Small Ventures U.S.A., L.L.C. 01-54-LNG	80 Bcf		Import LNG from various international sources, over a two-year term beginning on the date of first delivery.
1719	10-16-01	PanCanadian Energy Services, Inc. 01-58-NG	500 Bcf		Import and export a combined total from and to Canada and Mexico, including LNG beginning on November 1, 2001, and extending through October 31, 2003.

ORDER NO.	DATE ISSUED	IMPORTER/EXPORTER FE DOCKET NO.	IMPORT VOLUME	EXPORT VOLUME	COMMENTS
1720	10-17-01	NSTAR Gas Company 01-56-NG	20 Bcf		Import and export a combined total from and to Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1721	10-19-01	MASSPOWER 01-66-NG	20 Bcf		Import and export a combined total from and to Canada, beginning on October 22, 2001, and extending through October 21, 2003.
1722	10-19-01	Enbridge Gas Services (U.S.) Inc. 01-59-NG	400 Bcf		Import and export a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
1723	10-19-01	PG&E Energy Trading, Canada Corporation 01-63-NG	150 Bcf		Import from Canada, over a two-year term beginning on the date of first delivery.
1724	10-26-01	BP Energy Company 01-62-NG	1,100 Bcf		Import and export a combined total from and to Canada, beginning on November 10, 2001, and extending through November 9, 2003.
1474-C	10-26-01	Cascade Natural Gas Corporation 99-22-NG			Amendment to extend long-term authority to import for an additional three years beginning on November 1, 2001, and extending through October 31, 2004.
1725	10-29-01	Tenaska Marketing Ventures 01-67-NG	400 Bcf		Import and export a combined total from and to Canada, beginning on December 1, 2001, and extending through November 30, 2003.
1726	10-30-01	DEK Energy Company 01-69-NG	73 Bcf		Import from Canada, beginning on November 1, 2001, and extending through October 31, 2003.
1727	10-30-01	Pittsfield Generating Company, L.P. 01-65-NG	25.5 Bcf	25.5 Bcf	Import and Export from and to Canada, beginning on October 30, 2001, and extending through October 29, 2003.
1728	10-30-01	Nova Scotia Power Inc. 01-61-NG	200 Bcf		Import and export a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
1729	10-30-01	CEG Energy Options Inc. 01-64-NG	400 Bcf		Import from Canada, over a two year term beginning on the date of first delivery.
1730	10-30-01	Sierra Pacific Power Company 01-68-NG	100 Bcf		Import from Canada, beginning on December 31, 2001, and extending through December 30, 2003.
1731	10-30-01	Cinergy Marketing & Trading, LLC 01-60-NG	365 Bcf		Import and export a combined total from and to Mexico, beginning on November 1, 2001, and extending through October 30, 2003.
1732	10-30-01	Vermont Gas Systems, Inc. 01-72-NG	20 Bcf	20 Bcf	Import and export from and to Canada, beginning on December 23, 2001, and extending through December 22, 2003.

[FR Doc. 01–28825 Filed 11–16–01; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI99–2–001]

Alaska Power & Telephone Company; Notice Denying Intervention and Rejecting Request for Rehearing

November 13, 2001.

On August 16, 2001, the Director of the Commission's Division of Hydropower Administration and Compliance, Office of Energy Projects (Director), issued an order ruling on a declaration of intention and finding licensing not required for the proposed Gartina Creek Hydroelectric Project. 96 FERC ¶ 62,162 (2001). On September 17, 2001, Trout Unlimited and American Rivers jointly filed a motion for late intervention and a request for rehearing of the August 16 order.

In determining whether to grant late intervention, the Commission may consider such factors as whether the movant had good cause for filing late, whether the movant's interest is adequately represented by other parties to the proceeding, and whether granting the intervention might result in disruption to the proceedings or prejudice to the parties.[1]When late intervention is sought after issuance of a dispositive order, however, extraordinary grounds must be presented to warrant favorable action on the request.[2] Trout Unlimited and American Rivers assert that the challenged order establishes a significant precedent, and that the Commission may accept late intervention incident to rehearing concerning matters of jurisdiction. This does not establish good cause, and does not address the need to show extraordinary grounds for late intervention. Accordingly, the motion for late intervention is denied. Because only a party to the proceeding may seek rehearing, the request for rehearing filed by Trout Unlimited and American Rivers is rejected.[3]

This notice constitutes final agency action. Requests for rehearing by the Commission of this notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

David P. Boergers,

Secretary.

[FR Doc. 01–28781 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 18 CFR § 385.214(d) (2001).

[2] *See* Weber Basin Water Conservancy District, 50 FERC ¶ 61,409 at p. 62,262 (1990).

[3] The Commission may, in its discretion, allow late intervention and rehearing concerning matters which relate to its jurisdiction. *See, e.g.,* Alaska Power Company, 81 FERC ¶ 61,239 (1997). In this case, other parties to the proceeding have intervened and sought rehearing of the jurisdictional issues.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–61–001 and CP00–61–002]

Central New York Oil and Gas Company, LLC; Notice of Compliance Filing

November 9, 2001.

Take notice that on October 31, 2001, as amended on November 9, 2001, Central New York Oil and Gas Company, LLC (CNYOG) tendered for filing its FERC Gas Tariff, Original Volume No. 1, consisting of Sheet Nos. 0–140, to be effective December 1, 2001.

CNYOG asserts that the purpose of its filing is to comply with the Commission's order issued February 23, 2001, in Docket Nos. CP00–61–000, CP00–62–000, and CP00–63–000 granting CNYOG's request for certificates for construction of the Stagecoach Storage Project, a natural gas storage field in south central New York (Central New York Oil and Gas Company and Tennessee Gas Pipeline Company, 94 FERC ¶ 61,194 (2001)). In that order the Commission directed CNYOG to file its tariff at least thirty days prior to providing service from the Stagecoach Storage Project.

CNYOG further asserts that it has served copies of this filing upon all parties of record in these proceedings and interested state commissions. Any question concerning this filing may be directed to counsel for CNYOG, James F. Bowe, Jr., Esq., Dewey Ballantine LLP at (202) 429–1444, fax (202) 429–1579, or via the internet at *jbowe@deweyballantine.com.*

Any person desiring to be heard or to protest said 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 sections 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) by November 16, 2001. All such motions or protests must be filed as provided in section 157.10 of the Commission's regulations (18 CFR 157.10). 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 to the proceeding 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 Internet at *http://www.ferc/fed/us/online/rims.htm* (call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28779 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–262–002]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

November 9, 2001.

Take notice that on October 31, 2001, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing its report addressing the steps taken to mitigate increases in unaccounted-for gas levels to comply with the Commission's letter order issued on March 28, 2001 94 FERC ¶61,350 (2001).

Columbia Gas states that the instant report sets forth Columbia Gas' explanation of the possible causes of the increase in the lost and unaccounted-for quantities, and sets forth the resulting adjustments as promised in April 30, 2001 filing. Columbia Gas states that it proposes to reflect such adjustments in the calculation of the revised transportation retainage factor that was filed concurrently in Columbia Gas' Periodic RAM Filing. Columbia Gas states that the Periodic RAM Filing reflects the adjustments identified in the instant report that equate to a total one-time decrease of 1,889,900 Dth to the actual lost and unaccounted-for account.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed on or before November 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Web at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28790 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–40–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 9, 2001.

Take notice that on November 6, 2001 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, on certain revised tariff sheets in the above captioned docket bear a proposed effective date of November 1, 2001.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's respective Rate Schedules GSS and LSS. This tracking filing is being made pursuant to section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28791 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–141–002]

Progress Energy, Inc., On Behalf Of Certain of Its Public Utility Subsidiaries; Notice of Filing

November 13, 2001.

Take notice that on November 7, 2001, Progress Energy, Inc., on behalf of Carolina Power & Light Company, Progress Genco Ventures, LLC, Progress Ventures, Inc., CP&L Newco, Inc., Monroe Power Company, Effingham County Power, LLC, MPC Generating, LLC, Richmond County Power, LLC, DeSoto County Generation Company, LLC, and Rowan County Power, LLC (collectively, Applicants) tendered for filing an amendment to an application requesting all necessary authorizations under section 203 of the Federal Power Act, 16 U.S.C. 824b (1996), to engage in a corporate reorganization.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 23, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28780 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2444–000]

Tri-State Generation and Transmission Association, Inc.; Notice of Issuance of Order

November 13, 2001.

Tri-State Generation and Transmission, Inc.(Tri-State) submitted for filing a rate schedule under which Tr-State will engage in wholesale electric power and energy transactions at market-based rates. Tri-State also requested waiver of various Commission regulations. In particular, Tri-State requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Tri-State.

On September 12, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-West, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Tri-State 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).

Absent a request to be heard in opposition within this period, Tri-State is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise

in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Tri-State's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–28782 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–254–000, et al.]

Sierra Pacific Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 9, 2001.

Take notice that the following filings have been made with the Commission:

1. Sierra Pacific Power Company

[Docket No. ER02–254–000]

Take notice that on November 7, 2001, Sierra Pacific Power Company (Sierra) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection Agreement between Nevada Power and Duke Washoe LLC (Duke). This agreement governs the terms and conditions of the interconnection to Sierra's transmission system of Duke's 540 MW electric generation facility located in Washoe County, Nevada. Sierra requests that the Interconnection Agreement be made effective as of October 30, 2001, which is the date that it was executed.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

[Docket No. ER02–274–000]

Take notice that on November 6, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company (d/b/a GPU Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) , Service Agreement with Enron Power Marketing, Inc., dated October 23, 2001 designated as Service Agreement No. 36, FERC Electric Tariff, Second Revised Vol. No. 5.

GPU Energy request an effective date of October 23, 2001.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER02–275–000]

Take notice that on November 6, 2001, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing with the Federal Energy Regulatory Commission (Commission) two Generation-Transmission Must Run Agreements with American Transmission Company, LLC. The Must Run Agreements govern the terms and conditions for the dispatch of real and reactive power from Wisconsin Electric's Oak Creek Power Plant and the Presque Isle Power Plant and Upper Peninsula of Michigan Hydroelectric Plants to maintain the reliability of ATCLLC's transmission system.

Wisconsin Electric requests that the Must Run Agreements be made effective on December 15, 2001.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southwest Power Pool, Inc.

[Docket No. ER02–276–000]

Take notice that on November 6, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources Generation Services (Transmission Customer). SPP requests an effective date of November, 2001 for this service agreement.

A copy of this filing was served on the Transmission Customer.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER02–277–000]

Take notice that on November 7, 2001, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., submitted for filing with the Federal Energy Regulatory Commission (Commission) Amendment ''B'' to the Independence Steam Electric Station Operating Agreement (Operating Agreement) between Entergy Arkansas, Inc., the Arkansas Electric Cooperative Corporation, the Cities of Conway, Jonesboro, Osceola, and West Memphis, Arkansas, Entergy Power, Inc., Entergy Mississippi, Inc. and East Texas Electric Cooperative, Inc. Entergy Services states that Amendment ''B'' waives any rights that the parties to the Operating Agreement may have with respect to the option to provide substitute coal pursuant section 7.3 of the Operating Agreement.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER02–278–000]

Take notice that on November 7, 2001 Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) three Form of Service Agreements for Firm Point-to-Point Transmission Service (Service Agreements) between ComEd and Wisconsin Public Service Corporation (Wisconsin) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Wisconsin.

ComEd requests an effective date of January 1, 2002, and accordingly seeks waiver of the Commission's notice requirements.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Transmission Company LLC

[Docket No. ER02–279–000]

Take notice that on November 7, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Distribution-Transmission Interconnection Agreement between ATCLLC and Central Wisconsin Electric Cooperative. ATCLLC requests an effective date of June 29, 2001.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. American Transmission Company LLC

[Docket No. ER02–280–000]

Take notice that on November 7, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Distribution-Transmission Interconnection Agreement between ATCLLC and City of Sheboygan Falls.

ATCLLC requests an effective date of June 25, 2001.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Avista Corporation

[Docket No. ER02–281–000]

Take notice that on November 7, 2001, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commission's 18 CFR part 35.12 (1999), an executed Mutual Netting Agreement with TransAlta Energy Marketing (U.S.) Inc., effective October 1, 2001.

Notice of the filing has been served to TransAlta Energy Marketing (U.S.) Inc.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power

[Docket No. ER02–282–000]

Take notice that on November 6, 2001, American Electric Power Service Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission)a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated June 1, 2001, between AEP, agent for Columbus Southern Power Company (d/b/a AEP) and Buckeye Rural Electric Cooperative, Inc. (hereinafter called BREC) and Buckeye Power, Inc. (hereinafter called Buckeye). AEP states that copies of its filing were served upon BREC, Buckeye and the Public Utilities Commission of Ohio.

The Facility Agreement provides for the establishment of a new delivery point, pursuant to provisions of the Power Delivery Agreement between Columbus Southern Power, Buckeye Power, Inc. (hereinafter called Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requests an effective date of June 8, 2001 for the Facility Agreement.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER02–283–000]

Take notice that on November 7, 2001, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreement No. 174 under FERC Electric Tariff, Eighth Revised Volume No. 2, effective date May 15, 2001 is to be canceled. Notice of the proposed cancellation has been served upon Pinnacle West Energy and The Arizona Corporation Commission.

APS requested an effective date of October 31, 2001.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER02–284–000]

Take notice that on November 7, 2001, Tucson Electric Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) one (1) Service Agreement (for short-term firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The Service Agreement for Firm Point-to Point Transmission Service dated as of October 31, 2001 by and between Tucson Electric Power Company and Public Service Company of New Mexico—FERC Electric Tariff Vol. No. 2, Service Agreement No. 148. No service has commenced at this time.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. American Transmission Company LLC

[Docket No. ER02–285–000]

Take notice that on November 7, 2001, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed changes to its Open Access Transmission Tariff to provide for ATCLLC's collection of must run generation costs from network customers on a phase-in basis.

ATCLLC requests that the proposed changes be made effective on December 1, 2001.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket No. ER02–286–000]

Take notice that on November 7, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) long term firm, short-term firm and non-firm transmission service agreements under MAPP Schedule F, FERC Electric Tariff, First Revised Volume No. 1. Included are TSAs for transmission service with NSP Power Merchants and Saskatchewan Power Corporation.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER02–287–000]

Take notice that on November 7, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) a service agreement with Saskatchewan Power Corporation under MAPP Schedule R of the Restated Agreement, FERC Electric Tariff, Original Volume No. 2.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. IDACORP Energy, LP

[Docket No. ER01–2395–002]

Take notice that on November 7, 2001, IDACORP Energy LP is refiling with the Federal Energy Regulatory Commission (Commission) its Notice of Succession. In addition, IDACORP Energy is filing its newly adopted tariff and service agreement containing designations consistent with Commission regulations.

Comment date: November 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Power Ventures, L.P.

[Docket No. EG02–25–000]

Take notice that on November 6, 2001, Entergy Power Ventures, L.P., 20 Greenway Plaza, Suite 1025, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

The applicant is a limited partnership that will be engaged directly or indirectly and exclusively in the business of developing and ultimately owning and/or operating an interest in a 550 megawatt gas-fired, simple cycle

electric generating facility located in Harrison County, Texas and selling electric energy at wholesale.

Comment date: November 30, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit it consideration of comments to those that concern the adequacy or accuracy or the application.

18. Canastota Windpower, LLC

[Docket No. ER01–2692–002]

Take notice that on November 6, 2001, Canastota Windpower, LLC (Canastota or Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) Amended and Restated Application for Order Authorizing Market-based Rates, Waiving Regulations and Granting Blanket Approvals, pursuant to Commission letter dated October 11, 2001 request for additional information.

Comment date: November 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28778 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–45–000]

Colorado Interstate Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Valley Line Expansion Project

November 9, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Colorado Interstate Gas Company (CIG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of facilities to reinforce CIG's existing natural gas transmission system, including:

- The 5C Central Loop—about 35 miles of 24-inch-diameter loop between CIG's existing Ault Meter Station and the Fort Lupton Compressor Station, all in Weld County, Colorado;
- The Valley Line Loop—about 84 miles of 20-inch-diameter loop which would generally parallel CIG's existing Valley Line between its Watkins Compressor Station in southern Adams County east of Denver and a location adjacent to the existing Nixon Power Plant in central El Paso County south of Colorado Springs;
- Two new natural gas-fired reciprocating engine-driven compressors, totaling 4,450 horsepower, and appurtenant facilities at CIG's Fort Lupton Compressor Station in Weld County, Colorado; and
- Appurtenant and ancillary facilities.

The purpose of the proposed facilities would be to transport an additional 278.8 million cubic feet of natural gas per day (MMcfd) on the portion of CIG's system between its Cheyenne Compressor Station in northern Weld County and its Watkins Compressor Station in southern Adams County, and an additional 344.4 MMcfd on the portion of its Valley Line between its Watkins Compressor Station and the vicinity of the Nixon Power Plant in central El Paso County south of Colorado Springs.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ11.1.
- Reference Docket No. CP01–45–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 10, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of comments in this proceeding.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214).[1] Only intervenors have the

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet web site (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket#'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket#'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28785 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032–041 New York]

Niagara Mohawk Power Corporation, Fourth Branch Associates; Notice of Availability of Draft Environmental Assessment

November 13, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the Commission's Notice of Termination of License by Implied Surrender for the Machanicville Hydroelectric Project, located on the Hudson River in Saratoga and Rensselaer Counties, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. No Federal lands or Indian reservations are occupied by project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that terminating the license by implied surrender, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The staff also concludes that terminating the license by implied surrender constitutes an undertaking for the purposes of section 106 of the National Historic Preservation Act of 1966, as amended, and that such termination would have an effect on the Mechanicville Hydroelectric Project, a property listed in the National Register of Historic Places. All interested parties are requested to comment as instructed below.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA 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 comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 6032–041 to all comments. Comments 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.

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments in this proceeding. We will include all comments that we receive within a reasonable time in our environmental analysis of this project.

For further information, contact the Ellen Armbruster at (202) 208–1672.

David P. Boergers,

Secretary.

[FR Doc. 01–28783 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–6–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Raton Basin 2002 Expansion Project, and Request for Comments on Environmental Issues

November 9, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Colorado Interstate Gas Company's (CIG) proposed Raton Basin 2002 Expansion Project in Las Animas and Baca Counties, Colorado, and Cimarron County, Oklahoma.[1] The project would involve the construction and operation of about 68 miles of pipeline, in three looping segments.[2] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a CIG representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' should have been attached to the project notice CIG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet web site (*http://www.ferc.gov*).

This Notice of Intent (NOI) is being sent to landowners along CIG's proposed route; Federal, state, and local government agencies; national elected

[1] CIG's application was filed under section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations on October 5, 2001.

[2] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through that segment of the pipeline system.

officials; regional environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. Government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this NOI we are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated CIG's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

CIG seeks to meet the demand for increased coal-bed methane production in the Raton Basin by expanding its transportation facilities out of this area. To accomplish this, CIG would construct and operate the following facilities:

- 200B Trinidad East Loop—25.6 miles of 16-inch-diameter pipeline in Las Animas County, Colorado;
- 200B Kim East Loop—28.1 miles of 16-inch-diameter pipeline in Las Animas and Baca Counties, Colorado; and
- 3B Keyes South Loop—14.4 miles of 20-inch-diameter pipeline in Cimarron County, Oklahoma.

The 200B Trinidad East Loop and the 200B Kim East Loop would be adjacent to CIG's existing 16-inch-diameter 200A Campo Lateral. The 3B Keyes South Loop would be adjacent to CIG's existing 20-inch-diameter 3A Campo Lateral. For the majority of the routes, the loops would be spaced about 35 feet from the existing pipelines. To avoid rugged topography, the loops would deviate from the existing pipelines for a total of 3.2 miles (about 5 percent of the total length of the project).

CIG would install 1 block valve along the 200B Trinidad East Loop, 2 block valves along the 200B Kim East Loop, and 1 block valve along the 3B Keyes South Loop. These block valves would be within the construction right-of-way for the pipelines. The nominal construction right-of-way for the loops would be 85-feet-wide.

As part of this project CIG also intends to expand its existing Dumas Meter Station in Moore County, Texas, and expand its existing Baker Meter Station in Texas County, Oklahoma. However, the expansion of the two meter stations would be done under CIG's existing blanket certificate authority. In addition, under the authority of section 2.55(a) of the Commission's regulations, CIG would install cathodic protection equipment, and pig launching and receiving facilities at the origin and terminus of each loop segment.

The project would allow CIG to increase the capacity of its Raton Basin System by about 57.8 million cubic feet per day of natural gas. The general location of CIG's proposed facilities is shown on the map attached as appendix 1.[3]

Land Requirements for Construction

Construction of CIG proposed facilities would affect a total of about 907 acres of land. About 827 acres would be needed for pipeline construction, including 6 staging areas, and 88 temporary extra work space areas outside of the nominal construction right-of-way. About 119 acres of the construction work area would be existing rights-of-way. In addition, 6 pipe yards, totaling about 80, acres would be used. Also, CIG would use 79 existing roads for access.

Following construction, about 413 acres would be retained as permanent right-of-way. The remaining 494 acres of temporary work space would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. We will also evaluate possible alternatives to the proposed action, or portions of the project, and make recommendations on how to lessen or avoid impacts on various environmental resources.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CIG. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
- Crossing soils with high erosion and poor revegetation potential.
- Crossing lands set-aside for the Conservation Reserve Program.
- Water Resources and Wetlands
- Crossing 4 perennial streams.
- Crossing 6 wetlands, totaling 238 feet.
- Vegetation
- Crossing about 45 miles of short grass prairie.

—Crossing about 1 mile of juniper woodlands.

- Threatened and Endangered Species

—Flathead chub occurs in 2 streams to be crossed.

—Other listed, candidate, or sensitive species in the project area include the bald eagle, Eskimo curlew, black-tailed prairie dog, and lesser prairie chicken.

- Cultural Resources

—Potential impacts on 22 cultural resources.

—Consultations with Native Americans concerning sacred sites.

- Land Use

—Crossing about 11 miles of agricultural land.

—Crossing 6.6 miles of the Comanche National Grasslands.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''Us,'' ''we,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas/Hydro Branch, PJ–11.3;
- Reference Docket No. CP02–6–000; and
- Submit your comments so that they will be received in Washington, DC on or before December 14, 2001.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Due to recent events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments, interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Everyone who responds to this NOI or comments throughout the EA process will be retained on our environmental mailing list. If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC Web site (*http://www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the ''CIPS'' link on the FERC Internet Web site provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28786 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applicaiton Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 9, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12110–000.

c. *Date filed:* August 21, 2001.

d. *Applicant:* J @ W Hydro #1 Power Company.

e. *Name of Project:* Clear Creek Project.

f. *Location:* On Clear Creek, in Yakima County, Washington. The proposed project would utilize the existing Clear Creek Dam and Reservoir administered by the U.S. Bureau of Reclamation and located on U.S. Forest Service Land within the Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Eli Jakeman, J @ W Hydro #1 Power Company, 220 S. 31 Avenue, Yakima, WA 98902, (509) 457–0707.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments, protest and intervention 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–12110–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Bureau

of Reclamation's Clear Creek Dam and Reservoir would consist of: (1) An existing 52-foot-long, 48-inch-diameter steel penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 1.23 MW, (3) a proposed 100-foot-long, 12.47 kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 6,320 MWh that would be sold to a local utility.

l. A copy of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link select docket # and follow the instructions ((202)208–2222 for assistance).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28787 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applicaiton Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 9, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Preliminary Permit.

b. *Project No.:* 12133–000.

c. *Date filed:* October 15, 2001.

d. *Applicant:* Lake Eau Claire Water Power Company, Inc.

e. *Name of Project:* Lake Eau Claire Dam Water Power Project.

f. *Location:* Would utilize the existing Lake Eau Claire and its Dam, which are located in and owned by Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., Lake Eau Claire Water Power Company, Inc., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (920) 261–7975.

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.

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. Please include the project number (P–12133–000) on any comments or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) the existing 25-foot-high, 170-foot-long reinforced concrete dam and impoundment, which has a 793-acre surface area at normal pool elevation 899.75 feet, (2) a proposed 12-foot-diameter inlet cut through the dam, (3) a proposed 50-foot-long, 12-foot-diameter penstock, (4) a proposed 20-foot by 40-foot powerhouse containing an 800-kilowatt generating unit, (5) a proposed 400-foot-long underground transmission line, and (6) appurtenant facilities. The project would have an

annual generation of 1.85 gigawatthours that would be sold to Northern States Power Company.

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 permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

u. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28788 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM00–12–000]

Electronic Filing of Documents; Notice of Additional Qualified Documents for Electronic Filing

November 9, 2001.

Take notice that beginning November 13, 2001, the Commission will accept additional types of documents for filing via the Internet in lieu of paper copies.

Order No. 619,[1] authorized the Secretary of the Commission to issue and amend a list of qualified documents that, at the filer's option, may be submitted via the Internet without also filing paper copies.[2] The Commission defined the initial set of qualified documents and issued electronic filing instructions in a notice issued October 6, 2000.[3] That notice identified the initial set of qualified documents, including:

1. Comments on applications and other filings
2. Comments on technical conferences
3. Comments filed in connection with environmental documents (Notices, Environmental Assessments, and Environmental Impact Statements)[4]
4. Protests[5] and responses to certain protests.[6]
5. Reply comments.

By notice issued March 8, 2001,[7] the Secretary expanded the initial list of qualified documents to include the following:

1. Comments in response to Notices of Proposed Rulemakings[8]
2. Motion/Notice of Intervention[9]
3. Motion/Notice of Intervention Out-of-Time[10]
4. Withdrawal of Intervention[11]
5. Reply Comments and Responses to Motions to Intervene

The Secretary also confirmed that responses to Notices of Inquiry were qualified documents for filing via the Internet.

[1] III FERC Stats. & Regs., Regulations Preambles ¶ 31,107.

[2] 18 CFR 385.2003(c)(2), 65 FR 57088.

[3] ''Notice of Qualified Documents for Electronic Filing'', Docket No. RM00–12–000, issued October 6, 2000.

[4] 18 CFR 380.10(a).

[5] 18 CFR 385.211 and 18 CFR 343.3 (see also 18 CFR 4.5, 4.13, 4.23, 35.8(a), 154,210(a), 157.10, and 157.205(e)).

[6] 18 CFR 343.3(b).

[7] 94 FERC ¶61,239.

[8] 18 CFR 385.1903 and 18 CFR 380.10(b).

[9] 18 CFR 385.214, 385.1306 (See also 18 CFR 35.8(a), 154.210(a) and (b), 157.210, 157.106, 343.2(a), and 380.10).

[10] 18 CFR 385.214(b)(3).

[11] 18 CFR 385.216.

Beginning November 13, 2001, the following additional filings may, at the filer's option, be submitted via the Internet in lieu of paper copies:

1. Settlement Comments [12]
2. Request for Rehearing or Appeal [13]
3. Motions [14]
4. Answer/Response to a Pleading or Motion [15]
5. Motion to Compel Production [16]
6. Objection to Motion to Compel Production
7. Production of Documents [17]
8. Request for Hearing
9. Response to a Complaint [18]

The public should take note that there are statutory deadlines for filing requests for rehearing. Be advised that the Commission cannot waive these deadlines.

The public should also take note that ''comments'' on filings include mandatory and recommended terms and conditions or prescriptions on a hydropower application for exemption or license.

The Commission is not yet accepting complaints via the Internet. This document must be filed in the traditional manner with the required number of paper copies.

Qualified documents may be combined and submitted in the same document (electronic file). For example, a motion to intervene may also include comments and/or a protest in the same document and be eligible for filing via the Internet.

Non-qualified documents may not be included in an electronic submission with other qualified documents. For example a complaint (not a qualified document) combined with a Motion to Intervene is not eligible for electronic submission via the Internet.

We are revising the User Guide to reflect the additions to the qualified documents list. The guide contain the instructions for electronic submission and provides more detail on the types of documents eligible for electronic filing. The User Guide is accessible via the E-Filing link at *www.ferc.gov.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28789 Filed 11–16–01; 8:45 am]

BILLING CODE 6717–01–P

[12] 18 CFR 385.602(f).

[13] 18 CFR 385.713 and 18 CFR 385.715.

[14] 18 CFR 385.212

[15] 18 CFR 385.213.

[16] 18 CFR 385.410(b).

[17] 18 CFR 385.406.

[18] 18 CFR 385.206(f).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7104–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production; OMB Control Number 2060–0391; expiration date October 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 19, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1831.02 and OMB Control No. 2060–0391, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *Auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1831.02. For technical questions about the ICR contact Maria Malavé at (202) 564–7027 or via e-mail to *malave.maria@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production (OMB Control Number 2060–0391; EPA ICR No. 1831.02); expiring October 31, 2001. This is a request for extension of a currently approved collection.

Abstract: The NESHAP for ferroalloys production is applicable to all new and existing ferromanganese and silicomanganese production facilities that are major sources or are co-located at major sources. The sources at these affected facilities subject to this rule include submerged arc furnaces, metal oxygen refining (MOR) process, crushing and screening operations, and fugitive dust operations. The owners or operators of existing affected facilities (i.e., respondents) at the time of promulgation were required to be in compliance with the requirements no later than May 21, 2001. New or constructed affected sources that commence construction/reconstruction after August 1998 were required to be in compliance with the regulation by May 20, 1999, or upon startup, which ever was later.

Owners and operators of affected sources are subject to the monitoring, recordkeeping and reporting requirements of 40 CFR part 63, subpart A, the General Provisions, unless specified otherwise in the regulation. All records of measurements are to be maintained by the source for a period of at least five years. In addition, sources are required to comply with regulation specific requirements related to the frequency and type of information (including records of performance tests; start up, shutdown, and malfunction procedures and corrective actions; operating parameters and maintenance inspections; and opacity and visible emissions observations) to be collected and maintained to demonstrate initial and on-going compliance with the regulation. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2001 (66 FR 8588). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of ferroalloys and silicomanganese production facilities.

Estimated Number of Respondents: 1.

Frequency of Response: initial reports, quarterly excess emissions reports; and semiannually for all other reports required in § 63.1659(b).

Estimated Total Annual Hour Burden: 746 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No.1831.02 and OMB Control No. 2060–0391 in any correspondence.

Dated: November 8, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–28854 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00326; FRL–6809–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 3–5, 2001, in San Antonio, TX. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acrylic acid, benzene, ethyleneimene, JP 8 jet fuel, methanol, methyl ethyl ketone, perchloromethyl mercaptan, propyleneimine, trichloroethylene, and xylene. In addition, 10 minute AEGL values may be addressed for the following chemicals: Chloroform, dimethyl hydrazine, hyrdrazine, and methyl hydrazine.

DATES: A meeting of the NAC/AEGL Committee will be held from 9 a.m. to 5 p.m. on December 3, 2001; from 8:30 a.m. to 5:30 p.m. on December 4, 2001; and from 8:30 a.m. to 12:30 on December 5, 2001.

ADDRESSES: The meeting will be held at the Holiday Inn Riverwalk, 217 North St. Mary's St., San Antonio, TX.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00326. 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 of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is tentatively scheduled for April 9–11, 2001, in Washington, DC.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: November 8, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 01–28860 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7104–6]

Proposed Assessment of Clean Water Act Class II Administrative Penalty and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty for an alleged violation of the Clean Water Act by Chevron U.S.A., Inc. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility in violation of the regulations issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), (''Oil Pollution Prevention Regulations'' -40 CFR part 112) may be assessed a civil penalty of up to $137,500 by EPA in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits at 40 CFR part 22 (''part 22'')''.

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing notice of the following proposed Class II penalty proceeding initiated by the Superfund Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Chevron U.S.A., Inc. (Chevron) Spill Violations, Docket No. OPA–9–2001–0001, filed September 28, 2001; EPA has proposed penalty of $65,000; for a violation of the Clean Water Act's prohibition on discharges of oil into waters of the United States at the Jet A fuel pipeline at Chevron's Honolulu Terminal in Honolulu Harbor, Honolulu, Hawaii.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3871. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: November 6, 2001.

Jane Diamond,

Acting Director, Superfund Division, Region IX.

[FR Doc. 01–28855 Filed 11–16–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

November 8, 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(s), 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 19, 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0287.

Title: Section 78.69, Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 1,618.

Estimated Time Per Response: .50 hours per week (26 hours a year).

Frequency of Response: Rcordkeeping requirement.

Total Annual Burden: 42,068 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 78.69 requires that licensees of cable relay stations (CARS) maintain various records, including but not limited to records pertaining to transmissions, unscheduled interruptions to transmissions, maintenance, observations, inspections and repairs. Station records are required to be maintained for a period of not less than two years. The records kept pursuant to this rule section provide a history of station operations and are reviewed by Commission staff during field investigations to ensure that proper operation of the station is being conducted.

OMB Control No.: 3060–0853.

Title: Receipt of Service Confirmation Form, and Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's

Internet Protection Act—Universal Service for Schools and Libraries.

Form No.: FCC Forms 479, 486 and 500.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions, and businesses or other for-profit.

Number of Respondents: 40,000.

Estimated Time Per Response: 15.37 hours per response (avg.).

Frequency of Response: Recordkeeping and reporting requirements, and third party disclosure requirement.

Total Annual Burden: 75,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 1271 and related sections of the Children's Internet Protection Act (CIPA) provide that in order to be eligible under section 254 of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services, schools and libraries that have computers with Internet access must have in place certain Internet safety policies. FCC Forms 479, 486 and 500 are used to implement the requirements of CIPA and section 254.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–28770 Filed 11–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 56676, November 9, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 A.M., Wednesday, November 14, 2001.

CHANGE OF MEETING DATE: Notice is hereby given that the Board of Directors meeting scheduled for November 14, 2001 has been changed to Wednesday, November 28, 2001 at 10 a.m.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–28921 Filed 11–15–01; 11:09 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Wesbanco, Inc., Wheeling, West Virginia; to merge with American Bancorporation, Wheeling, West Virginia, and thereby indirectly acquire Wheeling National Bank, St. Clairsville, Ohio. Comments on this application must be received by December 10, 2001.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Central Texas Bankshare Holdings, Inc., Columbus, Texas, and Colorado County Investment Holdings, Inc., Wilmington, Delaware; to acquire 45.33 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby indirectly acquire voting shares of Hill Bancshares, Inc., Wilmington, Delaware, and Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, November 13, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–28816 Filed 11–16–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0450]

Prescription Drug User Fee Act (PDUFA); Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Prescription Drug User Fee Act (PDUFA). The legislative authority for PDUFA expires at the end of September 2002, and without further legislation the fees and resources provided under PDUFA will also expire. FDA is now evaluating the PDUFA provisions. The Federal Food, Drug, and Cosmetic Act (the act) encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting to hear stakeholder views on this subject. FDA is proposing three specific questions, and the agency is interested in responses to these questions and any other pertinent information stakeholders would like to share.

Date and Time: The public meeting will be held on Friday, December 7, 2001, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by November 30, 2001. Submit written or electronic comments by January 25, 2002.

Location: The public meeting will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

For information regarding this notice contact: Patricia A. Alexander, Office of Consumer Affairs, Office of Communications and Constituent Relations (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4391, FAX 301–827–3052, e-mail: palexand@oc.fda.gov.

For registration information contact: Carole A. Williams, Office of Consumer Affairs, Office of Communications and

Constituent Relations (HFE–40), Food and Drug Administration, Rockville, MD 20857, 301–827–4394, FAX 301–827–2866, e-mail: pubmtg@oc.fda.gov. All registration materials should be sent to Carole A. Williams. Electronic registration for this meeting is available at: http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdockets.cfm. Registrations will be accepted on a first-come, first-served basis. Individuals who register to make an oral presentation will be notified of the scheduled time for their presentation prior to the meeting. All participants are encouraged to attend the entire day.

Registration and Requests for Oral Presentation: To register to attend the meeting, submit your name, title, business affiliation, address, telephone, fax number, and e-mail address. If you wish to make an oral presentation during the open public comment period of the meeting, you must specify on your registration you wish to make a presentation. You must submit the following: (1) A written statement for each question addressed, (2) the names and addresses of all who plan to participate, (3) the approximate time requested to make your presentation. Depending on the number of presentations, FDA may have to limit the time allotted for each presentation. Presenters must submit two copies of each presentation given. If you need special accommodations due to a disability, please inform the registration contact person when you register.

SUPPLEMENTARY INFORMATION:

I. Background

A. September 2000 Public Meeting

On September 15, 2000, FDA held a public meeting to discuss the future of PDUFA and to listen to the views of all interested constituents. This public meeting was held as the agency began to prepare for new or amended authorizing legislation. At that meeting, the agency learned more about the expectations and concerns of various constituent groups and citizens regarding the PDUFA program. The December 7, 2001, meeting will continue this dialogue.

B. PDUFA I and PDUFA II

In 1992, Congress passed PDUFA authorizing FDA to collect fees from companies that produce certain human drug and biological products. The original PDUFA (PDUFA I) had a 5-year sunset. In 1997, Congress passed the Food and Drug Administration Modernization Act (FDAMA). Part of FDAMA included an extension of PDUFA (PDUFA II) for an additional 5 years. PDUFA's original intent was to provide FDA with additional revenue so it could hire more reviewers and support staff and upgrade its information technology to speed up the application review process for human drug and biological products without compromising review quality.

C. Authority to Collect Fees

The revenues are provided by a set of three fees, with one-third of the total annual revenue coming from each of the following fees: (1) Application fees for the submission of certain human drug or biological applications (in fiscal year (FY) 2001, $309,647 per application with clinical data, and $154,823 per application without clinical data or per supplemental application with clinical data); (2) annual establishment fees paid for each establishment that manufactures certain prescription drugs or biologicals (in FY 2001, $145,989 per establishment); and (3) annual product fees assessed on certain prescription drug and biological products (in FY 2001, $21,892 per product). In the aggregate, these fees are expected to generate $135 million in FY 2002. (This is a downward adjustment-previously they had been expected to generate about $162 million). No separate fees are charged for investigational new drug applications (INDs). However, since the review of investigational new drug applications is included in the process for the review of human drug applications, as defined in PDUFA, FDA uses some of the application, establishment, and product fees collected for the review of INDs.

D. Review Performance Goals

In 1992, FDA agreed to meet a set of review performance goals that became more stringent each year, if FDA also received sufficient fee resources to enable goal achievement. These goals applied to the review of original new human drug and biological applications, resubmissions of original applications, and supplements to approved applications. FDA met every PDUFA I performance goal.

Under PDUFA II, the review goals continue to shorten. By 2002, the PDUFA II goals call for FDA to review and act on 90 percent of the following: (1) Standard new drug and biological product applications and efficacy supplements within 10 months; (2) priority new drug and biological product applications and efficacy supplements (i.e., for products providing significant therapeutic gains) within 6 months; (3) manufacturing supplements within 6 months, and those requiring prior approval within 4 months; (4) class 1 resubmissions within 2 months, and class 2 resubmissions within 6 months.

In addition, PDUFA II added a new set of goals intended to improve FDA's responsiveness to, and communication with, industry sponsors during the early years of drug development. These goals specify timeframes for activities such as scheduling meetings and responding to various sponsor requests.

E. Impact on Drug Review Process

While PDUFA's original intent was to speed up the review process, PDUFA II's intent is to speed up the entire drug development process. By providing an influx of needed resources, PDUFA has had a dramatic and undeniable impact on the drug review process. Total resources for drug review activities have increased from $120 million in 1992, before PDUFA was enacted, to an estimated $329 million in FY 2002, a little more than half of which will come from fees paid by industry. These resources allowed FDA to increase its drug and biological review staff by almost 60 percent between 1993 and 1997, adding about 660 staff-years to the program by 1997. By the end of PDUFA II in 2002, FDA expects to have added another 340 staff-years of effort to this program. These additional staff, and resources to support them, have enabled FDA to respond more rapidly to new drug and biologic applications without compromising review quality.

While it is important to note that PDUFA's goals specify decision times, not approval times, both decision and approval times have decreased dramatically. Total approval time, the time from the initial submission of a marketing application to the issuance of an approval letter, has dropped from a pre-PDUFA median of 23 months to an estimated 15 months in 2001. Total approval time for priority applications, those for products providing significant therapeutic gains, has dropped from a median of over 12 months in the early PDUFA years to 6 months. In addition, because FDA has put greater effort into communicating what it expects applicants to submit, a higher percentage of applications are being approved. Before PDUFA, only about 60 percent of the applications submitted were ultimately approved. Now, about 80 percent are approved. For the consumer, this has meant more products available more quickly.

F. Challenges

Notwithstanding these successes, the agency has encountered challenges in trying to meet the PDUFA II goals.

Assuring that enough appropriated funds are spent on the process for the review of human drug applications to meet requirements of PDUFA, and at the same time spending our resources in a way that best protects the health and safety of the American people, is becoming increasingly difficult. Each year, the amount that FDA must spend from appropriations on the drug review process is increased by an inflation factor. Yet, since 1992, FDA has not received increased appropriations to cover the costs of the across-the-board pay increases that must be given to all employees. The result is that our workforce and real resources for most programs other than PDUFA have contracted each year since 1992 while we struggle to ensure that enough funds are spent on the drug review process to meet this PDUFA requirement. FDA will be unable to continue to reduce staffing levels in FDA programs other than drug review and still maintain those programs in a way that best protects and promotes the public health and merits public confidence.

Another challenge we have faced in PDUFA II is that we underestimated the resources we would need to meet the new, demanding PDUFA II goals. In addition, the fees we have collected have been significantly less than expected. Revenues have been lower than projected due to the reduced number of fee-paying applications and the increased number of fee-waived applications. This has also resulted in lower than expected fee revenues from products and establishments. In FY 2001, about 30 percent of applications received fee waivers. FDA will need to spend all of the reserve funds available in order to try to continue to meet PDUFA goals. FDA anticipates that by the end of PDUFA II the agency will have depleted all fee reserves.

Despite this fluctuation in revenues, our workload under PDUFA II continued to rise. Many of the activities covered by PDUFA II performance goals do not, themselves, generate fees, yet the workload in these areas has been substantial. For example, the numbers of commercial INDs, efficacy supplements, and manufacturing supplements are up, and the number of meetings, responses to clinical holds and special protocol assessments, all of which have specific PDUFA II performance goals, have been higher than anticipated. The new pediatric and fast track provisions of FDAMA, none of which received specific additional funding, also have contributed significantly to this increased workload.

FDA is also concerned about the safety of new drugs and biologics following approval and marketing. FDA's postmarket monitoring activities are not currently funded by PDUFA. More rigorous safety monitoring of newly approved drugs in the first few years after a product is on the market could help to detect unanticipated problems earlier. The current system for detecting adverse drug and biologics events does not provide sufficient data on the actual incidence of problems. Another concern is the growth in prescription drug advertising. Current PDUFA funding does not cover the agency's cost of reviewing promotional materials (over 37,000 pieces in 2000).

Although FDA has been able to meet most of its performance goals despite these challenges, we do not believe this will continue in the future. We do not foresee increasing or even maintaining performance levels until resources are available to meet the increased workload. These resources can be provided either from appropriated dollars or from user fees. However, to date we have not seen increases in appropriated dollars needed to meet the shortfalls we have experienced.

We may, in fact, be seeing that our efforts to meet the new PDUFA II goals have led to an unintended consequence regarding approval times of standard new drug and biologics applications. These approval times have begun to increase because more applications require multiple review cycles to reach approval. We believe this may be due to the fact that reviewers, pressed to meet the new PDUFA II goals for drug development (e.g., meetings, special protocol assessments, and responses to clinical holds), have had less time to devote to resolving last minute problems with these standard applications in time to meet the action goal date. As a result, the application must undergo an additional review cycle with its attendant timeframes and goals. Our statistics on this trend are preliminary and we are watching it closely. However, if our user fee program is to continue, it must be on a sound financial footing and based on reliable estimates of workload and resources.

II. Scope of Discussion

The legislative authority for PDUFA II expires at the end of September 2002. Without further legislation the fees and resources it has provided will also expire. Public input is important at this time as final preparations are being made to propose reauthorization. Section 903(b) of the act (21 U.S.C. 393(b)) encourages FDA to consult with stakeholders, as appropriate, in carrying out agency responsibilities. Accordingly, FDA will convene a public meeting on December 7, 2001. Interested persons are invited to attend and present their views. A list of questions that we are asking interested parties to address at this meeting follows:

1. Has PDUFA supported FDA's mission to protect and promote public health? What should be retained or changed to enhance the program?

2. Should PDUFA allow the use of user fee funding to monitor safety after new drug or biologic approval?

3. How can FDA ensure that PDUFA goals are met if there continues to be a funding shortfall? If the funding shortfall persists, should FDA, in order to best protect and promote the public health, set review priorities and, if so, how? Should there be flexibility in setting user fees to cover the increased cost of the program?

III. Comments

Interested persons may submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written comments on or before January 25, 2002. Submit electronic comments to fdadockets@oc.fda.gov or http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. You should annotate and organize your comments to identify the specific questions to which they refer. (See above.) You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document. You may review received comments approximately 15 days after the meeting in the Dockets Management Branch, Monday through Friday between 9 a.m. and 4 p.m. or on the Internet at http://www.fda.gov/oc/pdufa/meeting2001/.

IV. Transcripts

You may request a copy of the transcript in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the meeting at a cost of 10 cents per page. You may also examine the transcript Monday through Friday between 9 a.m. and 4 p.m. in the Dockets Management Branch or on the Internet at http://www.fda.gov/oc/pdufa/meeting2001/.

V. Electronic Access

Persons with access to the Internet may obtain more information about PDUFA at http://www.fda.gov/oc/pdufa/default.htm.

Dated: November 14, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–29002 Filed 11–15–01; 4:39 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Actions Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of actions under the NIH Guidelines for research involving recombinant DNA molecules (NIH Guidelines) and request for comment on the information collection provisions under the Paperwork Reduction Act of 1995.

SUMMARY: The actions described in this Notice amend the NIH Guidelines to enhance oversight of human gene transfer research by modifying the requirements for the reporting and analysis of serious adverse events in human gene transfer research studies governed by the NIH Guidelines.

The first action modifies the scope of serious adverse events that are reportable on an expedited basis. Expedited reporting will now be required for those serious adverse events that are unexpected and associated with the use of the gene transfer product (i.e., there is a reasonable possibility that the experience may have been caused by the gene transfer product). The change also provides timeframes for expedited reporting and definitions of serious, associated, and unexpected adverse events. Under the amendments, summary information about other adverse events would be included in annual reports. Principal Investigators with multiple studies may submit a single annual report, provided that data are attributed to discrete sites. The annual reporting requirements are set forth in Appendix M–I–C–3 and the safety reporting requirements are in Appendix M–I–C–4. Those two sections have been submitted for OMB approval under the Paperwork Reduction Act of 1995 and this notice provides 30 days for public comment on those information collection requirements. Following this comment period, OMB analysis of the comments, and approval of the requirements, NIH OBA will publish a notice setting forth the effective date of Appendices M–I–C–3 and M–I–C–4.

The second action clarifies that, in accordance with applicable law and longstanding policy of the NIH Office of Biotechnology Activities (OBA), when information submitted in serious adverse event reports and annual reports is labeled trade secret or confidential commercial information, the NIH OBA will assess this claim and make a determination. If NIH OBA determines that the data so labeled are confidential commercial or trade secret and that their public disclosure would promote an understanding of key scientific or safety issues, the NIH OBA will seek agreement from the appropriate party to release such data.

The third action adds specific language to the NIH Guidelines to prohibit the submission of individually-identifiable patient information in serious adverse event and annual reports.

The fourth action is the establishment of a working group of the NIH Recombinant DNA Advisory Committee (RAC), to be known as the NIH Gene Transfer Safety Assessment Board (GTSAB), that will play a role in the analysis of safety information in gene transfer research studies. The working group will report safety information to the RAC and, thereby, disseminate it to the scientific and patient communities, as well as the general public.

In toto, these four changes will enhance the identification of significant safety issues across human gene transfer trials, increase public knowledge, and strengthen the protection of research participants in human gene transfer research studies. These changes are an important step toward harmonization of Federal safety reporting requirements. Additional efforts are underway within the Department of Health and Human Services to further enhance consistency in the collection of safety information and submission of safety reports, increase the quality of safety reports, and expedite review of critical safety information. NIH will continue to monitor and participate in these efforts, reevaluating and, as appropriate, changing the NIH Guidelines.

DATES: Comments on the information collection requirements in Appendix M–I–C–3 and Appendix M–I–C–4 must be submitted to the OMB at the address shown below by December 19, 2001. As information collection requirements, Appendix M–I–C–3 and Appendix M–I–C–4 will take effect upon OMB approval. All other provisions will take effect 30 days after November 19, 2001.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th Street, NW., Room 10235, Washington, DC 20503, Attn: Desk Officer for NIH.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Biotechnology Activities, National Institutes of Health, MSC 7985, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, Phone 301–496–9838, FAX 301–496–9839. The NIH OBA Web site is located at *http://www4.od.nih.gov/oba/*

SUPPLEMENTARY INFORMATION:

I. Background

This Action follows from a Proposed Action published in the December 12, 2000 **Federal Register** (65 FR 77655) and derives from an extensive process of deliberation and public consultation. It takes into account the reports of two specially convened NIH working groups as well as numerous written comments from the public on two separate proposals. The preponderant view emerging from this process supports the four main objectives of this Action, which are to: (1) Harmonize NIH requirements for expedited reporting of serious adverse events in gene transfer trials with those of FDA; (2) clarify how claims that annual and safety reports contain confidential commercial or trade secret information will be resolved, given the need for disclosure of information to ensure broad public knowledge of issues raised by gene transfer research; (3) maintain the privacy of individuals participating in gene transfer research; and (4) develop a new mechanism for the analysis and dissemination of adverse event information with the goal of enhancing knowledge about scientific and safety trends. The history leading up to each element of this Action is discussed below.

A. Scope and Timing of Serious Adverse Event Reports

A major purpose of this Action is to harmonize NIH requirements for the reporting of serious adverse events with those of the FDA. This harmonization is expected to enhance compliance with the NIH Guidelines. Significant non-compliance with the NIH Guidelines became evident in 1999 following the death of a participant in a human gene transfer research study. Subsequent to this event, the NIH OBA called on investigators conducting these studies to submit to the Office comprehensive pre-

clinical and clinical data. In the course of gathering and assessing this data, the NIH OBA discovered that serious adverse events were not being reported as required by the NIH Guidelines. Concerted efforts were immediately initiated to enhance awareness of, and compliance with, the reporting requirements. To that end, NIH proposed that the NIH Guidelines be amended to make the requirements for reporting serious adverse events more explicit.

The proposed amendments, adding specific definitions and timeframes for the expedited reporting of serious adverse events, were first published for public comment in the November 22, 1999, **Federal Register** (64 FR 63827). The proposal clarified existing NIH policy, which required that all serious adverse events occurring in conjunction with human gene transfer trials be reported immediately to the NIH OBA, the IBC, the IRB, and, if applicable, the Office for Human Research Protections. This requirement applied whether or not the event was expected or deemed to be associated with the gene transfer product. FDA, on the other hand, requires expedited reporting of only those serious adverse events that are unexpected and associated with the gene transfer product (i.e., there is a reasonable possibility that the experience may have been caused by the gene transfer product). Unlike the NIH requirement, the FDA rules (21 CFR 312.32) provide specific timeframes for reporting these events. Since most investigators are subject to both the NIH Guidelines and FDA regulations, and full compliance is essential to federal oversight of gene transfer research, greater uniformity is an important objective.

The Advisory Committee to the Director, NIH (ACD) formed a working group in early December 1999 to review NIH's role in the oversight of human gene transfer studies, including serious adverse event reporting. The ACD working group recommended that the NIH and FDA work together to simplify, streamline, and harmonize reporting of serious adverse events. In June 2000, the RAC reviewed the conclusions and recommendations of the ACD Working Group and, after engaging in further discussion about the appropriate timing and scope of serious adverse event reporting, endorsed the ACD Working Group recommendations by a unanimous vote. In September 2000, the full ACD reviewed and adopted the recommendations of the working group at a publicly accessible teleconference.

These ACD recommendations, RAC endorsement of the recommendations, and public commentary all culminated in the Proposed Action of December 12, 2000. The proposal called for reporting unexpected serious adverse events possibly associated with the gene transfer product to the NIH OBA within 15 days after sponsor notification, or within 7 days if such an event were also fatal or life-threatening.

B. Analysis of Serious Adverse Events

The ACD Working Group also re-affirmed the need for the NIH OBA to gather cumulative safety data on gene transfer trials. They noted that systematic analyses of adverse event data would improve the conduct and safety of such research by revealing trends related to, for example, specific diseases, routes of administration, or vectors.

Public deliberations of the ACD and the RAC emphasized the importance of NIH's role in ensuring the safety of human gene transfer research studies. The NIH studies scientific and safety trends in gene transfer research and disseminates that information to investigators. This role in important ways complements the regulatory responsibility of the FDA, which includes assessing the overall safety of individual gene transfer products used in multiple trials and assessing the safety of broader classes of gene transfer products sharing related vectors. The NIH and FDA share the goal of developing a body of knowledge about the science and outcomes of this form of clinical investigation.

In this regard, the ACD recommended creation of a standing expert body that would review all reports of adverse events, analyze the data for trends, develop a cumulative report that would be presented annually at a public RAC meeting and made available to the public, and identify trends or even single events that may warrant further public discussion or federal action. They suggested that this standing body should include basic scientists, clinicians, patient advocates, and ethicists, and that ad hoc members should be appointed to provide additional expertise on an as-needed basis.

Thus, as part of the December 12, 2000 **Federal Register** notice, the NIH proposed the establishment of a new working group of the RAC, called the NIH Gene Transfer Safety Assessment Board (GTSAB). The GTSAB's specific functions were proposed to involve: (1) Reviewing in closed session serious adverse event reports, annual reports, and other relevant safety information and assessing toxicity and safety data across gene transfer trials and analyzing the data for trends; (2) identifying significant trends or single events; and (3) reporting aggregated data to the RAC. This Board is expected to enhance review of new protocols and public understanding and awareness of the safety of human gene transfer research studies as well as inform the decision-making of potential trial participants.

C. Confidentiality of Adverse Event and Annual Reports and Patient Privacy

In September 1999, the RAC initiated discussions regarding public access to serious adverse event information. This discussion was in response to several serious adverse event reports submitted to the NIH OBA which were labeled as confidential. The NIH has always acknowledged and affirmed the need to protect trade secret and other proprietary information, such as the details of a sponsor's manufacturing process. This principle is accommodated in the NIH Guidelines. The concept that serious adverse events per se should be considered from a commercial standpoint as confidential, however, is contrary to NIH's longstanding commitment to public access to information about the safety of human gene transfer research. NIH has always sought to ensure public access to safety information and, in Appendix M–I–B–2, actively discourages the labeling of information submitted in accordance with Appendix M as confidential. In instances where data have been properly labeled as confidential commercial or trade secret, NIH has acknowledged that claim, in accordance with applicable law, and sought agreement for any proposed public disclosure of that data. Nonetheless, the NIH Guidelines were not explicit about the confidentiality of serious adverse event reports, and thus the NIH OBA asked the RAC to consider whether the NIH Guidelines should be modified to clarify the requirement for public access to these reports. In response, the RAC concurred that adverse event data are essential to decision-making by IBCs, IRBs, and potential subjects of gene transfer research in humans. The RAC added that the public disclosure of adverse events is essential to public understanding and evaluation of gene transfer in humans.

The December 12, 2000 proposal elaborated on existing language on this topic by stating that adverse event and annual reports would not be considered confidential commercial information. In this Action, this statement has been revised in accordance with existing law to provide for case-by-case resolution of claims that adverse event or annual reports contain confidential commercial

information. This statement has also been repositioned within Appendix M of the NIH Guidelines to enhance its salience and clarity.

Finally, the proposal reinforced a longstanding tenet that in submitting adverse event reports, investigators should take measures to protect the privacy of patients and their families.

II. Summary

The amendments that emerged from this extensive process of public deliberation were published for public comment in the December 12, 2000 **Federal Register.** The specific changes proposed to the NIH Guidelines were as follows: (1) Change the requirements for expedited reporting of serious adverse events; (2) clarify that trade secret or other commercial confidential information should not be included in serious adverse event and annual reports and that those reports would not be classified by the NIH OBA as confidential information; (3) add a new section prohibiting individually identifiable patient information from being included in serious adverse event reports; and (4) establish a working group of the RAC, to be known as the NIH Gene Transfer Safety Assessment Board, to be responsible for the review and analysis of serious adverse events and other relevant safety information in gene transfer research studies and dissemination of safety information to the RAC, and, thereby, to the scientific and patient communities, and the public. The deadline for public comment was February 10, 2001.

III. Public Comments

A total of 28 comments were received on the proposal by the deadline, and another ten were received subsequently, for a total of 38. These comments, in the form of letters and e-mails, reflected the views of patients, industry, academic officials, an ethicist, scientists, a law firm, and the public at large. All comments have been reviewed by NIH staff, as well as members of the RAC, who considered the substance and scope of public comments in open session on March 8, 2001.

A. Overview of Comments

All commenters supported the principle of harmonizing requirements with FDA. The majority of comments were supportive of the proposal as written and urged its adoption. These came from associations representing patients, an ethicist, academic officials responsible for biosafety and human subjects oversight, a law firm, and a number of individuals expressing no particular affiliation. A scientific society representing researchers working on gene transfer techniques also expressed support for the proposal, though it made a number of suggestions for modifying specific components.

Opposition to the proposal was expressed by two industry trade associations, four companies, and two patient groups. These letters expressed a view that the NIH OBA and the RAC should not receive raw data on serious adverse events under any circumstances.

Taken together, objections can be categorized under four thematic headings: (1) Concern about public dissemination of confidential commercial and trade secret information; (2) assertions that such reporting was a duplication of effort, given existing FDA reporting requirements; (3) objections to the perceived regulatory stance on the part of NIH; and (4) challenges to the scope of adverse events reportable in an expedited manner. These are discussed below.

B. Responses to Specific Comments

Comment: The Proposed Action will cause inappropriate release to the public of confidential commercial and trade secret information. These comments suggested that many of the data items specified for inclusion in annual and serious adverse event reports had inherent commercial value, because they could conceivably allow others to infer information about the staging of the clinical trial, the bioavailability of the product, the dose response profile of the intervention, and other matters that would allow competitors to gain advantage in the design of their own trials.

Response: It has been a longstanding and widely accepted tenet of the NIH's 25-year-old system of oversight of recombinant DNA research conducted at NIH-funded institutions that the public dissemination of safety data is key to protecting public health and assuring the public that problems are being identified and addressed in a timely way. The RAC has been receiving and publicly reviewing safety data in gene transfer studies for over a decade. The NIH OBA, in fact, has provided a suggested reporting format that industry has used for a number of years (which can be viewed at *http://www4.od.nih.gov/oba/rac/SAEForm.rtf*). NIH has always acknowledged and affirmed the need to protect trade secret and other proprietary information, such as the details of a sponsor's manufacturing process, and this principle is accommodated in the NIH Guidelines.

Since the current version of the NIH Guidelines is not explicit about the specific content of serious adverse event reports, the Action lists specific data elements that should be reported to the NIH OBA (found in proposed M–I–C–4–a). Before developing this list, NIH OBA staff asked the RAC to consider whether the NIH Guidelines should include such clarifications and be modified to make clear that these data would be publicly accessible. In response, the RAC issued in September 1999 the aforementioned consensus statement that expressed unambiguously that adverse event reports must not be designated as confidential, either in whole or in part, given their importance to decision-making by IBCs, IRBs, and potential research subjects. The Proposed Action elaborated on the RAC recommendation by providing that the NIH OBA would not consider adverse event and annual reports to be confidential commercial information.

The NIH OBA uses this information to issue periodic scientific reports as well as analyses of safety data. When such information is labeled as confidential, the Action clarifies the NIH OBA policy for assessing, in accordance with applicable laws, whether the data are indeed confidential commercial information. In making this assessment, the NIH must carefully consider the views of the owner of the information on the competitive harm that could be caused by disclosure of the labeled information. As necessary, the NIH OBA will seek agreement from the appropriate party to release that information for the purposes of ensuring broad public knowledge of issues raised by gene transfer research. NIH will not publicly disclose information that it determines, under applicable law, to be confidential commercial without the agreement of the owner of that information. This policy is reflected in a new Appendix M–I–C–5 to clarify that it applies to any information submitted under Appendix M–I–C.

Comment: It should suffice to send raw adverse event information to the FDA only under its investigational new drug (IND) application process; submission to the NIH OBA for analysis by the Gene Transfer Safety Assessment Board (GTSAB) represents an unnecessary burden and duplication of effort. These commenters expressed the view that FDA has the scientific expertise, experience, and mechanisms in place to monitor adverse events effectively and in real-time, and has the authority to take action as appropriate to protect research participants. They also valued the broad confidentiality protections that the FDA process offers,

which are not consistent with NIH OBA's mission of disseminating information to patients, scientists, and other members of the public. Some companies suggested that a system might be set up to allow FDA to aggregate, synthesize, and analyze the data before delivering a report to the RAC, which would then look at the gross-level safety trends. Several letters pointed to a concurrent proposal by the FDA (January 18, 2001; 66 Federal Register 4688) to amend the biologics regulations to make available for public disclosure certain data and information related to human gene therapy and xenotransplantation. Given that FDA would be making similar kinds of information routinely available, these commenters questioned why the NIH should duplicate this role.

Response: The GTSAB will have a purpose that is different, though complementary to that of the FDA and other review groups, such as data safety and monitoring boards (DSMBs). The FDA provides immediate responses to reports of safety problems in the context of specific trials. The FDA has the authority to put those trials on hold to allow a full assessment of risks, shield research participants from any potential harm, and preclude the exposure of potential participants to the risks of the trials. In addition, the FDA assesses the overall safety of individual gene transfer products used in multiple trials and assesses the safety of classes of gene transfer products such as products using similar vectors. DSMBs are usually used to review data from a single trial at regular intervals; trials using DSMBs are usually in Phase III. The GTSAB would meet quarterly and conduct macro and longitudinal analyses of data accumulated across gene transfer trials to address questions that will allow the field of gene transfer research to advance safely.

The comprehensive public review of aggregated serious adverse event data by the RAC (through the GTSAB) has been endorsed by the ACD, the RAC, and members of the public as a critical component of the system of federal oversight of human gene transfer research. NIH and FDA will have a broad view of scientific and safety trends in gene transfer research and have the goal of advancement of knowledge in this area. The GTSAB will enhance the public dissemination of information about gene transfer research. A systematic and publicly accountable review and assessment of toxicity and safety data from these trials over time is essential for identifying trends and recognizing patterns that may have important implications for the future development of human gene transfer research. The GTSAB will augment the NIH's ability to perform this critical function, in accordance with the recommendations of the ACD and in keeping with the agency's responsibility to enhance the science, safety, and ethics of research conducted under the auspices of the NIH Guidelines. NIH and FDA will continue to work closely together in analyzing gene transfer adverse events and will involve the GTSAB as appropriate.

FDA's information disclosure regulations limit that agency's ability to share confidential information regarding gene transfer research with the NIH for the purpose of public disclosure, just as they limit FDA's ability to make such information available directly to the public. Thus, under current FDA regulations, NIH OBA cannot rely on disclosures from the FDA to achieve the objective of public disclosure of the scientific and safety issues. As observed by some commenters, the FDA has a proposal pending to disclose publicly specific categories of data from human gene therapy and xenotransplantation trials. At such time as this proposal is implemented, NIH will reassess and may, as appropriate, change the processes and mechanisms for gathering safety information as outlined in this action. If any future changes in FDA regulations alter reporting requirements so that they are no longer harmonized with the NIH Guidelines, the NIH will modify the NIH Guidelines as appropriate.

The RAC and a majority of public commenters favored the GTSAB, citing the unique role and purpose it will serve. For all of the above reasons, and because of the majority view expressed in public commentary, the GTSAB will be retained.

Comment: In requiring annual reporting and collecting severe adverse event data, the NIH is acting in an inappropriately regulatory manner. This comment suggested that the NIH Guidelines have ''mushroomed'' into an elaborate, burdensome set of rules, departing from their intended role as ''guidance.''

Response: The applicability of the NIH Guidelines has remained relatively constant since their inception in 1976, and there has been little change in safety reporting requirements since the 1985 version, which first described reporting policies for human gene transfer activities. Thus, the notion that the NIH Guidelines have expanded into an elaborate set of regulations is unfounded. To the contrary, this Action harmonizes the NIH safety reporting requirements with those of the FDA and entails an approximately 90 percent reduction in events that investigators will have to report to the NIH OBA on an expedited basis. NIH is offering flexibility in how this requirement is met. The NIH OBA has historically accepted adverse event reports on the FDA MedWatch form to minimize the burden on investigators. Investigators may also choose to use the NIH reporting format, which is based on the MedWatch form with certain reporting items tailored to the context of gene transfer research. Under these amendments to the NIH Guidelines, both formats will continue to be acceptable reporting mechanisms, provided reports are complete with regard to the information specified under new M–I–C–4–a.

In further harmonization with FDA, the NIH has modified the annual reporting requirement to allow investigators with multiple studies to submit a single annual report, provided that data are attributed to discrete sites. To facilitate compliance further, language has been added to explicitly allow the investigator to delegate the reporting task to the sponsor. The ultimate accountability for whether reporting occurs, however, rests with the investigator. Both changes reflect the fact that the NIH's oversight relationship is with institutions and investigators, as reflected historically in NIH Guidelines.

While NIH is not a regulatory agency, it does place conditions upon the funds that it awards to institutions. One of those conditions is compliance with the NIH Guidelines (see 42 CFR 52.8). Thus, the NIH Guidelines apply directly to biotechnology companies only if they receive funding from the NIH for recombinant DNA research. Most biotechnology companies do not receive such funding. Biotechnology companies that are not direct recipients of NIH funding for recombinant DNA research may be affected by the NIH Guidelines, nonetheless. When a company conducts recombinant DNA research in collaboration with an institution that receives any NIH funding for recombinant DNA research, all recombinant DNA research conducted at or sponsored by that institution is subject to the NIH Guidelines. Thus, the industry-sponsored recombinant DNA research conducted at that institution is subject to the reporting requirements addressed in this notice. In addition, a company may voluntarily choose to comply with the NIH Guidelines in accordance with Section IV-D, Voluntary Compliance. Many companies have chosen such voluntary compliance, including compliance with the safety reporting requirements.

Comment: The scope of serious adverse events (related and unexpected) that would have to be reported on an expedited basis is too narrow. In support of this view, commenters expressed concern that the significance of serious adverse events might not be readily discernable, and thus all such events should be reportable on an expedited basis. Comments also expressed the viewpoint that sponsors and scientists may not be objective in making determinations of ''relatedness'' or ''expectedness.''

Response: The NIH OBA agrees that complete reporting of adverse event data is important. Events that may not seem to be of generalizable concern may have implications for the field that are not fully appreciated until they are aggregated and analyzed. Therefore, the NIH OBA will continue to collect summary information about other adverse events in annual reports to this office.

It is important to note that the criteria of ''relatedness'' and ''expectedness'' are harmonized with the reporting requirements of the FDA to enhance compliance with expedited reporting of serious adverse events. The goal of harmonization has been considered and supported vigorously by the RAC, the ACD, and a diverse and broad-based public constituency. To employ the broad scope of promptly reportable events that was suggested in some comments would be equivalent to retaining the current requirements and would run counter to the harmonization objective.

Although this change will depend on investigators to make determinations of ''relatedness'' and ''expectedness,'' secondary oversight will occur through clinical monitoring plans that NIH and FDA require for clinical trials. Furthermore, it is anticipated that harmonization will enhance compliance with the expedited reporting of those events for which expedited reporting is likely to be of value and, overall, will improve the availability of safety and scientific information for analysis. Consequently, this Action retains the proposed scope of serious adverse events that are reportable on an expedited basis.

IV. RAC Discussion

The Recombinant DNA Advisory Committee (RAC) received copies of all comment letters, as well as synopses of each letter, and an analysis of the commentary in the aggregate. At its March 8, 2001 meeting the RAC reviewed these materials and heard oral commentary by members of the public. The RAC deliberated extensively on the merits of these various arguments and perspectives, and each member individually summarized his or her stance on the proposal. RAC perspectives were overwhelmingly in favor of adopting the Proposed Action, as reflected by a vote of 12 in favor, none opposed, and one abstention.

V. Paperwork Reduction Act of 1995

This Action contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), and have been submitted for OMB approval as a modification of OMB Control No. 0925–0001. A description of the information collection provisions and an estimate of the annual reporting burden are provided below.

Title: Annual reporting.

Description: The annual reporting provisions in Appendix M-I-C–3 would clarify the specific information items that investigators would have to report to NIH OBA within 60 days after the one-year anniversary of the date on which the investigational new drug (IND) application was filed with the FDA, and after each subsequent anniversary until the trial is completed. Appendix M–I–C–3 reduces the reporting burden by providing that, when multiple studies are conducted under the single IND, the Principal Investigator (or delegate) may choose to submit a single annual report covering all studies, provided that each study is identified by its OBA protocol number. Table 1 depicts the estimated reporting burden of complying with this aspect of the proposal. The estimated burden has been calculated by multiplying the approximate number of open protocols presently (since there is one report per protocol) by the number of hours typically required to prepare each report.

Description of Respondents: Investigators conducting human gene transfer research.

TABLE 1

NIH guidelines for research involving recombinant DNA molecules	Total number of reports annually (based on one report per open protocol)	Hours to prepare each report	Total hours
Appendix M–I–C–3	200	4	800

Title: Serious adverse event reporting.

Description: Under Appendix M–I–C–4, expedited reporting will be required for those serious adverse events that are unexpected and associated with the use of the gene transfer product (i.e., there is a reasonable possibility that the experience may have been caused by the gene transfer product). Appendix M–I–C–4 provides that these reports must be made as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information, or 7 days if the event is fatal or life-threatening. Table 2 provides an estimate of the total reporting burden based on the number of reports NIH expects to receive (per past experience). The burden is calculated by estimating the number of event that will be reportable on an expedited basis (by culling events that fit this classification out of the total reports received by OBA) and multiplying them by the time it takes to fill out an FDA MedWatch form or the NIH OBA reporting format.

Description of Respondents: Investigators conducting human gene transfer research.

TABLE 2

NIH guidelines for research involving recombinant DNA molecules	Number of serious adverse events reported annually that are unexpected and related	Hours to prepare each response	Total hours
Appendix M–I–C–4	120	1	120

These information collection requirements are intended to reduce the burden of reporting important safety data to the NIH by harmonizing the reporting requirements with those of FDA, limiting data elements to those necessary for NIH to identify significant safety issues in human gene transfer trials, and providing a reasonable timeframe for submission of the reports.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995, the agency has submitted the information collection provisions of this Action to OMB for review. Interested persons are requested to send comments regarding information by December 19, 2001 to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th Street, NW., Room 10235, Washington, DC 20503, Attn: Desk Officer for NIH. Upon OMB approval, NIH OBA will publish a notice setting forth the effective date of these requirements.

Amendments to the NIH Guidelines

Pursuant to the rationale expressed above and the recommendations of the NIH RAC, the ACD, and the majority of public commentary, the NIH Guidelines are amended as follows:

A New Section I–E–8 Is Added To Read

''Section I–E–8. A 'serious adverse event' is any event occurring at any dose that results in any of the following outcomes: death, a life-threatening event, in-patient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization also may be considered a serious adverse event when, upon the basis of appropriate medical judgment, they may jeopardize the human gene transfer research subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.''

A New Section I–E–9 Is Added To Read

''Section I–E–9. An adverse event is 'associated with the use of a gene transfer product,' when there is a reasonable possibility that the event may have been caused by the use of that product.''

A New Section I–E–10 Is Added To Read

''Section I–E–10. An unexpected serious adverse event is any serious adverse event for which the specificity or severity is not consistent with the risk information available in the current investigator's brochure.''

Section IV–B–7. Principal Investigator (PI) Is Modified To Read

''Section IV–B–7. Principal Investigator (PI)

On behalf of the institution, the Principal Investigator is responsible for full compliance with the NIH Guidelines in the conduct of recombinant DNA research. A Principal Investigator engaged in human gene transfer research may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written notification to the NIH OBA of the delegation and of the name(s), address, telephone, and fax numbers of the contact. The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses.''

Current M–I–C–3, Annual Reporting, Is Modified in Its Entirety To Read

''Appendix M–I–C–3. Annual Reports

Within 60 days after the one-year anniversary of the date on which the investigational new drug (IND) application was filed with the FDA, and after each subsequent anniversary until the trial is completed, the Principal Investigator (or delegate) shall submit the information set forth in (a), (b), and (c). When multiple studies are conducted under the single IND, the Principal Investigator (or delegate) may choose to submit a single annual report covering all studies, provided that each study is identified by its OBA protocol number.

(a) Clinical Trial Information. A brief summary of the status of each trial in progress and each trial completed during the previous year. The summary is required to include the following information for each trial: (1) The title and purpose of the trial; (2) clinical site; (3) the Principal Investigator; (4) clinical protocol identifiers, including the NIH OBA protocol number, NIH grant number(s) (if applicable), and the FDA IND application number; (5) participant population (such as disease indication and general age group, e.g., adult or pediatric); (6) the total number of participants planned for inclusion in the trial; the number entered into the trial to date; the number whose participation in the trial was completed; and the number who dropped out of the trial with a brief description of the reasons; (7) the status of the trial, e.g., open to patient accrual, closed but data collection ongoing, or fully completed, and (8) if the trial has been completed, a brief description of any study results.

(b) Progress Report and Data Analysis. Information obtained during the previous year's clinical and non-clinical investigations, including: (1) A narrative or tabular summary showing the most frequent and most serious adverse experiences by body system; (2) a summary of all serious adverse events submitted during the past year; (3) a summary of serious adverse events that were expected or considered to have causes not associated with the use of the gene transfer product such as disease progression or concurrent medications; (4) if any deaths have occurred, the number of participants who died during participation in the investigation and causes of death; and (5) a brief description of any information obtained that is pertinent to an understanding of the gene transfer product's actions, including, for example, information about dose-response, information from controlled trials, and information about bioavailability.

(c) A copy of the updated clinical protocol including a technical and non-technical abstract.''

Current Appendix M–I–C–4, Serious Adverse Event Reporting, Is Modified in Its Entirety To Read

''Appendix M–I–C–4. Safety Reporting

Principal Investigators must submit, in accordance with this section, Appendix M–I–C–4–a and Appendix M–I–C–4–b, a written report on: (1) Any serious adverse event that is both unexpected and associated with the use of the gene transfer product (i.e., there is reasonable possibility that the event may have been caused by the use of the product; investigators should not await definitive proof of association before reporting such events); and (2) any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity. The report must be clearly labeled as a ''Safety Report'' and must be submitted to the NIH Office of Biotechnology Activities (NIH OBA) and to the local Institutional Biosafety Committee within the timeframes set forth in Appendix M–I–C–4–b.

Principal Investigators should adhere to any other serious adverse event reporting requirements in accordance with federal regulations, state laws, and local institutional policies and procedures, as applicable.

Principal Investigators may delegate to another party, such as a corporate sponsor, the reporting functions set forth in Appendix M, with written

notification to the NIH OBA of the delegation and of the name(s), address, telephone and fax numbers of the contact(s). The Principal Investigator is responsible for ensuring that the reporting requirements are fulfilled and will be held accountable for any reporting lapses.

The three alternative mechanisms for reporting serious adverse events to the NIH OBA are: by e-mail to *oba@od.nih.gov;* by fax to 301–496–9839; or by mail to the Office of Biotechnology Activities, National Institutes of Health, MSC 7985, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892.

Appendix M–I–C–4–a. Safety Reporting: Content and Format

The serious adverse event report must include, but need not be limited to: (1) The date of the event; (2) designation of the report as an initial report or a follow-up report, identification of all safety reports previously filed for the clinical protocol concerning a similar adverse event, and an analysis of the significance of the adverse event in light of previous similar reports; (3) clinical site; (4) the Principal Investigator; (5) NIH Protocol number; (6) FDA's Investigational New Drug (IND) Application number; (7) vector type , e.g., adenovirus; (8) vector subtype, e.g., type 5, relevant deletions; (9) gene delivery method, e.g., in vivo, ex vivo transduction; (10) route of administration, e.g., intratumoral, intravenous; (11) dosing schedule; (12) a complete description of the event; (13) relevant clinical observations; (14) relevant clinical history; (15) relevant tests that were or are planned to be conducted; (16) date of any treatment of the event; and (17) the suspected cause of the event. These items may be reported by using the recommended Adverse Event Reporting Format available on NIH OBA's web site at: http://*www4.od.nih.gov/oba/*, the FDA MedWatch forms, or other means provided that all of the above elements are specifically included.

Reports from laboratory animal studies as delineated in Appendix M–I–C–4 must be submitted in a narrative format.

Appendix M–I–C–4–b. Safety Reporting: Time-frames for Expedited Reports

Any serious adverse event that is fatal or life-threatening, that is unexpected, and associated with the use of the gene transfer product must be reported to the NIH OBA as soon as possible, but not later than 7 calendar days after the sponsor's initial receipt of the information (i.e., at the same time the event must be reported to the FDA).

Serious adverse events that are unexpected and associated with the use of the gene transfer product, but are not fatal or life-threatening, must be reported to the NIH OBA as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (i.e., at the same time the event must be reported to the FDA).

Changes in this schedule are permitted only where, under the FDA IND regulations [21 CFR 312(c)(3)], changes in this reporting schedule have been approved by the FDA and are reflected in the protocol.

If, after further evaluation, an adverse event initially considered not to be associated with the use of the gene transfer product is subsequently determined to be associated, then the event must be reported to the NIH OBA within 15 days of the determination.

Relevant additional clinical and laboratory data may become available following the initial serious adverse event report. Any follow-up information relevant to a serious adverse event must be reported within 15 calendar days of the sponsor's receipt of the information. If a serious adverse event occurs after the end of a clinical trial and is determined to be associated with the use of the gene transfer product, that event shall be reported to the NIH OBA within 15 calendar days of the determination.

Any finding from tests in laboratory animals that suggests a significant risk for human research participants including reports of mutagenicity, teratogenicity, or carcinogenicity must be reported as soon as possible, but not later than 15 calendar days after the sponsor's initial receipt of the information (i.e., at the same time the event must be reported to the FDA).''

A New Appendix M–I–C–5 Is Added To Read

''Appendix M–I–C–5. Confidentiality

Data submitted in accordance with Appendix M–I–C that are claimed to be confidential commercial or trade secret information must be clearly labeled as such. Prior to making its determination about the confidentiality of data labeled confidential commercial or trade secret, the NIH will contact the Principal Investigator or delegate to ascertain the basis for the claim and subsequently will notify the Principal Investigator or delegate of its final determination regarding the claim.

If NIH determines that the data so labeled are confidential commercial or trade secret and that their public disclosure would promote an understanding of key scientific or safety issues, the NIH will seek agreement from the appropriate party to release such data. Public discussion of scientific and safety issues raised by data submitted in accordance with Appendix M–I–C is vital to informing both investigators and patients about the safety of gene transfer research.

To protect the privacy of participants in gene transfer research, any serious adverse event or annual reports submitted to NIH OBA must not contain individually identifiable patient information.''

A New Appendix M–I–D Is Added To Read

Appendix M–I–D. Safety Assessment in Human Gene Transfer Research

A working group of the RAC, the NIH Gene Transfer Safety Assessment Board, with staff support from the NIH OBA, will: (1) Review in closed session as appropriate safety information from gene transfer trials for the purpose of assessing toxicity and safety data across gene transfer trials; (2) identify significant trends or significant single events; and (3) report significant findings and aggregated trend data to the RAC. It is expected that this process will enhance review of new protocols, improve the development, design, and conduct of human gene transfer trials, promote public understanding and awareness of the safety of human gene transfer research studies, and inform the decision-making of potential trial participants.''

Current Appendix M–IV. Privacy and Confidentiality Is Modified To Read

''Appendix M–IV. Privacy

Indicate what measures will be taken to protect the privacy of patients and their families as well as maintain the confidentiality of research data. These measures should help protect the confidentiality of information that could directly or indirectly identify study participants.''

* * * * *

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and federal research program in which recombinant DNA techniques could be used, it has been

determined not to be cost effective or in the public interest to attempt to list these programs. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: October 19, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–28774 Filed 11–16–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Methamphetamine Abuse Treatment—Special Studies (MAT–SS)

New—The Methamphetamine Abuse Treatment—Special Studies (MAT–SS) project is a family of coordinated studies funded by SAMHSA's Center for Substance Abuse Treatment (CSAT) that will serve as a follow-up to the CSAT Methamphetamine Treatment Project (MTP). The MTP was conducted to compare the outcomes of the Matrix Model of methamphetamine treatment with Treatment-as-Usual in and across multiple treatment sites, and to assess the feasibility and outcomes generated by a technology transfer of the Matrix Model. Participants included 150 methamphetamine dependent clients recruited at each treatment site who were randomly assigned to one of the treatment conditions. Participants, diverse in demographic characteristics, and in individual and environmental circumstances, were evaluated at admission, weekly during treatment, at discharge, and at 6 and 12 months after treatment admission. Participating treatment sites include eight programs in seven geographical areas: Billings, Montana; Honolulu, Hawaii; and Concord, Costa Mesa, San Diego, Hayward, and San Mateo, California.

The family of studies included in the MAT–S project will address diverse issues associated with the phenomena of methamphetamine dependence. The Multi–Year Methamphetamine Treatment Follow-up Study will assess the long-term outcome and functioning of individuals who previously participated in treatment for methamphetamine dependence. The study will utilize a 36–month post-intake, face-to-face, one-on-one structured interview. Multiple measures typically utilized in substance abuse research with established psychometric properties will be employed to assess the longitudinal course of methamphetamine dependence and its consequences. A randomly selected sample of follow-up participants will also be interviewed to collect medical, neurological, and psychiatric data. The Adherence to Manualized Treatment Protocols Over Time Study will assess issues associated with the adoption of the Matrix Model of treatment and/or Matrix treatment components after the formal MTP study period has ended, specifically addressing adherence to the manualized treatment protocol. Interviews of both staff and clients will utilize a semi-structured, face-to-face format. Finally, The Cost Analysis of Outpatient Methamphetamine Treatment Study will evaluate the cost effectiveness of both the Matrix and Treatment-as-Usual treatment conditions in each treatment site. Two data collection methods will be utilized and to collect information from both administrator interviews and review of administrative and financial records.

The conceptual underpinning of the MAT–SS project is a recognition by SAMHSA and leading experts in the field that escalating methamphetamine abuse nationwide necessitates a longitudinally focused investigation addressing the process, nature, and consequences of methamphetamine dependence. The overall goals of the MAT–SS project are to document the longitudinal process of addiction and recovery in methamphetamine-dependent individuals, ascertain the feasibility and success of implementing a manualized treatment protocol in community-based treatment settings, and evaluate the cost effectiveness of various treatments for methamphetamine dependence. The following table summarizes the burden for this project.

	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Follow-up client interviews	1,016	1	3.0	3,048
Follow-up interviews/exams	508	1	2	1,016
Treatment adherence interviews	144	2	1.5	432
Cost analysis interviews	20	2	1.5	50
Cost analysis document review	8	2	6	96
Total	1,188			4,642
Annual average	396			1,547

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 8, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–28808 Filed 11–16–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, Recovery Community Organization Development and Community Mobilization Program, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of awards	Project Period (in year)
Recovery Community Organization Mobilization Program				
Track 1	January 10, 2002	$900,000	4–5	5
Track II	January 10, 2002	1,100,000	4	3

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of Fiscal Year 2002 funds for grants to foster the participation of people in recovery, their family members, and other allies (the recovery community) in the public dialogue about addiction, treatment, and recovery, and to build their capacity to identify, develop, and support treatment and recovery policies, systems, and services that meet their needs as they define them. Funded projects must document promising approaches in recovery community organizing that can be shared with others attempting similar efforts throughout the Nation. Based on past experience, CSAT believes that successful projects usually include a combination of the following organizing activities: encouraging and facilitating participation by people in recovery and their family members in the planning, design, delivery, and evaluation of addiction treatment and recovery policies, systems, and services at the local, State, regional, and national levels; promoting linkages among recovery community members, and between the recovery community and service delivery systems; and developing and conducting public education to help reduce the stigma associated with addiction, treatment, and recovery.

Applications for two separate Tracks will be funded under the RCSP. Track I solicits applications for new recovery community organizing initiatives, and Track II is designed to enable existing organizations that have demonstrated their capacity in recovery community organizing to expand or intensify their current program, or to replicate their promising program model in another setting.

Eligibility: Applicants may be domestic private nonprofit organizations, such as community-based organizations, universities, faith-based organizations, or units of State or local governments or Indian Tribes and tribal organizations. Consortia comprised of various types of eligible organizations are permitted.

For both Tracks, applications may be from: (a) Recovery community organizations (RCOs), which are organizations comprised of and led by recovery community members; or (b) facilitating organizations, which though themselves not necessarily comprised of recovery community members, will either enable the formation of an independent RCO or will develop some other organizational structure within which to carry out recovery community organizing. Organizations that were funded, either directly or indirectly, under CSAT's 1998 RCSP GFA are not eligible to apply for awards in Track I. Organizations that were funded, either directly or indirectly, under the 2001 RCSP GFA are not eligible to apply for awards in either Track.

Availability of Funds: Approximately $900,000 will be available to fund approximately 4–5 grants in Track I. The award for a Track I grant is expected to range from $175,000 to

$200,000 per year in total costs (direct and indirect). Approximately $1,100,000 will be available to fund approximately 4 grants in Track II. The award for a Track II grant is expected to range from $225,000 to $275,000 per year in total costs (direct and indirect).

Period of Support: Track I grants will be awarded for a period of up to 5 years. Track II grants will be awarded for a period of up to 3 years.

Criteria for Review and Funding: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues, contact: Catherine D. Nugent, Division of State and Community Assistance, CSAT/SAMHSA, Rockwall II, Suite 880, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2662, E-Mail: *cnugent@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: November 13, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–28834 Filed 11–16–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–05]

Announcement of Funding Awards for Fiscal Year 2001; Hispanic-serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Hispanic-serving Institutions Assisting Communities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to help Hispanic-serving Institutions of Higher Education expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG) .

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Hispanic-serving Institutions Assisting Communities Program (HSIAC) was enacted under section 107 of the CDBG appropriation for fiscal year 2001, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2001'' and is administered by the Office of University

Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Hispanic-serving Institutions Assisting Communities Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs. On February 26, 2001 (66 FR 11769), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $6.5 million in Fiscal Year 2001 funds for the Hispanic-serving Institutions Assisting Communities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD 13 applications were funded. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.514.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2001 Hispanic-serving Institutions Assisting Communities Program Funding Competition, by Name and Address

New York/New Jersey

1. Bronx Community College, Dr. Carin Savage, Bronx Community College, University Avenue and west 181st Street, Bronx, NY 10453. Grant: $400,000.
2. Lehman College, Eleanor Lunden, Lehnman College, 250 Bedford Park Blvd. West, Bronx, NY 10468. Grant: $210,952.

Southeast/Caribbean

3. University of Miami, Dr. Elizabeth Plater-Zyber, University of Miami, 1223 Dickinson Drive, Coral Gables, FL 33146. Grant: $399,995.
4. Miami-Dade Community College, InterAmerican Campus, Dr. David Rafky, Miami-Dade Community College, InterAmerican Campus, 627 SW 27th Avenue, Miami, FL 33135. Grant: $288,908.

Southwest

5. Del Mar College, Linda Ard, Del Mar College, 101 Baldwin, Corpus Christi, TX 78404. Grant: $400,000.
6. San Jacinto College North, Dr. Granville Sydnor, San Jacinto College North, 5800 Uvalde, Houston, TX 77504. Grant: $399,890.
7. Southwest Texas Junior College, Dr. Blaine Bennett, Southwest Texas Junior College, 2401 Garner Road, Uvalde, TX 78801. Grant: $400,000.
8. Texas A&M International University, Dr. J. Michael Patrick, Texas A&M International University, 5201 Laredo Blvd., Laredo, TX 78041. Grant: $150,479.
9. University of the Incarnate Word, Dr. John Velasquez, University of the Incarnate Word, 3721 S. Press Street, San Antonio, TX 78201. Grant: $399,948.

Pacific/Hawaii

10. Cochise College, Chuck Hoyak, Cochise College, 4190 West Highway 80, Douglas, AZ 85607. Grant: 319,290.
11. Los Angeles Mission College, Edgardo Zayas, Los Angeles Mission College, 13356 Eldridge Avenue, Sylmar, CA 91342. Grant: $400,000.
12. Los Angeles Trade-Technical College, Dr. Denise Fairchild, Los Angeles Trade-Technical College, 400 W. Washington Blvd., Los Angeles, CA 90015. Grant: $400,000.

Northwest/Alaska

13. Yakima Valley Community College, Dan Groves, Yakima Valley Community College, P.O. Box 22520, Yakima, WA 98907. Grant: $397,766.

Dated: November 8, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–28776 Filed 11–16–01; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–04]

Announcement of Funding Awards for Fiscal Year 2001; Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG) .

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for fiscal year 2001, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2001'' and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs. On February 26, 2001 (66 FR 11747), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $10 million in Fiscal Year 2001 funds for the HBCU Program. The Department reviewed, evaluated and scored the applications received based on the

criteria in the NOFA. As a result, HUD 22 applications were funded. These grants, with their grant amounts are identified below.

The Catalog Federal Domestic Assistance number for this program is 14.237.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 2001 Historically Black Colleges and Universities Program Funding Competition, by Name and Address

Mid-Atlantic

1. Bluefield State College, Dr. Felicia Wooten Blanks, Bluefield State College, 219 Rock Street, Bluefield, WV 24701. Grant: $300,000.
2. Bowie State University, Jean Humphrey, Bowie State University, 14000 Jericho Park Road, Bowie, MD 20715. Grant: $500,000.

Southeast/Caribbean

1. Alabama State University, Dr. William Brock, Sr., Alabama State University, 915 South Jackson Street, Montgomery, AL 36104. Grant: $499,917.
4. Barber-Scotia College, Dr. A. Erwin, Barber-Scotia College, 145 Carrabus Avenue West, Concord, NC 28025. Grant: $402,937.
5. Benedict College, Larry Salley, Benedict College, 1600 Harden Street, Columbia, SC 29204. Grant: $500,000.
6. C.A. Fredd Technical College Campus of Shelton Community College, Dr. Cordell Wynn, C.A. Fredd Technical College Campus, 3401 Martin Luther King, Jr. Blvd., Tuscaloosa, AL 35401. Grant: $300,000.
7. Coahoma Community College, Dr. Hazeltine Woods-Fouché, Coahoma Community College, 3240 Friars Point Road, Clarksdale, MS 38614. Grant: $492,723.
8. Edward Waters College, Ellis Brown, Edward Waters College, 1658 North Kings Road, Jacksonville, FL 32209. Grant: $494,975.
9. Elizabeth City State University, Morris Autry, Elizabeth City State University, 1704 Weeksville Road, Elizabeth City, NC 27909. Grant: $500,000.
10. Florida Agricultural and Mechanical University, Dr. Patricia McGill, Florida Agricultural and Mechanical University, 400 Foote Hillyer Administration Center, Tallahassee, FL 32307. Grant: $500,000.
11. Hinds Community College, Dr. George Barnes, Hinds Community College, Raymond, MS 39154. Grant: $300,000.
12. Jackson State University, Dr. Gail Grass Fulgham, Jackson State University, 1400 J.R. Lynch Street, Jackson, MS 39217. Grant: $500,000.
13. Johnson C. Smith University, Steven Washington, Johnson C. Smith University, 100 Beatties Ford Road, Charlotte, NC 28216. Grant: $495,998.
14. LeMoyne-Owen College, Jeffrey Higgs, LeMoyne-Owen College, 807 Walker Avenue, Memphis, TN 39126. Grant: $500,000.
15. Oakwood College, Marcia Adams Burnette, Oakwood College, 7000 Adventist Blvd., Huntsville, AL 35896. Grant: $409,960.
16. Stillman College, Dr. Eddie B. Thomas, Stillman College, 3600 Tuscaloosa, AL 35403. Grant: $500,000.
17. University of the Virgin Islands, Dr. Laverne Ragster, University of the Virgin Islands, 2 John Brewer's Bay, St. Thomas, VI 00802. Grant: $300,000.
18. Voorhees College, Elona Carolyn Davis, Voorhees College, 1411 Voorhees Road, Denmark, SC 29042. Grant: $500,000.

Southwest

19. St. Philip's College, Mayme Bailey Williams, St. Philip's College, 1801 Martin Luther King Drive, San Antonio, TX 78203. Grant: $500,000.
20. Texas Southern University, Ella Nunn, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004. Grant: $500,000.

Great Plains

21. University of Arkansas at Pine Bluff, Henry Golatt, University of Arkansas at Pine Bluff, 1200 North University Drive, Mail Slot 4943, Pine Bluff, AR 71601. Grant: $500,000.
22. Harris-Stowe State College, Hattie Weaver, Harris-Stowe State College, 3026 Laclede Avenue, St. Louis, MO 63103. Grant: $481,490.

Dated: November 8, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01–28775 Filed 11–16–01; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Northeastern Regional Panel will meet from 12 p.m., to 5:30 p.m. on Monday, November 26, 2001, and 8:30 a.m. to 3 p.m. on Tuesday, November 27, 2001.

ADDRESSES: The Northeast Panel meeting will be held at the Seacoast Science Center, 570 Ocean Blvd., Rye, New Hampshire 03870. Phone (603) 436–8043.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Northeast Regional Panel, established on 25 July 2001, to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Panel will, in accordance with Section 1203, invite representatives from Federal, State, and local agencies and from private environmental and commercial interests to:

(a) Identify priorities for the Northeast region with respect to aquatic nuisance species;

(b) Make recommendations to the Task Force regarding programs to carry out Section 1202 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(c) Assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Northeast region;

(d) Coordinate, where possible, aquatic nuisance species program activities in the Northeast region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance

Prevention and Control Act of 1990 (as amended, 1996);

(e) Provide advice to public and private individuals and entities concerning methods of preventing and controlling aquatic nuisance species; and

(f) Submit an annual report describing activities within the Northeast region related to aquatic nuisance species prevention, research, and control.

The focus of this meeting will be to: discuss Panel activities, administration and leadership, mission and goals, committee structure, membership, and future workplans.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: November 7, 2001.

Cathleen I. Short,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 01–28876 Filed 11–16–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council) Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet to select North American Wetlands Conservation Act (NAWCA) proposals for recommendation to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: December 2, 2001, 1–5 P.M.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 400 West Waterman, Wichita, Kansas 67202, in the Grand Eagle Ballroom C. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia, 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: November 8, 2001.

Kevin Adams,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–28684 Filed 11–16–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1310–02–0029; WAOR55142]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WAOR55142; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WAOR55142 for lands in Benton County, Washington, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WAOR55142 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, Land Law Examiner, Realty Records Section, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208, (503)952–6162.

Dated: November 2, 2001.

Sherrie L. Reid,

Chief, Realty Records Section.

[FR Doc. 01–28767 Filed 11–16–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–1220–NO]

Notice of Interim Final Supplementary Rules on BLM Administered Public Lands Within the Imperial Sand Dunes Recreation Area

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, California State Office, Interior.

ACTION: Interim final supplementary rules for BLM-administered public lands within the Imperial Sand Dunes Recreation Area, Imperial County, California.

SUMMARY: The Bureau of Land Management's El Centro Field Office (BLM) is publishing interim final supplementary rules. These supplementary rules will apply to the Public Lands within the Imperial San Dunes Recreation Area.

The interim final supplementary rules promulgated in this notice include prohibitions of three specific activities and types of activities:

1. Public nudity on Public Lands within the Imperial Sand Dune Recreation Area.

2. Unauthorized organized activities, including musical events and band concerts, shows, organized parties.

3. Riding in open truckbeds or other situations where there are no proper means of securing passengers.

These supplementary rules are necessary for the protection of the public health and safety, and of the public lands and their resources.

DATES: The interim final supplementary rules will be effective on November 19, 2001, and will remain in effect until publication of final supplementary rules. We will accept comments and publish final supplementary rules that respond to comments. Public comments will be accepted until December 19, 2001. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may hand-deliver comments on the interim final supplementary rules to the originating office; Bureau of Land Management, El Centro Field Office Manager, 1661 South 4th Street, El Centro, CA, 92243 or mail comments to the same address. You may also comment via the Internet to: *ca067@ca.blm.gov*.

FOR FURTHER INFORMATION CONTACT: Greg Thomsen, El Centro Field Office Manager, 1661 South 4th Street, El Centro, CA, 92243, or telephone (760) 337–4400.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Your comments on the interim final supplementary rules should be specific, should be confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. 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 supplementary rules 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**).

BLM will make your comments, including your name and address, available for public review at the El Centro Field Office of BLM address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The Imperial Sand Dunes, sometimes called the Algodones Dunes, are the largest mass of sand dunes in California. The dune system extends for more than 40 miles along the eastern edge of the Imperial Valley in southeastern Imperial County, California. The Imperial Sand Dunes encompass the most intensively visited recreational area in the California Desert Conservation Area. The area is a popular destination for a variety of recreational activities, with primary focus on the operation of Off Highway Vehicles (OHV) and camping.

For the past 30 years, the Imperial Sand Dunes has been the premiere OHV recreation area in California. Over the past few years, BLM staff have witnessed a significant increase in visitation because of the area's close proximity to the metropolitan areas of southern California and Arizona. The population growth of both southern California and Arizona has been a significant factor in this increased visitation at the ISDRA. Increased visitation is also due in part to the increase in sales of all-terrain vehicles and dune buggies.

In Fiscal Year 2001, annual visitation at the ISDRA was estimated at about 700,000 visitors. Visitation is highest between October and May when the area receives thousands of OHV recreationists due to the warm winter temperatures of the California Desert. BLM estimates that visitation is sometimes greater than 70,000 visitors on weekends, especially major holiday weekends. During the high-use season, visits usually average two to four days, and the area is utilized both day and night by OHV recreationists.

In recent years, a relatively small population of the dune recreationists have engaged in a series of activities that seriously threaten public health and safety for visitors to the ISDRA, volunteer staff, park rangers, and BLM law enforcement officers. Specifically, there have been frequent complaints from visitors about drug and alcohol abuse, and associated lawless and unruly behavior by some visitors, especially at night. In the past, these abuses have culminated in assaults, fights, and general increase in lawless behavior, especially by groups and individuals not associated with the historic OHV recreation at the ISDRA.

BLM has been aggressively taking actions that are aimed at addressing the lawlessness in order to maintain a safe environment for the thousands of legitimate recreational visitors at the ISDRA. The proposed three supplemental rules will provide BLM law enforcement officers proactive tools to address significant law enforcement issues at the ISDRA.

III. Discussion of the Supplementary Rules

These supplementary rules will apply to the public lands within the Imperial Sand Dunes Recreation Area (ISDRA), managed by the Bureau of Land Management. BLM has determined these supplementary rules necessary for the protection of persons, property, and public lands and resources. Our objective is to provide a quality recreational experience to the general public, with minimal conflicts among users, and to prevent degradation of the public lands and resources. To accomplish this objective, we are promulgating these supplementary rules, which are directed to enable early proactive response to public activities which can lead to unruly group behavior. The goal is a reduction of these types of activities that threaten public safety to other visitors and staff of the ISDRA. The supplementary rules are not directed at the vast majority of the visitors who are attempting to pursue lawful and legitimate activities on the public lands.

The supplementary rules cover activities that seem to be at the core of many disturbances in the past. Summarized, the supplementary rules include the following three prohibitions:

1. Prohibition of public nudity on Public Lands within the Imperial Sand Dune Recreation Area.
2. Prohibition of unauthorized use or organized activities, including musical events and band concerts, shows, organized parties.
3. Prohibition of riding in open truckbeds or other situations where there are no proper means of securing passengers.

The public has demonstrated intense interest, over several decades, in many issues involved with management of ISDRA. This interest has been manifested over the last several years, in an increasingly collaborative approach to solving management issues in cooperation with the public. There is strong support for increased law enforcement at ISDRA, and timely implementation of these regulations is a critical step in meeting the public expectations to provide for health and safety among recreational users.

BLM finds good cause to publish these supplementary rules effective the date of publication, without prior notice and opportunity for public comment. Historically, weekends during the fall and winter season are the busiest periods, particularly holiday weekends, with the busiest such weekend being the Thanksgiving Day weekend. The situation has escalated over the past several years, with activities during the 1999 Thanksgiving Day weekend almost leading to a full scale riot, with members of the public and Federal and state law enforcement officers put at serious risk. It is essential that these interim final supplementary rules be in place by Thanksgiving 2001. These rules have been in development as an aftermath to the investigation of the 1999 Thanksgiving Day disturbances at ISDRA.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an

effect of $100 million or more on the economy. They are not intended to affect commercial activity, but rather the safety of people and natural resources on certain public lands. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. While the supplementary rules are directed in part at exercises of First Amendment rights of public expression, and therefore are subject to careful scrutiny, there are ample precedents at all levels of government for requiring permits for concerts, parades, and other similar gatherings and activities.

Clarity of the Supplementary Rules

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 interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the abbreviation ''Sec.'' and a numbered heading, for example, ''Sec. 2 Under what authorities does BLM promulgate these Supplementary Rules?'')

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, 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. The supplementary rules do not pertain specifically to commercial or governmental entities of any size. Therefore, BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to public and private organizations, groups, and individuals who wish to stage musical performances and to recreate on the public lands and facilities of the Imperial Sand Dunes Recreation Area. In this respect, the regulation of these activities is limited to that necessary to protect the public lands and facilities and those, including small business concessioners and outfitters, who use them. The supplementary rules have no significant effect on business—commercial or industrial—use of the public lands, other than the requirement to secure an advance permit. Promoters of impromptu unpermitted concerts, competitive and similar events, and video producers, that would be proscribed by these supplementary rules would have to obtain permits under BLM's recreation permit regulations or general permit regulations, incurring the costs applicable under those regulations.

Unfunded Mandates Reform Act

These supplementary rules 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 interim final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. 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)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules provide that certain property may be seized and held as evidence, but only as part of a due process procedure under the Fourth Amendment. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules 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. The supplementary rules affect land in only one state, California, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these interim final supplementary rules 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

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. The rules affect only recreationists on public land in one National Recreation Area in California, and prohibit certain activities and regulate others. These activities, while Indians may participate in them, are not activities peculiar to Indians or Indian tribes.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a significant energy action. It will not have an adverse effect

on energy supplies. The rule applies only to recreation-related activities on public lands in a recreation area in California.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal authors of these supplementary rules are Gregory Thomsen, El Centro Field Office Manager, CA, and James Keeler, National Off-highway Vehicle Coordinator, Washington DC Office, assisted by Mark Conley, Outdoor Recreation Planner, of the California State Office, and Ted Hudson of the Regulatory Affairs Group, Washington Office.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, issues supplementary rules for the Imperial Sand Dunes Recreation Area, to read as follows:

Dated: November 6, 2001.

Mike Pool,

State Director.

Supplementary Rules for Imperial Sand Dunes Recreation Area

Sec.

1 Why is BLM promulgating these Supplementary Rules?
2 Under what authorities does BLM promulgate these Supplementary Rules?
3 Definitions.
4 To what lands do these supplementary rules apply?
5 Prohibited acts.
6 What are the penalties for violations of these rules?

Sec. 1 Why is BLM promulgating these supplementary rules?

These supplementary rules are necessary to protect natural resources and the public health and safety on public lands at the Imperial Sand Dunes Recreation Area.

Sec. 2 Under what authority does BLM promulgate these supplementary rules?

43 CFR 8365.1–6, issued under section 303 of the Federal Land Policy and Management Act (43 U.S.C. 1733), authorizes BLM State Directors to issue supplementary rules that may provide for the protection of persons, property, and public lands and resources.

Sec. 3 Definitions.

As used in these supplementary rules the term:

''Unauthorized organized activity'' means the staging or playing of videos or movies, playing of recorded music through a public address system or a live band or exhibition, to or before an assembly or audience consisting of at least 20 people or spectators in any public place or in any place exposed to public view, regardless of profit, without a land use or special recreation permit.

''Land use permit'' means a permit issued under the authority of 43 CFR 2920.1–1 by BLM Field Offices.

''Special Recreation Permit'' means a permit issued under the authority of 43 CFR 8372.1 by BLM Field Offices.

''Public nudity'' means being nude in any place where a person may be observed by another person. Any person is nude if the person has failed to cover the rectal area, pubic area, or genitals. A female person is also nude if she has failed to cover both breasts below a point immediately above the top of the areola. Each such covering must be fully opaque.

''Stage'' means to organize and present an event or performance for public viewing.

Sec. 4 To what lands do these supplementary rules apply?

BLM will enforce the following rules on the public lands within the Imperial Sand Dunes Recreation Area, Imperial County, California.

Sec. 5 Prohibited acts.

a. *Public nudity.* Within the Imperial Sand Dunes Recreation Area, you may not engage in public nudity in any public place, in any place exposed to public view, or any place open to the public.

b. *Unauthorized organized activities.*

1. You may not stage, carry out, participate in, or sponsor an unauthorized organized event on public lands within the Imperial Sand Dunes Recreation Area.

2. BLM may seize, store as evidence, and properly dispose of any vehicles or equipment used in unauthorized organized activities under paragraph b.1. of this section.

c. *Riding in pickup beds and other unsafe activities.* 1. You may not transport any person in or on the back of a pickup truck or a flatbed motortruck on or off a highway.

2. You may not ride in or on the back of a pickup truck or flatbed motortruck being driven on or off a highway.

3. You may not carry passengers on or off highway in or on any part of a motor vehicle not designed for passengers.

4. You may not ride as a passenger on or off highway in or on any part of a motor vehicle not designed for passengers.

Sec. 6 What are the penalties for violations of these rules?

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 01–28768 Filed 11–16–01; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–422–425 and 731–TA–964–983 (Preliminary)]

Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury [3] by reason of imports from Argentina, Brazil, France, and Korea, of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Argentina, Brazil, France, and Korea. The Commission further determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and procedure (19 CFR 207.2(f)).

[2] Commissioners Bragg, Miller, and Devaney determines that there is a reasonable indication that an industry in the United States is materially injured.

[3] Chairman Koplan, Vice Chairman Okun, and Commissioner Hillman determine that there is a reasonable indication that an industry in the United States is threatened with material injury.

in the United States is materially injured [2] or threatened with material injury [3] by reason of such imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 28, 2001, petitions were filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN; [4] Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH); and Weirton Steel Corporation, Weirton, WV; [5] alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized or LTFV imports of certain cold-rolled steel products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. Accordingly, effective September 28, 2001, the Commission instituted countervailing duty investigations Nos. 701–TA–422–425 (Preliminary) and antidumping investigations Nos. 731–TA–964–983 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 5, 2001 (66 FR 51069). The conference was held in Washington, DC, on October 19, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2001, and will transmit its views on November 20, 2001. The views of the Commission are contained in USITC Publication 3471 (November 2001), entitled Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–422–425 and 731–TA–964–983 (Preliminary).

By order of the Commission.

Issued: November 13, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28813 Filed 11–16–01; 8:45 am]

BILLING CODE 7020–02–M

[4] National is not a petitioner with respect to Japan.

[5] Weirton is not a petitioner with respect to the Netherlands.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–409–412 and 731–TA–909–912 (Final)]

Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (phone: 202–205–3179; e-mail: *ffischer@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On September 5, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigations (66 FR 46467, September 5, 2001). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from November 26, 2001, to December 13, 2001. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 3, 2001; the prehearing conference (if needed) will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 10, 2001; the prehearing staff report will be placed in the nonpublic record on November 30, 2001; the deadline for filing prehearing briefs is December 7, 2001; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 14, 2001; the deadline for filing posthearing briefs is December 21, 2001; the Commission will make its final release of information on January 10, 2002; and final party comments are due on January 14, 2002.

For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: November 13, 2001.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28811 Filed 11–16–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–924 (Final)]

Mussels From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–924 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada of mussels, provided for in subheading 0307.31.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 18, 2001.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of mussels from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 12, 2001, by Great Eastern Mussel Farms, Tenants Harbor, ME.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 21, 2002, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 7, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 27, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 4, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is February 28, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 14, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 14, 2002. On April 2, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 4, 2002,

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''live processed blue mussels from Canada. Included in the scope are fresh, live, processed blue mussels (mytilus edulis). Processing may include, but is not limited to, purging, grading, debearding, picking, inspecting and packing. Processed mussels are mussels that are: (1) Free of sand or grit, broken product, defective product and beards (byssus threads); (2) uniform in size; and (3) packed or ready for packing. Mussels that meet the aforementioned characteristics, regardless of the methods used to achieve these characteristics, are covered by this investigation.''

but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 13, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28812 Filed 11–16–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–426 and 731–TA–984–985 (Preliminary)]

Sulfanilic Acid From Hungary and Portugal

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Hungary of sulfanilic acid, provided for in subheadings 2921.42.22 and 2921.42.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Hungary and by reason of imports from Hungary and Portugal of sulfanilic acid that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 28, 2001, a petition was filed with the Commission and Commerce by Nation Ford Chemical Co. of Fort Mill, SC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of sulfanilic acid from Hungary and Portugal that are alleged to be sold in the United States at LTFV and that are alleged to be subsidized by the Government of Hungary. Accordingly, effective September 28, 2001, the Commission instituted countervailing duty investigation No. 701–TA–426 (Preliminary) and antidumping duty investigations Nos. 731–TA–984–985 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 5, 2001 (66 FR 51070). The conference was held in Washington, DC, on October 18, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2001. The views of the Commission are contained in USITC Publication 3472 (November 2001), entitled Sulfanilic Acid from Hungary and Portugal: Investigations Nos. 701–TA–426 and 731–TA–984–985 (Preliminary).

By order of the Commission.

Issued: November 13, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28814 11–16–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Devaney dissenting with respect to Hungary. Commissioner Devaney found that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Hungary of sulfanilic acid that are allegedly subsidized by the Government of Hungary or alleged to be sold in the United States at LTFV.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–147]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is utilized by NASA procurement and technical personnel in the management of contracts valued at less than $500K.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Acquisition Process—Reports Required On Contracts Valued at Less Than $500K.

OMB Number: 2700–0088.

Type of review: Extension.

Need and Uses: Information is used by NASA procurement and technical personnel in the management of contracts. Collection is prescribed in the NASA Federal Acquisition Regulation Supplement and approved mission statements.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1,282.

Responses Per Respondent: 30.

Annual Responses: 38,460.

Hours Per Request: 27 1/2 hrs.

Annual Burden Hours: 1,065,600.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–28845 Filed 11–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–146]

Proposed Collection; Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection is required to ensure proper accounting of Federal funds and property provided under cooperative agreements with commercial firms.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Cooperative Agreements with Commercial Firms.

OMB Number: 2700–0092.

Type of review: Extension.

Need and Uses: Reporting and recordkeeping are prescribed under 14 CFR Part 1274. Information collected ensures the accountability of public funds and proper maintenance of an appropriate internal control system.

Affected Public: Business or other for-profit.

Number of Respondents: 107.

Responses Per Respondent: 6.

Annual Responses: 658.

Hours Per Request: 7.

Annual Burden Hours: 4,592.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–28846 Filed 11–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate, With Changes, an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by January 18, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7557 or send e-mail to *splimpto@nsf.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this task order is to: (1) Identify the types of interactions that take place between ERCs and their industrial sponsors; (2) benefits deriving from them; (3) the differential outcomes and benefits to industry emanating from (a) specific ERC components, e.g., fundamental research, emerging technology, engineered systems, and the integration of research and education, and (b) their respective outputs; and (4) how ERCs work with start-up companies that seek assistance from the centers and with firms that are spin-offs from ERC technology.

Title of Collection: Impact of Industry-Engineering Research Center (ERC) Interaction and Effectiveness of ERC-Trained Industrially Employed Engineers.

OMB Number: 3145–0152.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate, with change, an information collection for three years.

Abstract: ''Impact on Industry of Interactions with Engineering Research Centers (ERCs)—Repeat Study''.

Proposed Project: NSF's Directorate for Engineering established the Engineering Research Center (ERC) Program in 1985 to address concerns of industry regarding declining US industrial competitiveness. The mission of the Program as defined by the National Academy of Engineering was to strengthen competitiveness by bringing new approaches and goals to academic engineering research and education, and by forgoing vital new links between universities and industry. The proposed study repeats one conducted when the Program was 10 years old, which studied the outcomes and impacts of ERC involvement upon firms involved with first generation centers. The repeat study would involve firms formally participating with the eight second-generation centers, which were initiated from FY 1994–96. Data will be collected from the representatives to the ERCs of these firms. Data will NOT be used to evaluate individual centers, but, rather, to study the Program's on-going as a whole.

Use of the Information: The resulting information will be used to identify program-wide patterns of outcomes and

impacts on organizations that are members of ERCs. Results will be used for continuous program performance improvement and external reporting, e.g., for the Government Performance and Results Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 400.

Estimated Total Annual Burden on Respondents: 200 hours.

Frequency of Responses: One time.

Dated: November 13, 2001.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 01–28766 Filed 11–16–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30, issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock County, Illinois.

The proposed amendment would allow an increase in the licensed power level from 2511 megawatts thermal (MWt) to 2957 MWt. This change represents an increase of approximately 17.8 percent above the current licensed thermal power at Quad Cities Nuclear Power Station, Units 1 and 2, and is considered an extended power uprate. The proposed amendment would also change the operating licenses and the technical specifications appended to the operating licenses to provide for implementing uprated power operation.

The original amendment request, dated December 27, 2000, was submitted by Commonwealth Edison Company (ComEd). ComEd was subsequently merged into Exelon Generation Company, LLC. By letter dated February 7, 2001, Exelon informed the NRC that it assumed responsibility for all pending NRC actions that were requested by ComEd. The original application was supplemented by letters dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), and November 2, 2001 (two letters).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 19, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order that may be entered in proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specifically requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, and to Mr. Edward J. Cullen, Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 27, 2000, as supplemented by letters dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), and November 2, 2001 (two letters), which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 9th day of November 2001.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–28645 Filed 11–16–01; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Call for nominations.

SUMMARY: The NRC is advertising for nominations for the position Interventional Cardiology Physician on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before January 18, 2002.

ADDRESSES: Submit four copies of the nominee's resume to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5030; e-mail *arw@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues related to the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine; unsealed byproduct material; (d) therapy physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State representative; and (k) health care administrator.

NRC is inviting nominations for an interventional cardiologist physician appointment to the ACMUI. This is a new position. Nominees should be interventional cardiologist physicians with experience in intravascular brachytherapy use of radiation sources. Committee members serve a 3-year term, with possible reappointment to an additional 3-year term.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel expenses (including per-diem, in lieu of subsistence); and are also reimbursed secretarial and correspondence expenses. Members who are full-time Federal employees are reimbursed travel expenses only. Nominees will undergo a security background check and will be required to complete financial disclosure statements to avoid conflict-of-interest issues.

Dated at Rockville, Maryland, this 13th day of November, 2001.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–28817 Filed 11–16–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 20–64 and RI 20–64A]

Submission for OMB Review Comment Request for Review of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. RI 20–64, Former Spouse Survivor Annuity Election, is used by the Civil Service Retirement System to provide information about the amount of annuity payable after a survivor reduction and to obtain a survivor benefits election from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64A, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees under the Civil Service Retirement System who want to provide a survivor annuity for a former spouse.

Approximately 30 RI 20–64 forms are completed annually. The form takes approximately 45 minutes to complete. The annual burden is 23 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–

8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–28828 Filed 11–16–01; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Existing Information Collection: Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an existing information collection. The regulations describe how former spouses give us written notice of a court order requiring us to pay benefits to the former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

Approximately 19,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 30 minutes to collect the information. The annual burden is 9,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey via FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3450.

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management,

Kay Coles James,

Director.

[FR Doc. 01–28829 Filed 11–16–01; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 September 19, 2001 (66 FR 48297). Individual authorities established or revoked under under Schedule C between August 1, 2001, and September 30, 2001, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during August through September 2001:

Department of Agriculture

Special Assistant to the Under Secretary for Food, Nutrition and Consumer Services. Effective August 17, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective September 13, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective September 14, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective September 18, 2001.

Director, Legislative and Intergovernmental Affairs to the Under Secretary for Research, Education and Economics. Effective September 19, 2001.

Confidential Assistant to the Secretary of Agriculture. Effective September 27, 2001.

Confidential Assistant to the Assistant Secretary for Administration. Effective September 27, 2001.

Department of Commerce

Special Assistant to the Under Secretary for Export Administration. Effective August 2, 2001.

Legislative Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs, National Oceanic and Atmospheric Administration. Effective August 3, 2001.

Deputy Director to the Director Of Public Affairs, National Oceanic and Atmospheric Administration. Effective August 6, 2001.

Executive Assistant to the Secretary of Commerce. Effective August 21, 2001.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 21, 2001.

Special Assistant to the Assistant Secretary and Director General, United States and Foreign Commercial Service. Effective August 27, 2001.

Confidential Assistant to the Chief of Staff. Effective August 27, 2001.

Public Affairs Specialist to the Director of Public Affairs. Effective August 28, 2001.

Special Assistant to the Director, Office of External Affairs. Effective September 10, 2001.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 10, 2001.

Special Assistant to the Director, Office of Business Liaison. Effective September 10, 2001.

Senior Advisor for Privacy to the Under Secretary for Technology. Effective September 10, 2001.

Confidential Assistant to the Director, Office of Business Liaison. Effective September 10, 2001.

Public Affairs Specialist to the Director of Public Affairs. Effective September 10, 2001.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective September 13, 2001.

Special Assistant to the Director, Bureau of Census. Effective September 17, 2001.

Director of Advance (Special Assistant to the Secretary) to the Director of External Affairs. Effective September 17, 2001.

Legislative Specialist for Trade to the Assistant Secretary for Legislative Affairs. Effective September 26, 2001.

Department of Defense

Personal and Confidential Assistant to the General Counsel. Effective August 13, 2001.

Special Assistant to the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs. Effective September 14, 2001.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective September 19, 2001.

Staff Assistant to the Assistant Secretary of Defense (International Security Policy). Effective September 19, 2001.

Special Assistant to the Assistant Secretary of Defense (International Security Policy). Effective September 19, 2001.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective September 20, 2001.

Special Assistant to the Director of Net Assessment. Effective September 21, 2001.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective September 21, 2001.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective September 21, 2001.

Department of Education

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 2, 2001.

Confidential Assistant to the Director, Office of Public Affairs. Effective August 2, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 7, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 7, 2001.

Special Assistant (Trip Director) to the Director, Scheduling and Briefing Staff. Effective August 21, 2001.

Director, White House Initiative on Hispanic Education to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective August 28, 2001.

Special Assistant to the Deputy Secretary. Effective August 28, 2001.

Special Assistant to the Under Secretary. Effective September 13, 2001.

Confidential Assistant to the Senior Advisor to the Secretary. Effective September 13, 2001.

Executive Assistant to the Deputy Secretary. Effective September 13, 2001.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective September 25, 2001.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective September 27, 2001.

Secretary's Regional Representative, Region I to the Deputy Assistant Secretary for Regional Services. Effective September 27, 2001.

Counselor to the Deputy Secretary. Effective September 28, 2001.

Department of Energy

Staff Assistant to the Deputy Assistant Secretary for International Energy Cooperation. Effective August 2, 2001.

Special Assistant to the Director, Office of Scheduling and Advance. Effective August 2, 2001.

Senior Advisor to the Director, Office of Nuclear Energy, Science and Technology. Effective August 2, 2001.

Senior Advisor to the Principal Deputy Assistant Secretary. Effective August 21, 2001.

Staff Assistant to the Assistant Secretary for Policy and International Affairs. Effective August 27, 2001.

Special Assistant to the Assistant Secretary for Fossil Energy. Effective September 13, 2001.

Congressional Affairs Officer to the Director, Congressional Affairs, National Nuclear Security Administration. Effective September 13, 2001.

Senior Policy Advisor to the Secretary of Energy. Effective September 14, 2001.

Special Assistant to the Chief Financial Officer. Effective September 17, 2001.

Special Assistant to the Chief Information Officer. Effective September 19, 2001.

Special Assistant to the Director, Office of Scheduling and Advance. Effective September 21, 2001.

Department of Health and Human Services

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective August 27, 2001.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective August 27, 2001.

Director of Scheduling to the Chief of Staff. Effective September 13, 2001.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaision). Effective September 13, 2001.

Confidential Assistant (Advance) to the Director of Scheduling and Advance. Effective September 13, 2001.

Confidential Assistant to the Executive Secretary. Effective September 17, 2001.

Department of Housing and Urban Development

Assistant to the Secretary (White House Liaison) to the Chief of Staff. Effective August 7, 2001.

Press Secretary and Senior Communications Advisor to the Secretary to the Chief of Staff. Effective August 27, 2001.

Special Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective September 10, 2001.

Special Assistant to the Deputy Assistant Secretary for Congressional Relations. Effective September 10, 2001.

General Deputy Assistant Secretary for Housing to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective September 10, 2001.

Advance Coordinator to the Deputy Secretary. Effective September 13, 2001.

Advance Coordinator to the Director of Executive Scheduling. Effective September 13, 2001.

Staff Assistant to the Deputy Secretary. Effective September 21, 2001.

Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 21, 2001.

Staff Assistant to the Assistant Secretary for Housing. Effective September 21, 2001.

Staff Assistant to the Deputy Secretary. Effective September 21, 2001.

Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective September 21, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective September 21, 2001.

Staff Assistant to the Deputy Secretary. Effective September 21, 2001.

Staff Assistant to the Deputy Secretary. Effective September 24, 2001.

Staff Assistant to the Deputy Secretary. Effective September 26, 2001.

Special Assistant to the General Counsel. Effective September 28, 2001.

Special Assistant to the Secretary. Effective September 28, 2001.

Department of the Interior

Special Assistant to the Director, Fish and Wildlife Service. Effective August 7, 2001.

Deputy Director to the Director, External and Intergovernmental Affairs. Effective August 8, 2001.

Speech Writer to the Director, Office of Communications. Effective August 13, 2001.

Special Assistant to the Director, National Park Service. Effective August 15, 2001.

Special Assistant to the Solicitor. Effective August 15, 2001.

Deputy White House Liaison to the White House Liaison. Effective August 21, 2001.

Special Assistant to the Assistant Secretary, Water and Science. Effective September 26, 2001.

Department of Justice

Attorney Advisor to the Assistant Attorney General, Civil Rights Division. Effective August 7, 2001.

Attorney Advisor to the Assistant Attorney General, Civil Rights Division. Effective August 10, 2001.

Special Assistant to the Assistant Attorney General, Environment and Natural Resources Division. Effective August 13, 2001.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 13, 2001.

Press Assistant to the Director, Office of Public Affairs. Effective August 13, 2001.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 13, 2001.

Counsel to the Attorney General. Effective August 16, 2001.

Counsel to the Assistant Attorney General, Office of Justice Programs. Effective August 27, 2001.

Staff Assistant to the Director, United States Marshals Service. Effective August 27, 2001.

Counsel to the Associate Attorney General. Effective September 7, 2001.

Attorney Advisor to the Assistant Attorney General, Office of Policy Development. Effective September 10, 2001.

Assistant to the Attorney General. Effective September 13, 2001.

Executive Assistant to the Commissioner, Immigration and Naturalization Service. Effective September 13, 2001.

Confidential Assistant to the Director, Office of Public Affairs. Effective September 13, 2001.

Staff Assistant to the Principal Deputy Assistant Attorney General, Office of Justice Programs. Effective September 13, 2001.

Counsel to the Associate Attorney General. Effective September 17, 2001.

Deputy Director to the Director, Office of Intergovernmental Affairs. Effective September 17, 2001.

Special Assistant to the Director, Office of Intergovernmental Affairs. Effective September 17, 2001.

Department of Labor

Staff Assistant to the Director of Scheduling and Advance. Effective August 2, 2001.

Staff Assistant to the Assistant Secretary for Public Affairs. Effective August 3, 2001.

Special Assistant to the Director of Scheduling and Advance. Effective August 6, 2001.

Special Assistant to the Deputy Assistant Secretary for Labor Management Standards. Effective August 6, 2001.

Special Assistant to the Assistant Secretary for Administration Management. Effective August 6, 2001.

Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective August 27, 2001.

Special Assistant to the Deputy Assistant Secretary for Employment and Training. Effective August 27, 2001.

Staff Assistant to the Assistant Secretary for Policy. Effective August 27, 2001.

Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 17, 2001.

Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 17, 2001.

Special Assistant to the Secretary of Labor. Effective September 17, 2001.

Staff Assistant to the Assistant Secretary for Public Affairs. Effective September 24, 2001.

Special Assistant to the Assistant Secretary for Employment and Training. Effective September 24, 2001.

Staff Assistant to the Director of Scheduling and Advance. Effective September 26, 2001.

Department of State

Staff Assistant to the Deputy Assistant Secretary. Effective August 2, 2001.

Staff Assistant to the Under Secretary for Management. Effective August 2, 2001.

Confidential Assistant to the White House Liaison. Effective August 2, 2001.

Protocol Officer to the Chief of Protocol. Effective August 7, 2001.

Special Assistant to the Under Secretary for Arms Control and International Security Affairs. Effective August 17, 2001.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective August 20, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective August 24, 2001.

Special Assistant to the Chief of Protocol. Effective August 27, 2001.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective September 5, 2001.

Protocol Officer (Visits) to the Chief of Protocol. Effective September 5, 2001.

Special Assistant to the Assistant Secretary, Legal Advisor. Effective September 13, 2001.

Member to the Director, Office of Policy Planning Staff. Effective September 14, 2001.

Public Affairs Officer to the Assistant Secretary for Public Affairs. Effective September 17, 2001.

Confidential Assistant to the Secretary of State. Effective September 21, 2001.

Staff Assistant to the Secretary of State. Effective September 21, 2001.

Assistant Chief of Protocol for Ceremonials to the Chief of Protocol. Effective September 21, 2001.

Foreign Affairs Officer (Visits) to the Chief of Protocol. Effective September 26, 2001.

Special Assistant to the Assistant Secretary for Public Affairs. Effective September 26, 2001.

Special Assistant to the Chief of Protocol. Effective September 26, 2001.

Department of Transportation

Assistant for Policy to the Secretary of Transportation. Effective August 7, 2001.

Deputy Director to the Assistant to the Secretary and Director of Public Affairs. Effective August 9, 2001.

Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs. Effective August 21, 2001.

Executive Assistant to the Secretary of Transportation. Effective September 17, 2001.

Confidential Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective September 17, 2001.

Associate Director to the Deputy Assistant Secretary for Governmental Affairs. Effective September 28, 2001.

Associate Director to the Deputy Assistant Secretary for Governmental Affairs. Effective September 28, 2001.

Department of the Treasury

Special Assistant to the Assistant Secretary (Tax Policy). Effective August 6, 2001.

Director of Scheduling to the Chief of Staff. Effective August 6, 2001.

Special Assistant to the Treasurer of the United States. Effective August 6, 2001.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 6, 2001.

Senior Advisor to the Deputy Secretary. Effective August 6, 2001.

Special Assistant to the Assistant Secretary for Legislative Affairs. Effective August 24, 2001.

Senior Advisor to the Deputy Assistant Secretary for Public Liaison. Effective August 24, 2001.

Staff Assistant to the White House Liaision. Effective September 13, 2001.

Equal Employment Opportunity Commission

Confidential Assistant to the Director, Office of Legal Cousel. Effective September 10, 2001.

Export-Import Bank of the United States

Special Assistant to the Vice President of Public Affairs. Effective September 21, 2001.

Federal Communications Commission

Special Assistant to the Director, Office of Media Relations. Effective September 28, 2001.

Federal Emergency Management Agency

Special Assistant to the Director. Effective August 16, 2001.

Director of Congressional and Intergovernmental Affairs Division to the Assistant Director, External Affairs. Effective August 16, 2001.

Confidential Assistant to the Director. Effective August 16, 2001.

Federal Energy Regulatory Commission

Regulatory Policy Analyst to the Director, Office of Markets, Tarrifs and Rates. Effective August 6, 2001.

Federal Maritime Commission

Special Advisor to a Commissioner. Effective August 14, 2001.

Federal Trade Commission

Congressional Liaison Specialist to the Director, Office of Congressional Relations. Effective August 23, 2001.

National Aeronautics and Space Administration

Senior Policy Analyst to the Chief of Staff. Effective August 23, 2001.

Chief of Staff to the Associate Administrator for Legislative Affairs. Effective August 23, 2001.

Office of Management and Budget

Deputy to the Associate Director for Legislative Affairs (Senate). Effective August 2, 2001.

Legislative Analyst to the Director, Office of Management and Budget. Effective August 2, 2001.

Confidential Assistant to the Deputy Director, Office of Management and Budget. Effective August 2, 2001.

Special Assistant to the Director, Office of Management and Budget. Effective August 17, 2001.

Public Affairs Specialist to the Associate Director for Communication. Effective August 24, 2001.

Confidential Assistant to the Associate Director, Information Technology and E-Government. Effective August 27, 2001.

Associate Administrator to the Administrator, Office of Procurement Policy. Effective September 13, 2001.

Special Assistant to the Administrator, Office of Information and Regulatory Affairs. Effective September 25, 2001.

Staff Assistant to the Director, Office of Management and Budget. Effective September 28, 2001.

Confidential Assistant to the Counselor to the Director (Controller, Office of Federal Financial Management). Effective September 28, 2001.

Office of Personnel Management

Deputy Chief of Staff to the Chief of Staff. Effective August 13, 2001.

Special Assistant to the Chief of Staff. Effective August 13, 2001.

Special Assistant to the Director, Office of Communications. Effective August 27, 2001.

Office of National Drug Control Policy

Deputy Chief of Staff to the Chief of Staff, ONDCP. Effective September 20, 2001.

Office of the United States Trade Representative

Public Affairs Specialist to the Associate U.S. Trade Representative for Policy and Communications. Effective August 21, 2001.

Overseas Private Investment Corporation

Executive Assistant to the President and Chief Executive Officer. Effective August 13, 2001.

Staff Assistant to the President and Chief Executive Officer. Effective August 13, 2001.

Executive Assistant to the Executive Vice President. Effective August 27, 2001.

Small Business Administration

Special Assistant to the Director of Intergovernmental Affairs. Effective August 30, 2001.

Senior Advisor to the Assistant Administrator for International Trade. Effective August 30, 2001.

Senior Policy Advisor to the Administrator. Effective August 30, 2001.

Director of Advisory Councils to the Associate Administrator for Communications and Public Liaison. Effective September 13, 2001.

Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective September 13, 2001.

Special Assistant to the Director of Intergovernmental Affairs. Effective September 13, 2001.

Special Assistant to the Assistant Administrator for International Trade. Effective September 13, 2001.

United States Tax Court

Trial Clerk to a Judge. Effective August 22, 2001.

Trial Clerk to a Judge. Effective August 22, 2001.

Trial Clerk to a Judge. Effective August 22, 2001.

Trial Clerk to a Judge. Effective August 22, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–28830 Filed 11–16–01; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45049; File No. SR–ISE–2001–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Exempting Complex Orders From Payment-for-Order Flow and Marketing Fees

November 9, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

23, 2001, the International Securities Exchange LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its payment-for-order-flow and marketing fees to exempt transactions involving ''Complex Orders.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to exempt trades in ''Complex Orders'' from the Exchange's payment-for-order-flow and marketing fees. ''Complex Orders'' include, among other things, ''spread'' transactions.[3] These trades are executed on thin profit margins, and the Exchange believes that imposing the payment-for-order-flow and marketing fees on these trades will adversely affect its ability to attract this type of order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[4] and furthers the objectives of section 6(b)(4)[5] because it is an equitable allocation of reasonable fees among the Exchange's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing with the Commission because the Exchange has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–28 and should be submitted by December 10, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28773 Filed 11–16–01; 8:45 am]

BILLING CODE 8010–01–M

[3] The Exchange defines ''Complex Orders'' in ISE Rule 722(a). *See* Exchange Act Release No. 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security; Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATES: November 29, 2001 10 a.m.–6 p.m.

ADDRESSES: Washington, DC—Venue to be determined. Due to unforeseen circumstances the venue has not been identified to date. This information will be published in the **Federal Register** and posted at *www.CSSS.gov* as soon as it is available.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting will be open to the public between 10 a.m. and 6 p.m., with a break for lunch between 1 p.m. and 2 p.m.

Purpose: This is the sixth deliberative meeting of the Commission. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Thursday, November 29, at 10 a.m. and ending at 6 p.m., with a break for lunch between 1 p.m. and 2 p.m. The Commission will be deliberating on how to administer personal accounts and how to ensure long-term solvency in the Social Security program.

Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, transcripts, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov,* e-mail to *comments@CSSS.gov;*
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;

• Telephone at (202) 343–1255.

Dated: November 13, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–28917 Filed 11–16–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3828]

Advisory Committee on International Economic Policy Notice of Postponement and Rescheduling of Public Meeting

The Advisory Committee on International Economic Policy (ACIEP) public meeting described in Public Notice No. 3804 that had been scheduled from 10 a.m. to 12 p.m. on Tuesday, November 20, 2001, in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520 has been postponed. It will now be held on December 12, from 9:00 a.m. to 12:00 p.m. in the Loy Henderson Auditorium at the State Department. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the December 12 meeting will be:

• China's Accession to the WTO

• Results of the Doha WTO Ministerial

• The Campaign Against International Terrorism

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647–5936 (Attention: Raynell Bowling); Tel: (202) 647–0847; or e-mail: (*bowlingra@state.gov*) by December 10th. On the date of the meeting, persons who have pre-registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact

Deborah Grout, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3526, Main State, Washington, DC 20520. Tel: 202–647–1826.

Dated: November 15, 2001.

Deborah Grout,

Executive Secretary, Department of State.

[FR Doc. 01–28969 Filed 11–16–01; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Blending of Surplus Highly Enriched Uranium From the Department of Energy, to Low Enriched Uranium for Subsequent use as Reactor Fuel at the Tennessee Valley Authority's Browns Ferry Nuclear Plant

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and the Tennessee Valley Authority's (TVA) procedures implementing the National Environmental Policy Act. On February 14, 2001, TVA published a notice of adoption of the Final Environmental Impact Statement (FEIS), ''Disposition of Surplus Highly Enriched Uranium,'' prepared by the U.S. Department of Energy (DOE), Office of Fissile Materials. This FEIS was released by DOE in June 1996. TVA was not a cooperating agency on that FEIS. In February 2001, TVA re-circulated the FEIS to agencies and persons who had provided comments on the original DOE FEIS. EPA's Notice of Availability for the re-circulation of the FEIS appeared in the **Federal Register** on February 16, 2001. Subsequent to TVA's adoption of the DOE FEIS and consideration of public comments received on TVA's adoption of the FEIS, TVA has decided to implement the actions related to the preferred alternative identified by DOE. The preferred alternative in DOE's FEIS, as adopted by TVA, is Alternative 5, Maximum Commercial Use.

TVA's actions related to the preferred alternative include entering into an interagency agreement with DOE to obtain approximately 33 metric tons of highly enriched uranium (HEU) for blend down and subsequently to use the low enriched uranium (LEU) in the form of nuclear reactor fuel at TVA's Browns Ferry Nuclear Plant (BFNP). Interagency agreements are a common method for federal agencies to frame roles, responsibilities, and conditions for arrangements between agencies. TVA actions related to the preferred alternative also include entering into contracts with a consortium composed of Framatome ANP of Lynchburg, Virginia and Richland, Washington and Nuclear Fuel Services of Erwin, Tennessee, to process and blend the uranium and to fabricate the fuel.

FOR FURTHER INFORMATION CONTACT: Bruce L. Yeager, Senior Specialist, National Environmental Policy Act, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, mail stop WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–8051 or e-mail blyeager@tva.gov.

SUPPLEMENTARY INFORMATION:

Synopsis of Decision

After analysis of the adequacy and applicability of the DOE's Final Environmental Impact Statement for Disposition of Surplus Highly Enriched Uranium, TVA's adoption of the DOE FEIS (**Federal Register**, February 14, 2001), re-circulation of the DOE FEIS, and the consideration of public comments received on TVA's adoption of the FEIS, TVA decided to implement the actions (as described below) related to the preferred alternative identified in the DOE FEIS. These actions include entering into an interagency agreement with the DOE and into contracts with a private consortium for the procurement and processing of the HEU and for the fabrication of LEU into nuclear fuel. TVA will obtain approximately 33 metric tons of HEU from the DOE for blending down and subsequently use the LEU as nuclear reactor fuel at TVA's BFNP. Framatome ANP will process and blend the uranium at the Nuclear Fuel Services facility in Erwin, Tennessee, and fabricate fuel at its facilities in Richland, Washington. The first fuel covered by the contracts is expected to be loaded during the spring of 2005 and the last reload is expected to occur in 2015.

Basis for Decision

TVA has decided to implement the actions described under the DOE preferred alternative (Maximum Commercial Use) because it would result in substantial savings to TVA ratepayers in nuclear fuel costs in the years 2005–2015, thereby aiding TVA in its mission of providing low cost, reliable power for the Tennessee Valley region without significantly impacting the environment. Implementation of

TVA's actions would also avoid the environmental impacts associated with producing an equivalent amount of LEU from 14 million pounds of natural uranium (as U3O8) that in turn would require mining of 140,000 tons of ore.

Background

In accordance with United States policies and international agreements for the non-proliferation of weapons-usable fissile material, the President declared on March 1, 1995 that approximately 200 tons of this material was surplus to United States defense needs. In the HEU Final EIS (Issued June 28, 1996), DOE considered the potential environmental impacts of alternatives for a program to reduce global nuclear proliferation risks by blending up to 200 metric tons of United States-origin surplus HEU down to LEU to make it non-weapons usable. The resulting LEU was to either be sold for commercial use as fuel feed for non-defense nuclear power plants, or disposed of as low-level radioactive waste (LLW). After consideration of the public comments received, DOE finalized the HEU EIS and decided to implement the preferred alternative (Maximum Commercial Use) of the FEIS. Implementation of the preferred alternative will involve gradually blending up to 85 percent of the surplus HEU to a U-235 enrichment level of approximately 4 percent for sale and commercial use over time as reactor fuel feed, and blending the remaining surplus HEU down to an enrichment level of about 0.9 percent for disposal as LLW. This would take place over an estimated 15-to 20-year period.

Three blending technologies (uranyl nitrate hexahydrate [UNH] liquid) blending; uranium hexafluoride (gas); or molten metal blending), and four potential blending sites (DOE's Y–12 Plant in Oak Ridge, Tennessee; DOE's Savannah River Site in Aiken, South Carolina; the Babcock and Wilcox Naval Nuclear Fuel Division Facility in Lynchburg, Virginia; and the Nuclear Fuel Services, Inc. Plant in Erwin, Tennessee) were considered in the FEIS.

DOE issued the Final Environmental Impact Statement for Disposition of Surplus Highly Enriched Uranium in June 1996, and subsequently issued a Record of Decision on July 29, 1996.

TVA published a Notice of Adoption for this FEIS in the **Federal Register** on February 14, 2001, and the Environmental Protection Agency's Notice of Availability for re-issue of the FEIS appeared in the **Federal Register** on February 16, 2001. The FEIS was re-circulated by TVA to federal and state agencies. Individuals and organizations who had provided comment on DOE's draft EIS were mailed the Notice of Adoption and a letter noting TVA's adoption of the FEIS, and its availability. Additionally, the FEIS was placed in local libraries in Aiken, South Carolina; Richland, Washington; Athens, Alabama; and Erwin, Oak Ridge, Knoxville, and Chattanooga, TN.

At their March 28, 2001, public meeting, the TVA Board of Directors approved delegation of authority to enter into the Interagency Agreement with the Department of Energy for obtaining surplus HEU and processing the HEU to LEU. The Board further approved delegation of authority for awarding separate contracts to Framatome ANP (Lynchburg, VA and Richland, WA) for processing and blending HEU to LEU, and for fabrication of fuel assemblies for use in TVA reactors. The environmental impacts of the above actions were earlier evaluated by TVA and determined to be bounded by the actions analyzed in the DOE FEIS. The FEIS was subsequently adopted by TVA.

Alternatives Considered

Because of the large number of potential combinations of end products, blending technologies and blending sites, DOE formulated several representative alternatives that bounded potential effects. The Final HEU EIS adopted by TVA considered and analyzed the No Action Alternative and four reasonable alternatives for blending of a nominal 200 metric tons of surplus HEU down to LEU to make it non-weapons-usable. In addition to the No Action Alternative (continued storage of surplus HEU), DOE considered four alternatives that represent reasonable choices within the matrix of possible combinations for blending of different proportions of the surplus HEU for commercial use or for disposal as waste, with variations on numbers and locations of blending sites. The analyses of potential effects from the types and amounts of materials, transfer of materials, and sites in the range of alternatives considered by DOE bound those implemented in TVA's actions. The FEIS considered:

- Alternative 1—No Action (continued storage)
- Alternative 2 (No Commercial Use)—Blend 100 percent to waste (at all four sites)
- Alternative 3 (Limited Commercial Use)—Blend 75 percent to waste (at all four sites), 25 percent to fuel (at 2 commercial sites)
- Alternative 4 (Substantial Commercial Use)—Blend 35 percent to waste, 65 percent to fuel (at any 1 site, the 2 commercial sites, the 2 DOE sites, or at all 4 sites)
- Alternative 5 (Maximum Commercial Use)—Blend 15 percent to waste, 85 percent to fuel (at any 1 site, the 2 commercial sites, the 2 DOE sites, or at all 4 sites).

As described in the DOE FEIS, each alternative involving commercial use of LEU derived from surplus HEU (Alternatives 3, 4, and 5) included transfer of 50 metric tons of surplus HEU and 7,000 metric tons of natural uranium from DOE stockpiles to the United States Enrichment Corporation (USEC) for eventual sale and commercial use.

Environmentally Preferred Alternative

Council on Environmental Quality (CEQ) regulations require that a Record of Decision identify the environmentally preferred alternative(s). The analyses in DOE's HEU final EIS indicated that the environmentally preferred site for the blending facility would be the Savannah River site (SRS). However, since the impacts at all proposed blending sites are expected to be low during normal operations (including radiological impacts) and well within regulatory limits, and since the overall risks associated with potential accidents are low, TVA concludes that the minor environmental differences between sites would not serve as a basis for choosing among them. Each of the facilities identified in the FEIS would be capable of blending up to the entire inventory of surplus HEU without significant adverse environmental impacts. Further, location of the oxide conversion facility at NFS in Erwin, Tennessee, where conversion of UNH liquid to uranium dioxide powder will occur with subsequent shipment of the oxide powder to the Framatome ANP-Richland nuclear fuel fabricating facility, has less potential for environmental impacts than shipment of UNH liquid or crystals to the fabricating facility.

Environmental Consequences

The environmental analyses in DOE's FEIS estimated that the incremental radiological and other impacts of disposition of HEU during normal accident-free operations would be low for workers, the public and the environment, and well within regulatory requirements for all alternatives. Blending activities that would be conducted for the proposed TVA actions would be substantively the same as activities that have been analyzed in DOE's FEIS. The incremental impacts from TVA's actions would be low and well within the

bounds of impacts described in the DOE FEIS. There would be some increases in water usage, fuel needs, and waste generation from use of the NFS site. However, these increases can be accommodated at the NFS site. The only additional construction required would be that for an oxide conversion facility and a uranyl nitrate storage facility at the NFS site. As discussed in response to comments below (Impact of Converting Low Enriched Uranyl Nitrate Solution to UO2 (Provision 7), the potential effects of performing the conversion to oxide at NFS is not a substantial change relevant to environmental concerns in the FEIS. Further, the impact of these minor changes is within the bounds of impacts analyzed. Conversion of the material at NFS would result in fewer and safer shipments of a less soluble form of uranium.

Response To Public Comments Received on TVA's Adoption Of DOE's FEIS

During the public review period, four agencies (US Environmental Protection Agency {EPA}, Nuclear Regulatory Commission {NRC}, Alabama Department of Environmental Management {ADEM} and Tennessee Department of Environment and Conservation {TDEC}); two organizations (Local Oversight Committee—Oak Ridge Reservation {LOC} and the Citizens for National Security {CNS}); and three individuals responded with comments on TVA's notice of adoption of the DOE FEIS for highly enriched uranium (HEU) disposition. On March 16, 2001, the EPA published their Availability of Comments on Environmental Impact Statements in the **Federal Register** in which the EPA expressed lack of objections with TVA's adoption of, and no concerns with, DOE's FEIS provided TVA follows the actions described in the FEIS. On March 8, 2001, the Alabama Department of Environmental Management (ADEM) responded that the agency had no comments concerning the disposition of highly enriched uranium into nuclear fuel assemblies for the TVA BFNP in Athens, Alabama.

General comments from individuals included concerns regarding: (1) Threat of nuclear materials to humans and the environment (1 individual); (2) comments of support regarding the nuclear power industry and/or the TVA action (2 individuals); (3) the appropriateness of using an Interagency Agreement between TVA and DOE (LOC); and 4) desire for a public meeting or additional time for comment (LOC and 1 individual). The first two comments were noted. With regard to the third comment the proposed use of an Interagency Agreement between TVA and DOE to document each parties obligations is an appropriate contractual instrument to specify the role of two federal agencies implementing a project. A considerable number of opportunities were provided to the public to comment on the original DOE FEIS. The 33-day period provided for submitting comments on TVA's adoption of DOE's FEIS (after re-circulation of the FEIS), constituted additional opportunity for review of TVA's proposed actions and their relationship to DOE's actions. All comments received were considered in TVA's deliberations.

Other comments from the public, organizations, and agencies were in the following areas of specific concern:

- General comments about need to maintain consistency with the DOE FEIS (EPA, TDEC, LOC, CNS);
- Source of blendstock, inclusion of off-specification materials in the DOE FEIS, the processes used for blending and types of products involved (LOC, NRC, 1 individual);
- Desired identification of specific transport routes, methods and types of materials (CNS, LOC, 1 individual) as it relates to the DOE FEIS;
- Scaling down of potential impacts to the lesser quantities involved in the TVA action (1 individual);
- NEPA analysis related to the NFS facility and the environmental assessment to be performed by NRC for a license amendment for the NFS facility (NRC, 1 individual);
- Age of the DOE FEIS and identification of areas the commenter believed needed updated, additional review or further disclosure of analyses, e.g. socioeconomic, transportation, safeguards and accident scenarios (CNS);
- Assurance that regulation and licensing would be consistent with NRC procedures for other commercial fuel cycle facilities in the United States and previous Records of Decision issued by DOE regarding disposition of Low Level Waste (TDEC).

TVA initiated review on the use of surplus HEU as a source of low enriched uranium in March, 1994 in response to a Commerce Business Daily inquiry and **Federal Register** notice from DOE for proposed disposition options for uranyl nitrate (UN) solutions at its Savannah River Site (SRS). TVA performed feasibility studies specifically aimed at utilization of ''off-spec'' HEU as a source of enriched uranium for TVA reactors and began discussions with commercial fuel vendors to identify potential interest in providing fuel fabrication services using such uranium. Based on these studies, TVA provided input for DOE's consideration in evaluating the alternatives for HEU disposition in the FEIS. Following NEPA review for potential environmental effects, TVA conducted a limited successful demonstration (from Spring 1999 through Fall 2000) at its Sequoyah Nuclear plant using 4 fuel assemblies derived from off-specification highly enriched uranium. Results of the test indicated that the HEU-derived fuel performed normally, caused no changes in plant operational parameters, characteristics or safety, and resulted in no new or additional wastes beyond those occurring with typical operations.

In 1997, TVA and DOE signed a Memorandum of Understanding to fully investigate the commercial and technical viability of using up to 33 metric tons of ''off-spec'' HEU. TVA requested formal proposals from all domestic commercial fuel vendors in 1998 to provide services including HEU purification, downblending, conversion to uranium dioxide powder, and fabrication into fuel assemblies. A consortium composed of Framatome-Cogema Fuels in Lynchburg, Virginia, Siemens Power Corporation in Richland, Washington, and Nuclear Fuel Services in Erwin, Tennessee, provided the best proposal. Subsequent to the original proposal, Framatome-Cogema Fuels and Siemens Power Corporation merged into Framatome ANP. TVA then initiated joint negotiations with DOE and the consortium to determine the most cost-effective approach to complete the HEU disposition consistent with the FEIS assumptions. These negotiations have culminated in the TVA decision to enter into agreements with DOE and the commercial consortium. These agreements have the following major provisions:

1. DOE shall provide natural uranium in the form of UF6 to TVA as blendstock.
2. TVA shall provide natural uranium oxide for downblending 33 metric tons of HEU.
3. TVA's contractor shall convert 225 metric tons of natural uranium powder into UN solution and ship the solution to SRS for downblending HEU.
4. DOE shall downblend approximately 16 metric tons of HEU at SRS into low-enriched UN solution containing 233 metric tons of uranium.
5. TVA's contractor shall ship the low-enriched UN solutions from SRS to the NFS site.
6. DOE shall ship approximately 17 metric tons of HEU to NFS for

downblending into low-enriched UN solution containing 228 metric tons of uranium.

7. TVA's contractor shall convert all of the low-enriched UN solutions to UO2 powder containing 461 metric tons of uranium at the NFS site.

8. TVA's contractor shall ship the UO2 powder to Richland, WA for fuel pellet and fuel assembly fabrication.

The environmental impacts of the above actions have been evaluated by TVA and determined to be bounded by the actions analyzed in the FEIS. The following discussion provides the basis for this determination, and also attempts to address comments received from the public, organizations and agencies.

Impact of Blendstock Selection (Provisions 1 and 2)

DOE evaluated a number of different options for providing uranium blendstock to blend the HEU (FEIS pages 2–4 & 2–14). These included depleted uranium and natural uranium both in the form of UF6 and uranium oxide powder. The natural or depleted UF6 to be provided to TVA already exists in DOE inventory at the USEC. Transfer to TVA would be accomplished at the USEC site by a ''book transfer'' to the TVA inventory already in storage at USEC. Therefore, no environmental impact would result from this transfer action. Since a UNH blending process will be utilized both at SRS and NFS, UF6 must be converted into uranium oxide powder for dissolution into UN solution. TVA evaluated the alternative of converting the UF6 to uranium oxide at one of its commercial fuel fabricators versus procuring uranium oxide powder directly on the commercial uranium market. The total cost of shipping the UF6 (either natural or depleted uranium), conversion to uranium oxide powder, and shipping the powder to NFS for dissolution was greater than procuring the powder directly. Furthermore, the environmental impact of the UF6 conversion to powder would be greater. Approximately 50–70 shipments of depleted or natural UF6 from the USEC facilities in Paducah, Kentucky, or 50 shipments of depleted UF6 from Oak Ridge, Tennessee, would be required. The FEIS evaluated shipping UF6 to the GE (now Global Nuclear Fuel—GNF) plant in Wilmington, North Carolina, from Paducah (a distance of 1,278 km) or from Oak Ridge (a distance of 791 km) for conversion to uranium oxide powder. Once converted the uranium oxide powder would have to be shipped from the GNF plant to NFS (a distance of 860 Km) in approximately 40 shipments. To complete these actions, a minimum of 90 total shipments resulting in 73,950 shipment-km of transportation would be required. TVA proposed procuring uranium oxide powder directly from a commercial supplier such as Cameco in Ontario, Canada. Approximately 40 shipments of uranium powder from the Cameco facility in Blind River, Ontario, Canada (a distance of 1,700 Km from NFS) would be required, resulting in 68,000-km of transportation. Although, the route from Cameco to NFS was not specifically analyzed in the FEIS, the expected environmental impact from this transportation is estimated to be less than the UF6 alternative primarily due to the elimination of the UF6 shipments. (Note that UF6 is a more volatile chemical form than uranium oxide). Shipment of uranium oxide powder from other commercial suppliers in the United States would have less impact than shipments from Cameco. The FEIS did evaluate the impact of shipping natural uranium powder from the Hanford site in Richland, Washington, to SRS (a distance of 4,442 km) to bound the maximum intersite transportation effects (FEIS page 2–14 and Appendix G) for all intermediate routes. The FEIS analyses of this route does bound the impact of the TVA proposed action. TVA also evaluated use of surplus depleted uranium solutions at SRS and surplus low-enriched uranium powder at DOE's Fernald site as blendstock.

Both of these alternatives were unacceptable because the chemical contaminants in this material made it unusable as blendstock.

Finally, the incremental effect of TVA's adopted action is less than the TVA alternative action of refueling its reactors using uranium procured in the commercial market. If TVA did not use the surplus HEU as a source of uranium, it would have to procure natural UF6 from its commercial vendors. Only two vendors exist in North America, ConverDyne in Illinois and Cameco in Canada. TVA normally procures 50 percent of its requirements annually from each of these suppliers. If the HEU-derived uranium is not used, TVA would procure approximately 2,500,000 kg of uranium as UF6 from Cameco. This would require over 300 shipments of natural UF6 from Cameco to USEC enrichment facilities at Paducah, Kentucky, (a distance of 1450 km) resulting in 435,000 shipment-km. Therefore, the proposed action, procuring natural uranium oxide powder from Cameco as blendstock has much less significant environmental impacts in regard to transportation than the alternative of not using the HEU-derived uranium.

Impact of Blendstock Dissolution (Provision 3)

The natural uranium oxide powder delivered to NFS will be converted into a uranyl nitrate solution for blending HEU using the UNH blending process (FEIS page 2–20). Approximately, 562,500 liters of uranyl nitrate solution containing 225,000 kg of uranium will be shipped from the NFS site in Erwin, Tennessee, to the SRS in Aiken, South Carolina, (a distance of 620 km). The shipments will be made in DOT certified cargo tank trailers approved for shipping uranyl nitrate solution. Approximately 50 shipments total will be required with a maximum of 15 shipments in a year. The route to be taken will primarily be interstate highways from Johnston City, Tennessee, to Asheville, North Carolina, via I–81 and I–40, Asheville, North Carolina, to Columbia, South Carolina, via I–26, and Columbia, South Carolina, to Aiken, South Carolina, via I-20. The FEIS does not specifically evaluate these shipments in Appendix G. However, the FEIS does evaluate shipment of 4 percent uranyl nitrate solution from SRS to the Westinghouse commercial fuel fabrication plant in Columbia, South Carolina, (FEIS page 4–95) and the shipment of 4 percent uranyl nitrate hexahydrate from NFS to Westinghouse in Columbia, South Carolina, (FEIS page G–7) over the same route. The results of the FEIS transportation analyses bound the expected impacts of the planned natural uranyl nitrate solution shipments from Erwin, TN to Aiken, SC because the total number of shipments evaluated in the FEIS over the same route is greater than 500 shipments and the FEIS analyses were done for 4 percent enriched uranium instead of natural uranium. The total health impact of shipping the natural uranyl nitrate solution (estimated at <6E–03 fatalities total) is significantly less than the total heath impact from the FEIS analyses (5.5E–02 fatalities total). Furthermore, the FEIS bounding analyses for shipping natural uranium blendstock (FEIS page 2–14) is from the Hanford site in Richland, Washington, to SRS (a distance of 4,442 km). For 50 shipments of natural uranium blendstock over this route a total health impact of 3.7E–02 fatalities can be calculated from Table G.1–6 of the FEIS.

Impact of Blending 17 Metric Tons of HEU at SRS (Provision 4)

The FEIS specifically evaluates blending up to 200 metric tons of HEU to a combination of 4 percent UNH and

0.9 percent UNH at SRS (FEIS pages 2–64 to 2–77).

Impact of Shipping Enriched Uranyl Nitrate Solution from SRS to NFS (Provision 5)

TVA's contractor will ship 233 metric tons of low enriched uranium as uranyl nitrate solution from SRS to NFS in Erwin, Tennessee. The route to be used is the same route discussed previously in regard to natural uranium solution shipping. The shipments will be made in 230 gallon Type B shipping containers licensed by the NRC. Each commercial truck shipment will carry 9 shipping containers for a total of 2070 gallons containing 800 kg of uranium. Type B shipping containers are required by federal regulations for these shipments because of the U–234 concentration expected in the uranyl nitrate solution. Type B containers are designed and tested to meet stringent requirements (FEIS page G–14) to ensure that the contents are not released even under hypothetical accident conditions. TVA contracted with Columbiana Boiler to design, test, and license a bulk liquid transport package suitable for shipping low-enriched uranyl nitrate solution.

The uranyl nitrate solution shipping campaign will occur over the period of 2003–2007 and will require approximately 300 shipments. The maximum number of shipments expected per year is 70. The FEIS evaluated shipment of 4 percent uranyl nitrate solution from SRS to the Westinghouse commercial fuel fabrication plant in Columbia, South Carolina, (FEIS page 4–95) using Type A cargo tankers and the shipment of 4 percent uranyl nitrate hexahydrate crystal from NFS to Westinghouse in Columbia, South Carolina (FEIS page G–7) using Type A containers.

These shipments are over the same route proposed for the low enriched uranyl nitrate solution. The results of the FEIS transportation analyses cited bound the expected impacts of the planned low enriched uranyl nitrate solution shipments because the total number of shipments evaluated in the FEIS over the same route is greater than 500 shipments as compared to the 300 shipments necessitated by the TVA action. Additionally, the FEIS assumes the shipments are made in Type A containers (FEIS page 4–102) with a 100 percent content release rate during maximum accident conditions (FEIS page G–2). The low enriched uranyl nitrate solution shipments will be made in Type B containers with zero content release expected during accident conditions. The total health impact of shipping the low enriched uranyl nitrate solution is estimated to be less than 5.8E–02 fatalities using the conservative assumptions of the FEIS. The smaller number of shipments and the use of Type B containers would result in lesser health impacts from TVA actions. Furthermore, the FEIS bounding analyses for shipping low enriched uranium is from SRS to Siemens in Richland, Washington, (a distance of 4,442 km). For 300 shipments of low enriched uranium over this route a total health impact of 2.1E–01 fatalities can be calculated from Table G.1–7.

Impact of Blending 16 Metric Tons of HEU at NFS (Provision 6)

The FEIS specifically evaluates blending up to 200 metric tons of HEU to a combination of 4 percent UNH and 0.9 percent UNH at NFS (FEIS pages 2–64 to 2–77).

Impact of Converting Low Enriched Uranyl Nitrate Solution to UO2 (Provision 7)

Processing and downblending up to 200 metric tons of HEU at the NFS site is specifically evaluated in the FEIS. The FEIS assumes that the product of the downblending operation would be UNH crystals. The process is illustrated in the FEIS on page 2–21. Further, the FEIS assumes that the UNH crystals will be shipped to commercial fuel fabricators for dissolution to UN liquid, denitration to U3O8 powder, and reduction to UO2 powder.

Under TVA's adopted action, the denitration and reduction processes to produce low enriched UO2 powder would be undertaken at the NFS site. The FEIS evaluated the impacts of downblending 25 percent of the surplus HEU (50 metric tons) to 0.9 percent enriched uranyl nitrate solution (3750 metric tons) and conversion to U3O8 powder at the NFS site (FEIS pages 2–20 to 2–22 and 2–41 to 2–44). Thermal denitration of uranyl nitrate solution to U3O8 will produce essentially equivalent gaseous and liquid effluents as the ammonium diuranate(ADU) process used to produce UO2. In the thermal denitration process, nitrates are recovered from the offgas in a liquid process. In the ADU process, the nitrates are also recovered as liquid and the ammonium hydroxide is recycled. Both processes require offgas treatment including filtration for uranium solids by HEPA filtration. Since the effluent from the ADU process will be concentrated and solidified, the impact to the environment will be minimized. Therefore, the FEIS analyses for conversion of 3750 metric tons uranium as uranyl nitrate solution to U3O8 powder bound the expected impacts of the proposed conversion of 461 metric tons uranium as low enriched uranyl nitrate solution to UO2 powder at the NFS site. Addition of these processes and the storage tank facility at the NFS site for uranyl nitrate, would require a license amendment from the NRC. The NRC will independently evaluate the potential environmental impacts of a proposed license amendment by NFS.

Impact of Shipping 461 Metric Tons of UO2 Powder to Framatome ANP-Richland (Provision 8)

After the low enriched uranyl nitrate solution is converted into UO2 powder at NFS, it will be shipped to the Framatome ANP fuel fabrication facility in Richland, Washington. The shipping campaign will occur over the period of 2004–2008. A total of 154 shipments will be required to transport 461 metric tons of uranium as UO2 powder. The maximum number of shipments expected in any one year is 40. The UO2 will be packaged in Type B shipping containers meeting DOT requirements and licensed by the NRC. The FEIS evaluates shipping low enriched uranium as UNH crystals from NFS to Siemens (now Framatome ANP) in Richland, WA. UNH crystals require more volume than UO2 powder, therefore, 215 shipments would be needed to ship the 461 metric tons of uranium as crystals. Furthermore, UNH crystals are much more soluble than UO2 powder and accidental releases of UNH crystals would likely have a more significant impact than releases of UO2 powder. From the FEIS Table G.1–7, the total health impact for these shipments is calculated as 1.44E–01 fatalities. The FEIS analyses bound the expected impacts of shipping the low enriched uranium as UO2.

Use of Off-Specification HEU

TVA is planning to use the off-specification material described in the FEIS that can be economically recovered. The FEIS does cover the impact of blending this off-specification uranium to 4 percent enrichment for commercial reactor use in Alternative 5 : Maximum Commercial Use Alternatives (Pages 2–9). This alternative evaluated an 85 percent fuel/15 percent waste ratio for 200 metric tons of surplus HEU. The 85 percent commercial fuel usage included off-specification uranium that could be economically recovered (approximately 33 metric tons). The 15 percent waste included HEU material that cannot be economically recovered. The results are summarized in Table 2.4–1 (page 2–64) and discussed in Chapter 4 of the FEIS.

Socioeconomics

TVA's staff economist reviewed the DOE FEIS and concluded that the FEIS adequately covers the socioeconomic and environmental justice considerations for TVA's proposed actions. One activity was evaluated in greater detail for socioeconomic effects to corroborate that effects were minimal and did not create additional substantive issues or potential for impacts. Construction of additional facilities at NFS is not explicitly addressed in the DOE FEIS. Construction would require about 4 years, with a maximum employment of about 105 workers. This activity would have a positive socioeconomic impact on the area. At maximum employment, the number of jobs in Unicoi County, where the facility is located, would increase about 1.6 percent. However, the Labor Market Area within which most construction workers would live, also includes Carter, Sullivan and Washington Counties. This Labor Market Area (LMA) has a combined employment level of over 189,000 workers. Therefore the maximum LMA employment increase during construction would be less than one-tenth of one percent and would constitute a minor, insignificant addition to employment in the LMA.

Other Considerations

As discussed, the DOE FEIS bounds the expected environmental impacts from the proposed TVA actions. Furthermore, the alternative of obtaining low enriched uranium through conventional mining, milling, conversion, and enrichment has far greater environmental impacts than the proposed action. To produce an equivalent amount of LEU for fuel rod assemblies would require 14 million pounds of U3O8 which would conservatively require mining about 140,000 tons of ore. Finally, the following should be considered. The Department of Transportation estimates that 3.6 billion tons of regulated hazardous materials are transported each year in the United States with approximately 500,000 shipments of hazardous materials occurring each day (FEIS page 4–101). There are approximately 2 million annual shipments of radioactive materials representing about 2 percent of the annual hazardous material shipments. As discussed, TVA's proposed actions will replace some of those shipments with other shipments in the form of natural uranium and low enriched uranium. All of the shipments anticipated resulting from the TVA actions would represent less than a 0.01 percent increase in the number of expected radioactive material shipments over the same time period, and constitute an insignificant addition to the amount of such material shipped.

Avoidance and Minimization of Environmental Harm

As discussed, implementation of the decisions in this ROD will result in low environmental and health impacts during normal operations. These impacts were adequately addressed in the DOE FEIS. However, DOE, TVA, and its contractors will take all reasonable steps to avoid or minimize harm, including the following:

- DOE and TVA will use current safety and health programs and practices to reduce impacts by maintaining worker radiation exposure as low as reasonably achievable.
- DOE, TVA and its contractors will meet appropriate waste minimization and pollution prevention objectives consistent with the Pollution Prevention Act of 1990. As discussed in the HEU FEIS, segregation of activities that generate radioactive and hazardous wastes will be employed, where possible to avoid the generation of mixed wastes. Treatment to separate radioactive and non-radioactive components will be employed to reduce the volume of mixed wastes. Where possible, non-hazardous materials will be substituted for those that contribute to the generation of hazardous or mixed waste. Waste streams would be treated to facilitate disposal as nonhazardous wastes, where possible. In addition to following such practices at its own federal facilities, TVA and DOE will seek to include comparable requirements in contracts with commercial facilities.

Dated: November 4, 2001.

John Scalice,

Chief Nuclear Officer and Executive Vice President.

[FR Doc. 01–28844 Filed 11–16–01; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of the Record of Decision for the Proposed Chicago Terminal Airspace Project

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of the Record of Decision (ROD).

SUMMARY: The FAA is announcing the approval of the Record of Decision (ROD) for the Final Environmental Impact Statement for the Chicago Terminal Airspace Project (CTAP). The ROD provides final agency determinations and approvals for air traffic actions.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Davis, Environmental Specialist, AGL–520.E, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (847) 294–8091.

SUPPLEMENTARY INFORMATION: The ROD describes and approves the implementation of FAA actions associated with high-altitude airspace and procedural changes for flights to/from the Chicago region. The project would not provide for any airport related development nor would it cause significant adverse environmental impacts. The FAA's actions, which include only air traffic actions, are described tin detail in the CTAP Final Environmental Impact Statement (FEIS), which was approved on August 23, 2001.

In reaching the decisions, the FAA has given careful consideration to: (a) The aviation safety and operational objectives of the project in light of the various aeronautical factors and judgments presented; (b) the need to enhance efficiency of the national air transportation system; and (c) the anticipated environmental impacts of the project.

The FAA's determinations on CTAP are discussed in the ROD, which was approved on November 2, 2001.

ADDRESSES: The ROD is available for review at: Federal Aviation Administration; Airspace Branch; AGL–520, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Individuals who would like to review the ROD must contact Ms. Annette Davis at (847) 294–8091 to make prior arrangements. The ROD will also be posted at the following Web site: *http://www.faa.gov/ctap.html*

Issued in Des Plaines, Illinois on November 9, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 01–28869 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal

Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Morris Leasing Company, Ltd.

[Docket Number FRA–2001–9999]

The Morris Leasing Co., Ltd. of White Pigeon, Michigan has petitioned for a waiver of compliance for two locomotives from the requirements of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows and, additionally, a waiver of compliance for one locomotive from the requirements of the Railroad Safety Appliance Safety Standards, 49 CFR part 231, which requires all locomotives built prior to April 1, 1977, be equipped with four switching steps.

The two locomotives are used for hauling cars for unloading limestone. The locomotives do not cross any public highways, highway grade crossings, or public streets.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2001–9999) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on November 13, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–28871 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10900]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Chrysler Grand Voyager Multipurpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 Chrysler Grand Voyager multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998 Chrysler Grand Voyager multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 19, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'')(Registered Importer 90–005) has petitioned NHTSA to decide whether 1998 Chrysler Grand Voyager multipurpose passenger vehicles, originally manufactured for sale in European markets, are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1998 Chrysler Grand Voyager multipurpose passenger vehicles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998 Chrysler Grand Voyager multipurpose passenger vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1998 Chrysler Grand Voyager multipurpose passenger vehicles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998 Chrysler Grand Voyager multipurpose passenger vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102

Transmission Shift Lever Sequence * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Motor Vehicle Brake Fluids*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 Head Restraints, 203 *Impact Protection for the Driver from the Steering Control Panel*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1998 Chrysler Grand Voyager multipurpose passenger vehicles comply with the Vehicle Identification Number plate requirement of 49 CFR part 565 and the Bumper Standard found in 49 CFR part 581. Petitioner also states that the non-U.S. certified 1998 Chrysler Grand Voyager multipurpose passenger vehicles are not covered by the Theft Prevention Standard of 49 CFR part 541.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Add brake warning indicator label, if necessary.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of headlight and taillight assemblies with sidemarker lights.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Etch required warning on passenger side mirror glass.

Standard No. 208 *Occupant Crash Protection:* Installation of audible safety belt warning system for the driver side and, if necessary, replacement of air bag systems and knee bolsters with U.S. versions.

The petitioner also states that a certification label must be affixed to the driver=s side door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 14, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 01–28831 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9 AM on Wednesday, December 5, 2001, at the Sheraton West Palm Beach Hotel, 630 Clearwater Park Road, West Palm Beach, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 30, 2001, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 14, 2001.

Marc C. Owen,

Chief Counsel.

[FR Doc. 01–28850 Filed 11–16–01; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34112]

Cape May Seashore Lines, Inc.—Modified Rail Certificate

On October 22, 2001, Cape May Seashore Lines, Inc. (CMSL), a noncarrier, filed an application [1] for a modified certificate of public convenience and necessity under 49 CFR 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate approximately 28.94 miles of rail line on the Cape May Branch between milepost 51.87 at Tuckahoe, NJ, and milepost 80.0 at Cape May City, NJ, and on the Cape May Point Branch between milepost 0.0 at Cape May City and milepost 2.6 at Cape May Point. Consolidated Rail Corporation (Conrail) owned and operated the line until September 15, 1978, when it was sold to the Commuter Operating Agency of the New Jersey Department of Transportation pursuant to sections 206(c)(1)(D) and 206(d)(5)(C) of the Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. 701 *et seq*. It is CMSL's understanding that Conrail continued to provide freight service over the line until June 10, 1983, when Conrail obtained authority from the former Interstate Commerce Commission to terminate operations over the line.[2]

CMSL also states that after Conrail terminated its operations, The Shore Fast Line, Inc.,[3] a Class III short line railroad, provided freight service on the line. This carrier was subsequently replaced by the Southern Railroad of New Jersey.

On May 21, 1999, CMSL entered into a long term lease agreement with the New Jersey Transit Authority (NJT), successor to the New Jersey DOT's Commuter Operating Agency, to provide excursion passenger service on the line. This agreement was modified on May 22, 2001, to give CMSL the sole and exclusive right to operate both excursion passenger and common carrier freight service. The initial term

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[1] CMSL concurrently filed redacted and unredacted versions of its application, along with a request for a protective order. A protective order limiting access to and use of applicant's confidential information contained in its unredacted filing was served on November 2, 2001.

[2] *See Conrail Abandonment in Cape May County, NJ*, Docket No. AB–167 (Sub–No. 478) (ICC served July 1, 1983).

[3] *See generally, Better Materials Corporation and J.C. McHugh-Control Exemption-The Shore Fast Line, Inc., and The Shore Fast Line, Inc.-Operation and Commodities Clause Exemption*, Finance Docket No. 30156 *et al.*, (ICC served May 3, 1983).

of the lease between CMSL and NJT is for approximately 30 years, from May 21, 1999, to July 31, 2029.

The line connects with the Conrail Shared Assets Operation at milepost 51.87 at Tuckahoe, NJ, providing customers with access to both CSX Transportation, Inc. and Norfolk Southern Railroad Company. CMSL will initially provide freight service over the line on an as-needed basis, and will expand this service as conditions warrant.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivision,* Finance Docket No. 28990F (ICC served July 16, 1981).

CMSL indicates that no subsidy is involved, that there are no preconditions for shippers to meet in order to receive rail service, and that it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street NW, Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street NW, Suite 520, Washington, DC 20005.

Decided: November 7, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28658 Filed 11–16–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application in 1998 with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. This project, known as the Powder River Basin (PRB) Expansion Project, would involve construction of approximately 280 miles of new rail line to extend DM&E's existing rail line from Wall, South Dakota west to coal mines in Wyoming's Powder River Basin. Reconstruction of another approximately 600 miles of DM&E's existing rail would allow operation of unit coal trains along the new and reconstructed route.

In addition to the Board's authorization, the project would require actions by five other Federal agencies: the U.S. Department of Agriculture Forest Service; the U.S. Department of Interior Bureaus of Land Management and Reclamation; the U.S. Army Corps of Engineers; and the U.S. Coast Guard. In conducting the necessary environmental review, the Board's Section of Environmental Analysis (SEA), in cooperation with these five Federal agencies, published a Draft Environmental Impact Statement (Draft EIS) on September 27, 2001. This was followed by a 152-day comment period and 12 public meetings, which produced more than 8,600 comments on the Draft EIS. As required by the National Environmental Policy Act (NEPA), SEA has reviewed and evaluated all comments, prepared responses, and undertaken additional research and analysis, as appropriate.

The Final EIS reflects SEA's independent analysis and incorporates input from agencies, elected officials, Tribes, communities, organizations, businesses, and members of the public. In addition to presenting the results of SEA's additional analysis, and responses to Draft EIS comments, the Final EIS includes SEA's final recommendations to the Board for mitigating, to the extent possible, the potentially significant adverse environmental impacts associated with the proposed project, if the Board decides to give final approval to DM&E's proposal. The Final EIS recommends far-reaching and extensive environmental mitigation—147 conditions in all. The Final EIS also contains information on the anticipated cost of SEA's recommended environmental mitigation and the mitigation that may be required by the five cooperating agencies.

On December 10, 1998, the Board issued a decision finding that DM&E's application satisfies the transportation-related requirements of 49 U.S.C. 10901. The Board made it clear that it would issue a subsequent decision on the entire proposed project after completion of the environmental review process required by NEPA.

Issuance of this Final EIS terminates the Board's environmental review process. SEA has determined that neither a supplement to the Draft EIS nor an additional comment period on this Final EIS is warranted. The Board will now issue a final decision, based on the entire environmental record, including public comments, the Draft EIS, the Final EIS, and SEA's recommended environmental mitigation. In its final decision, the Board will grant, deny, or grant with conditions the proposed PRB Expansion Project. The cooperating agencies will also issue decisions under their own governing statutes, based on the EIS and various applications submitted by DM&E.

DM&E cannot begin construction of its new rail line until the Board issues a final decision approving DM&E's application and the decision has become effective. Under the regulations of the President's Council on Environmental Quality implementing NEPA, no decision of the Board or cooperating agency on DM&E's proposal may be made until 30 days after the U.S. Environmental Protection Agency publishes a Notice of Availability of the Final EIS in the **Federal Register** (anticipated on November 30, 2001).

FOR FURTHER INFORMATION CONTACT: Victoria Rutson, Environmental Project Director, Section of Environmental Analysis, Surface Transportation Board, Powder River Basin Expansion Project, 1–877–404–3044; U.S. Department of Agriculture Forest Service: Wendy Schmitzer, (307) 358–4690; U.S. Department of the Interior Bureau of Land Management: Bill Carson, (307) 746–6607; U.S. Army Corps of Engineers: Chandler Peter, (307) 772–2300 (Omaha District) and Timothy Fell, (651) 290–5360 (St. Paul District); U.S. Department of the Interior Bureau of Reclamation: Kenneth Parr, (605) 394–9757; U.S. Coast Guard: Bruce McLaren, (314) 539–3724. [TDD/TDY for hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: *Public Availability:* The entire Final EIS has been mailed to key reviewing agencies, Governors, elected officials, and appropriate county officers, as well as the parties of record. It is also available to all interested persons for review at over 80 public libraries. For information on where to view a copy of the Final EIS, please call SEA's toll-free Environmental Hotline at 1–877–404–3044. The entire document is also available on the Board's Web site (*http://www.stb.dot.gov*), under ''Decisions & Notices,'' listed as ''Environmental Review'' by Service

Date (November 19, 2001), Docket Number (FD 33407), or Docket Prefix (FD). Finally, a printed copy of the Final EIS may be obtained for a fee by contacting Da-2-Da Legal, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293–7776 or via *http://Da__to__Da@hotmail.com.*

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28843 Filed 11–16–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34115]

Tecumseh Branch Connecting Railroad Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Tecumseh Branch Connecting Railroad Company (TBCR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company and to operate approximately 2.1 miles of rail line (known as the Tecumseh Branch). The rail line is a portion of the former Detroit, Toledo & Ironton Railroad located in the City of Adrian and Township of Madison, Lenawee County, MI, and extends between milepost 44.2 in Madison Township and milepost 46.3 in Adrian. TBCR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after November 1, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34115, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our web site at *www.stb.dot.gov.*

Decided: November 8, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28659 Filed 11–16–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–09: OTS Nos. H–3797 and 00386]

Michigan City Savings and Loan Association, Michigan City, IN; Approval of Conversion

Notice is hereby given that on November 13, 2001, the Director, Examination Policy, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Michigan City Savings and Loan Association, Michigan City, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington, DC 20552, and the OTS Central Regional Office, 1 South Wacker Drive, Suite 2000, Chicago, Illinois 60606.

Dated: November 14, 2001.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 01–28840 Filed 11–16–01; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register

Vol. 66, No. 223

Monday, November 19, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB71

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–44853; File No. S7–16–01]

RIN 3235–A122

Customer Margin Rules Relating to Security Futures

Correction

In the issue of Tuesday, November 13, 2001, on page 56902, in the first column, in the correction of proposed rule document 01–24574, in the first paragraph, in the third line, ''October 24, 2001'' should read ''October 4, 2001''.

In the same correction, in the first column, in paragraph 3., in the first line, ''the same page'' should read ''page 50728''.

In the same correction, in the first column, in paragraph 4(b), in the second line, ''amount'' should read ''amount,''.

[FR Doc. C1–24574 Filed 11–16–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9641]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Identix Incorporated, Common Stock, $.01 par value)

October 31, 2001.

Correction

In notice document 01–27789 appearing on page 56140 in the issue of Tuesday, November 6, 2001, make the following correction:

On page 56140, in the first column, the subject title should be as set forth above.

[FR Doc. C1–27789 Filed 11–16–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–113–AD; Amendment 39–12493; AD 2001–22–14]

RIN 2120–AA64

Airworthiness Directives; Overland Aviation Services Fire Extinguishing System Bottle Cartridges

Correction

In final rule document 01–27412 beginning on page 55559 in the issue of Friday, November 2, 2001, make the following correction:

On page 55562, in the second table, in the first entry under the Procedures column, in the third and fourth line, remove ''cartridge''.

[FR Doc. C1–27412 Filed 11–16–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 19, 2001

Part II

Social Security Administration

20 CFR Parts 404 and 416

Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria; Final Rule,

Rescission of Social Security Acquiescence Ruling 97–2(9); Notice

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AB01

Revised Medical Criteria for Determination of Disability, Musculoskeletal System and Related Criteria

AGENCY: Social Security Administration (SSA).

ACTION: Final rules with request for comments.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate musculoskeletal impairments in adults and children who claim Social Security or Supplemental Security Income (SSI) benefits based on disability under titles II and XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating musculoskeletal impairments.

When the final rules become effective, we will apply them to new applications filed on or after the effective date of the rules and to other claims described in the preamble. Individuals who currently receive benefits will not lose eligibility as a result of these final rules.

Also, although some individuals with musculoskeletal impairments will not meet the requirements of these final listings, they may still be found disabled at a later step in the sequential evaluation process based on their functional limitations.

DATES: These regulations are effective February 19, 2002. Comments must be received on or before January 18, 2002.

ADDRESSES: You may give us your comments via: our Internet site facility (i.e., Social Security Online) at *http://www.ssa.gov/regulations/index.htm;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or, letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Process and Innovation Management, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1769 or TTY (410) 966–5609 for information about these rules. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at www.ssa.gov.

SUPPLEMENTARY INFORMATION: We are revising and making final the rules we proposed in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on December 21, 1993 (58 FR 67574). Although we are publishing these regulations as final rules, we also are providing the public with the opportunity to provide us with comments on the changes we have made in these final rules. Although this is not our usual practice when we issue final rules, we are providing an opportunity to comment on these changes for two reasons. First, we recognize that there is significant public interest in the listings that we use to adjudicate musculoskeletal impairments, since impairments of the musculoskeletal system represent a high percentage of cases that we adjudicate under the listings. Second, we are committed to ensuring that the listings for the musculoskeletal body system continue to reflect appropriate advances in medical knowledge, treatment and methods of evaluating musculoskeletal impairments. In light of the advances in medical knowledge with respect to the treatment and evaluation of musculoskeletal impairments, we have determined that the most appropriate way to ensure that the requirements of these listings continue to reflect current medical knowledge is to request public comments on the changes we are making in these final rules.

We provide a summary of the provisions of the final rules below. A more detailed explanation of the provisions of the final rules and the changes we have made from the text in the NPRM follows in the section, ''Revisions to Appendix 1.'' We then provide a summary of the public comments and our reasons for adopting or not adopting the recommendations in the summaries of the comments in the section, ''Public Comments.'' The final rule language follows the comment section.

Background

The Act provides, in title II, for the payment of disability benefits to individuals insured under the Act. Title II also provides child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are disabled and have limited income and resources. For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, ''disability'' means that an impairment(s) results in an inability to engage in any substantial gainful activity. For a child claiming SSI benefits based on disability, ''disability'' means that an impairment(s) causes marked and severe functional limitations. Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months.

The listings contain examples of some of the most frequently encountered impairments in the disability program. The criteria include specific symptoms, signs, and laboratory findings that are considered to characterize impairments severe enough to prevent a person from doing any gainful activity, or in the case of a child claiming SSI benefits under title XVI of the Act, an impairment that causes marked and severe functional limitations. The listings help to ensure that determinations and decisions regarding disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

The listings contained in appendix 1 to subpart P of part 404 are referenced in subpart I of part 416. The listings are divided into part A and part B. The criteria in part A are applied in evaluating impairments of persons age 18 or over. The criteria in part A may also be applied in evaluating impairments in children (persons under age 18) if the disease processes have a similar effect on adults and children. In evaluating disability for children using the listings, we first use the criteria in part B and, if the criteria in part B do not apply, we use the criteria in part A. See §§ 404.1525 and 416.925. We use the criteria in the listings only to make favorable determinations or decisions regarding disability. We never deny a claim or find that an individual's disability has ceased because an impairment(s) does not meet or medically equal a listing. When an

individual has a severe impairment(s) that does not meet or medically equal a listing, we may still find him or her disabled (or still disabled) based on other rules. For more information about our sequential evaluation processes for adults and children, see §§ 404.1520, 416.920, and 416.924 of our regulations regarding initial claims and §§ 404.1594, 416.994, and 416.994a of our regulations regarding continuing disability reviews.

When the musculoskeletal listings were revised and published in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advances in disability evaluation and treatment and program experience would require that we periodically review and update the medical criteria in the listings. Accordingly, we published termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory text of the listings. We published the latest extension for part A and part B of the musculoskeletal listings, until July 2, 2003, in the **Federal Register** on June 28, 2001 at 66 FR 34361. We are now updating the listings for the musculoskeletal system in 1.00 (part A) and 101.00 (part B). These regulations will expire 7 years after the effective date unless revised and issued again or extended.

We published these regulations in the **Federal Register** on December 21, 1993 (58 FR 67574) as an NPRM. We gave members of the public a period of 60 days in which to comment. The comment period ended on February 22, 1994. Thirty-four commenters provided comments on the NPRM. We have carefully considered all the comments submitted and we respond below to those comments that were substantive. In addition, we discuss the significant differences between the final rules and the proposed rules and the changes we have made in response to the public comments.

Explanation of the Effective Date

As we noted in the ''Date'' section of this preamble, these final rules will be effective February 19, 2002. Under the provisions of 5 U.S.C. 801ff, for certain rules, we must provide an effective date of no less than 60 days after the later of the date the rule is published in the **Federal Register** or the date on which we sent them to Congress for review. There are also extensive changes in these final rules, and we need additional time to provide training and instructions to all of our adjudicators. For these reasons, we have provided that the rules will not be effective until 90 days after the date on which we published them. In addition, we will carefully consider any comments we receive in order to determine whether any changes in these rules are necessary. We will then respond to the comments we receive and publish any necessary revisions as final rules.

We will continue to apply the current rules until the effective date of these final rules. When the final rules become effective, we will apply them to new applications filed on or after the effective date of the rules. Individuals who currently receive benefits will not lose eligibility solely as a result of these listings going into effect.

When we conduct reviews to determine whether an individual's disability continues, we do not find that disability has ended based only on these changes in the listings. Our regulations explain that we continue to use our prior listings when we review the cases of people who receive disability benefits or SSI payments because we found that their impairments met or equaled those listings. In these cases, we determine whether the individual has experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If the individual's impairment still meets or equals the same listing section that we used to make our most recent favorable determination or decision, we will find the medical improvement is not related to the ability to work. If the individual's condition has medically improved so that he or she no longer meets or equals the prior listing, we engage in further evaluation to determine whether the individual is currently disabled. We may find that such an individual is currently disabled, depending on the full circumstances of his or her case. See 20 CFR 404.1594(c)(3)(i), 416.994(b)(2)(iv)(A). We follow a similar rule when we decide whether a child who is eligible for SSI payments has experienced medical improvement in his or her condition. 20 CFR 416.994a(b)(2).

As is our usual practice when we make changes to our regulations, we will apply these final rules to the claims of applicants for benefits that are pending at any stage of our administrative review process, including those claims that are pending administrative review after remand from a Federal court. With respect to claims in which we have made a final decision, and that are pending judicial review in Federal court, we expect that the court's review of the Commissioner's final decision would be made in accordance with the rules in effect at the time of the final decision. If the court determines that the Commissioner's final decision is not supported by substantial evidence, or contains an error of law, we would expect that the court would reverse the final decision, and remand the case for further administrative proceedings pursuant to the fourth sentence of section 205(g) of the Act, except in those few instances in which the court determines that it is appropriate to reverse the final decision and award benefits, without remanding the case for further administrative proceedings. In those cases decided by a court after the effective date of the rules, where the court vacates the Commissioner's final decision and remands the case for further administrative proceedings, on remand, we will apply the provisions of these final rules to the entire period at issue in the claim.

Explanation of the Final Rules

For clarity, we refer to the changes we are making here as ''final'' rules and to the rules that will be changed by these final rules as the ''current'' rules. These final rules update our regulations to reflect advances in the medical treatment and methods of evaluating musculoskeletal impairments since we published the current rules. We explain the reasons for these changes in more detail below. Because these final rules provide listing-level criteria that reflect advances in medical science and technology, some individuals with musculoskeletal impairments who would meet the criteria of the current listings will not meet the requirements of these final listings. Although these individuals may not have their claims allowed at the third step of our sequential evaluation process, depending on their residual functional capacity and age, education and past work experience, they may be found disabled at a later step in the sequential evaluation process.

It must be remembered that these final rules do not go into effect until February 19, 2002. Therefore, the current rules remain in effect until that date.

A claimant with a musculoskeletal impairment, as a claimant with any other impairment(s), may be found disabled without considering age, education, and work experience, if his or her impairment(s) meets or equals one of the sets of medical criteria in the listings. We do not deny any adult's claim solely because his or her impairment(s) does not meet or equal in severity the requirements of any listing. Under the sequential evaluation process set out in §§ 404.1520 and 416.920 of our regulations, for every adult claimant whose severe impairment or combination of impairments does not

meet or equal in severity a listing, we assess his or her residual functional capacity to determine what he or she can still do despite his or her limitations. This individualized assessment of the individual's functioning considers all relevant evidence. Using the residual functional capacity assessment, we determine whether the person retains the capacity to perform his or her past relevant work; if not, we determine if any other work exists in significant numbers in the national economy, considering the individual's residual functional capacity, age, education, and work experience. Thus, we do not deny any adult's claim of disability on the sole basis that the individual's musculoskeletal impairment or any other impairment(s) does not meet or equal in severity the criteria of a listing.

For children claiming SSI benefits based on disability, the impairment(s) must cause marked and severe functional limitations as defined in § 416.906 following a sequential evaluation process for children set out in § 416.924. If the child has a severe impairment that does not meet or medically equal the requirements of a listed impairment, we will determine if the child's impairment(s) functionally equals listing-level severity (see § 416.926a.) If the child's impairment(s) does not meet or medically or functionally equal the requirements of the listings, we will find that he or she is not disabled.

The final rules stress a finding of disability under the musculoskeletal listings on the basis of how the individual is functioning. This factor, especially as it relates to the individual's ability to ambulate and perform fine and gross movements effectively on a sustained basis, drew the greatest number of comments, both positive and negative. For reasons that we will explain in detail below, we have kept with some minor modifications the sections on ability to ambulate and perform fine and gross movements effectively, because we continue to believe that these represent appropriate benchmarks for deciding whether the majority of musculoskeletal impairments are of listing-level severity. We believe these functional criteria represent an appropriate method to evaluate listing-level severity in individuals with musculoskeletal impairments. We will carefully monitor these musculoskeletal listings to ensure that they continue to meet program intent as part of our ongoing review of our criteria in the Listing of Impairments for evaluating musculoskeletal impairments.

As we stated earlier, current beneficiaries will not lose eligibility solely as a result of these listings going into effect. If the beneficiary's impairment(s) does not meet or medically equal the requirements of a listing, we may still find him or her disabled based on other rules. For more information about our sequential evaluation processes for adults and children, see §§ 404.1520, 416.920, and 416.924 of our regulations regarding initial claims, and §§ 404.1594, 416.994, and 416.994a of our regulations regarding continuing disability reviews.

The following is a summary of the provisions of the final rules and the changes we have made from the text of the NPRM published on December 21, 1993 (58 FR 67574) and the comments we received on it. A more detailed discussion of the changes made and why we made them follows in the section discussing public comments. The changes in the proposed rules ''Technical Revisions to Medical Criteria for Determinations of Disability'' that we published in the **Federal Register** on February 11, 2000 (65 FR 6929), and the comments we received in response to that NPRM are not addressed here.

Revisions to Appendix 1

We revised item 2 in the second paragraph of the introductory text to Appendix 1 to show that the part A and part B musculoskeletal system listings will expire 7 years after the effective date of the final regulations.

Revisions to Part A of Appendix 1

1.00 Musculoskeletal System

We reorganized and revised 1.00, the introductory section of the musculoskeletal listings, to bring it up to date and to reflect the new listings. To facilitate use of the new listings, we have provided sub-section headings for the text in this section.

1.00A Disorders of the Musculoskeletal System

This is a new, brief introductory section which describes the pathologic processes that may cause musculoskeletal impairments.

1.00B Loss of Function

We redesignated the section on loss of function from 1.00A in the current rules to 1.00B and have expanded the section to provide more information about the causes of, and ways to evaluate, loss of function resulting from musculoskeletal impairments. The opening section (final 1.00B1) expands the first sentence of current 1.00A to include a wider range of causes for musculoskeletal dysfunction than in the current rule, which mentions only amputation and deformity. The final rules include the following impairments that have been in the listings for some time: Bone or joint deformity or destruction due to any cause, miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits, amputation, and fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. The additions make the list of possible causes of functional loss due to musculoskeletal impairments correspond to the listed impairments.

We expanded the guidance about musculoskeletal ''deformity'' to clarify that the term refers to joint deformity due to any cause. In a nonsubstantive editorial change, we clarified the second sentence of the first paragraph of proposed 1.00B to cross-refer to final 14.00B6 instead of final listing 14.09. We also clarified the language to better express our intent. This will clarify in the final rules that individuals with inflammatory arthritis that does not meet the requirements of final listing 14.09 are to be evaluated under final listing 1.02 or under any other body system listing that is appropriate. In response to a comment, we added a new sentence at the end of final 1.00B1 to make it clear that impairments with neurological causes are to be evaluated under the appropriate neurological listings (11.00ff).

The second section (final 1.00B2) is based in part on current 1.00A, but it also contains new material. It explains that, regardless of the cause(s) of a musculoskeletal impairment, the functional loss that must result from certain listed impairments is defined in terms of ''the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment.'' The terms represent new criteria we use to measure loss of function in several of the listings. Because we intend these listings to emphasize the impact of the impairment(s) on a person's ability to function, and thereby to perform gainful activity, these criteria clarify the degree of musculoskeletal functional limitations required to establish listing-level severity in adults and make clear that the inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last for at least 12

months. We use the same basic standards in part B, because they establish an appropriate benchmark for determining whether a child has ''marked and severe functional limitations'' necessary to establish disability under the SSI program; i.e., an ''extreme'' limitation in functioning. We also clarified in these sections that we will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities that we list as examples in this section.

These criteria are measurements to be considered from a physical standpoint alone. The functional limitations resulting from a mental impairment(s) are to be considered under the mental disorders criteria in 12.00ff.

Sections 1.00B2b and 1.00B2c (B1, paragraph 2, and B2 in the NPRM) define what we mean by ''inability to ambulate effectively'' and ''inability to perform fine and gross movements effectively.'' Both sections describe ''extreme'' functional loss. In response to a public comment, we expanded the first sentence in each section to better explain what we mean by an ''extreme'' loss of function when we talk about an inability to ambulate effectively and an inability to perform fine and gross movements effectively. In final 1.00B2b and 1.00B2c we define an ''extreme'' loss in terms of the individual's ability to independently initiate, sustain, or complete activities. We believe that this phrase better describes what we mean later on in 1.00B2b(1) and 1.00B2c when we explain that the individual must have an extreme limitation in ''the ability to carry out activities of daily living.'' It clarifies that an individual may have an ''extreme'' limitation when he or she has a very serious limitation in any one of these abilities: the ability to independently initiate activities (e.g., because of frequent need for assistance from somebody else), or sustain activities (e.g., because of pain), or complete activities (e.g., because of muscle fatigue).

The phrase also helps to clarify that an individual does not have to be completely unable to walk or to use his or her upper extremities. We recognize that, even though individuals may have functional limitations of such severity that they are unable to engage in any gainful activity, they may still have some residual ability to function in their daily activities.

The phrase is also consistent with the definition of ''extreme'' in our rules for assessing ''functional equivalence'' in SSI childhood cases (§ 416.926a(e)(3)). In this way, the term will have the same meaning throughout our rules. For this reason, we made the same changes in part B of these final listings.

Final 1.00B2b addresses only an individual's ability to walk, not the ability to stand. This is because standing as a functional measure is a presupposed condition for walking; that is, before a person can walk, he or she must be able to stand. Furthermore, standing is not an accurate gauge of functioning for purposes of assessing listing-level severity. Even profoundly impaired individuals can often stand for a period of time, although they may not be able to walk effectively.

In response to public comments, we added ''the inability to walk without the use of a walker, two crutches or two canes'' as one example of an inability to ambulate effectively. For reasons explained in the section that deals with public comments, we do not consider required use of one cane or crutch to automatically exclude all gainful activity. However, if someone who uses one cane or crutch is otherwise unable to effectively ambulate, the impairment(s) might still meet or equal a listing. In addition, if an adult's impaired ability to ambulate does not meet or equal any listing, this does not mean that, upon further consideration at later steps in the sequential evaluation process, the claim could not be allowed.

We also made several other changes in final 1.00B2c (1.00B2 in the NPRM) in response to public comments. We revised the second sentence to clarify that loss of function of one arm (including amputation of the arm), but continued excellent use of the other arm would not satisfy the definition. We also deleted the example of ''intermittent assistance'' in buttoning and tying shoes in the last sentence of the proposed rule because of public comments that indicated it was not clear.

Finally, we made two minor editorial changes to sections 1.00B2b and 1.00B2c in the final rules (1.00B1 and B2 in the NPRM) to make the sentences read less awkwardly and to make them more ''user-friendly.'' The phrase, ''to afford them the ability to,'' which appeared in both paragraphs of the NPRM, now reads, ''to be able to.''

In final 1.00B2d (1.00B3 in the NPRM), we clarified the statement about pain in the second sentence of current 1.00A. Our intention is to make sure that no one has the erroneous impression that there must be objective medical findings that directly support the severity of a person's pain. The new language, which is consistent with our rules for the evaluation of symptoms, including pain, in §§ 404.1525(f), 404.1529 and §§ 416.925(f) and 416.929, clarifies that there need only be medical signs or laboratory findings that show the existence of a medically determinable impairment which could reasonably be expected to cause pain or other symptoms for these symptoms to be found to affect an individual's ability to perform basic work activities. It also explains the importance of evaluating the intensity and persistence of an individual's pain or other symptoms to determine their impact on functioning in the new musculoskeletal listings, whenever appropriate.

1.00C Diagnosis and Evaluation

As in the NPRM, final 1.00C expands the guidance in the third sentence of current 1.00A. In response to comments and to make the provisions easier to read, we divided the proposed section into three numbered paragraphs.

The first sentence of final 1.00C1 (the first paragraph of proposed 1.00C) corresponds to the current rule. We expanded the section to say that both the evaluation and the diagnosis of musculoskeletal impairments should be supported, as applicable, by detailed clinical and laboratory findings. Although the severity level of the new listings is generally met with functional limitations, diagnosis may be important for predicting the duration of the impairment, including expected response to any treatment an individual may be receiving. Chronic conditions must be differentiated from short-term, reversible disorders, and it is sometimes necessary to be able to predict response to current treatment.

We also revised the references to x-ray evidence to include other, modern imaging. Requirements for x-ray evidence appear in numerous places in the current listings. Because there have been significant medical advances in imaging techniques, such as computerized axial tomography (CAT scan) and magnetic resonance imaging (MRI), we expanded the criteria in final 1.00C1 and throughout the introductory text and listings to include all medically acceptable imaging. In these final rules we added language to make clear that not only must the imaging be medically acceptable, but that it must also be ''appropriate'' to ensure that the technique used is the proper one to support the evaluation and diagnosis of the impairment. In response to public comments, we added myelography to the list of examples of appropriate medically acceptable imaging.

Final 1.00C2 and 1.00C3 correspond to the second paragraph of proposed

1.00C. Both the proposed and final language are based on the seventh paragraph in current 1.00B, but the final rules are expanded to respond to public comments. We added final 1.00C2 to address CAT scans, MRIs, myelography, and similar tests. The final rule clarifies that we will not routinely purchase expensive tests such as CAT scans and MRIs, and that we will not order myelograms and other invasive tests that may involve significant risk to the claimant. However, we also include a reminder of our longstanding policy that we will consider the results of these tests when they are part of the existing evidence we have in the case record.

Final 1.00C3 now addresses only electrodiagnostic procedures. It is otherwise substantially the same as the current and proposed rules. We included the paragraph in this section because it fits more appropriately with the discussion of evaluation techniques in 1.00C.

We made one other minor change from the NPRM in final 1.00C1. The parenthetical examples of condition of the musculature in the first sentence of this section are just that, examples. Thus, the correct term to use is ''e.g.,'' not ''i.e.,'' as shown in the NPRM.

1.00D The Physical Examination

Final 1.00D draws extensively from the fourth and fifth paragraphs of current 1.00B. These paragraphs are included in current 1.00B under the heading, ''Disorders of the spine,'' even though much of the information they contain is relevant to examinations for any musculoskeletal impairment. We created a new section headed, ''The physical examination,'' to make clear that these criteria are not confined to disorders of the spine. We moved parts of the fourth paragraph of current 1.00B that are relevant only to examinations of the spine to what is now 1.00E, ''Examination of the spine.'' In addition, we made a number of nonsubstantive editorial changes for clarity and precision.

In the next-to-the-last sentence of 1.00D in the final rules, which corresponds to the third sentence of the fifth paragraph of current 1.00B, we changed the reference from ''a record of ongoing treatment'' to ''a record of ongoing management and evaluation.'' Not all individuals with musculoskeletal impairments receive treatment even though they may be seen by a medical source. In some cases, the abnormalities may temporarily, or even permanently, improve with the passage of time, even if the individual is not receiving treatment; in others, there may not be any formal treatment, only such conservative measures as bed rest, curtailed activities, or over-the-counter medications. The provision is also meant to underscore the need for a longitudinal record because musculoskeletal impairments are often characterized by exacerbations and remissions, whether there is treatment or not.

We also included the last sentence from the third paragraph of current 1.00B as the last sentence of final 1.00D. We believe that a correlation of examination findings with an individual's daily activities is important not only for evaluation of pain, as the current rule may suggest, but also for the assessment of the individual's overall ability to function.

1.00E Examination of the Spine

As pointed out in the explanation for 1.00D, we retained the portions of the sentences from the fourth paragraph of current 1.00B that pertain only to examinations of the spine in the new section that describes examinations for disorders of the spine, now 1.00E. In 1.00E1 we also defined more precisely how measurements of motion of the spine and straight-leg raising are to be made, based on guidance in the ''Guides to the Evaluation of Permanent Impairment'' published by the American Medical Association. Since publishing the NPRM, we added that straight-leg raising should be reported together with any other appropriate tension signs. In response to public comments, we added that muscle spasm should be reported when present. We also added guidance for measuring muscle strength in conjunction with findings of atrophy in response to comments that pointed out that atrophy in itself may not provide sufficient information about functioning of the muscle.

The last sentence of final 1.00E2 (the second paragraph of 1.00E in the NPRM) is based on the last sentence of the second paragraph of current 1.00B, which explains that neurological impairments are to be evaluated under the neurological listings in 11.00ff. The reference to ''neurological abnormalities'' in the old paragraph is not a general reference to all neurological abnormalities that may not completely subside after treatment or with the passage of time. Rather, it is a reference to neurological abnormalities of such severity that they could be considered to meet or equal the severity of a neurological listing. We, therefore, clarified the statement and have indicated in parentheses the two types of neurological conditions that would be evaluated under the neurological listings. We removed the second and third sentences of the second paragraph of current 1.00B because they would be redundant in the context of the new rules.

Final 1.00F (Proposed 1.00N) Major Joints

We redesignated this section from 1.00N, as it appeared in the NPRM, to final 1.00F. It corresponds to current 1.00D. Current 1.00D explains that the wrist and hand are considered together as one major joint, but there was no provision for the ankle and foot. Instead, it referred only to the ankle and did not mention the foot. The new section corrects this inadvertent omission.

Although we do not use the term ''major joint'' in these final rules, we are defining it in final 1.00F to point out a difference between our rules and the ordinary use of the term. In the final rule, we make explicit that we are referring to major peripheral joints, as opposed to other peripheral joints (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine.) Further, and in response to comments, we explain that we consider the ankle and foot separately for evaluation of weight bearing under final listings 1.02A and 1.03.

Final 1.00G (Proposed 1.00O) Measurements of Joint Motion

Final 1.00G was proposed 1.00O in the NPRM and it corresponds to current 1.00E. We revised this section to bring it up-to-date and to broaden its scope. We removed the reference in the current rules to the ''Joint Motion Method of Measuring and Recording'' published by the American Academy of Orthopedic Surgeons because it has not been revised or updated since 1965. For the measurement of joint motion, therefore, the final rule refers only to the ''Guides to the Evaluation of Permanent Impairment,'' which is used throughout the country by physicians and surgeons. The final rule does not include a date of publication but instead refers to the ''current edition'' in order to ensure that only the most current standards are used in the future.

Final 1.00H (Proposed 1.00F) Documentation

We added a new 1.00H, based on 1.00F of the NPRM, ''Duration of Impairment.'' The final section explains that musculoskeletal impairments frequently improve with time or treatment and provides guidance on the evidence we need to establish a longitudinal record. In the final rules, we revised the heading to better reflect

these provisions, which were not only about duration.

We made several revisions in the final rule in response to comments. The final rule now contains four numbered paragraphs. In final 1.00H1, we clarified what we mean by a ''longitudinal clinical record.'' We deleted the requirement that there must usually be a longitudinal clinical record covering at least 3 months of management and evaluation in response to public comments. However, we continue to stress in final 1.00H1 that a longitudinal clinical record is important for the assessment of severity and expected duration of an impairment unless the claim can be decided favorably on the basis of current evidence.

In final 1.00H2, we provide a reminder that we will consider evidence of treatment when it is available. In final 1.00H3, we added guidance to explain what we will do when an individual does not have a record of ongoing treatment. The guidance is identical to guidance we provide in the introductory text in some of the other body system listings.

In final 1.00H4, we added a reminder that individuals whose impairments do not meet the listings may still be found disabled based on a finding of medical equivalence or an assessment of residual functional capacity, age, education, and work experience. This language is also identical to provisions in the introductory text to other body system listings.

Final 1.00I (Proposed 1.00G) Effects of Treatment

Final 1.00I (1.00G in the NPRM) discusses the effects of treatment, including surgery. It explains the importance of considering a person's treatment because treatment can have beneficial effects or adverse side effects that in themselves can cause limitations. The section explains that some people can experience full or partial improvement of their conditions with a given treatment, while others may experience little or no improvement with the same treatment. Even though some treatments may result in improvement in a condition, their beneficial effects may be counterbalanced by adverse side effects, such as in the case of pain medication that relieves the symptom of pain but causes symptoms of drowsiness, dizziness, or disorientation that compromises the individual's ability to function.

In response to a public comment, we added the phrase, ''or judgment about future functioning,'' to the end of the last sentence of final 1.00I3 to make clear our concern with how treatment affects or will affect the individual's ability to function.

Final 1.00J (Proposed 1.00H) Orthotic, Prosthetic, or Assistive Devices

Another new section, 1.00J (1.00H in the NPRM), discusses how orthotic, prosthetic, or assistive devices are to be considered in evaluating musculoskeletal impairments.

In response to comments, we revised and clarified this section and removed the phrase ''medically necessary.'' In final 1.00J2 (orthotics) and 1.00J3 (prosthetics) we explain that it is unnecessary to routinely evaluate an individual's ability to function without the orthotic or prosthetic device in place. In 1.00J2 (orthotics) we explain that we would not expect an examination without an orthotic device unless the individual with a lower extremity impairment has difficulty with, or cannot use, the device. In this situation, the examination should include information on how the individual ambulates without the device. However, we do not expect a physician to examine the individual without the device if contraindicated by medical judgment.

In final 1.00J3 (prosthetics) we explain that it is necessary to evaluate an individual's medical ability to use a prosthetic device to ambulate effectively. However, it is unnecessary to evaluate an individual's ability to walk without the device. This is because we recognize that individuals with the type of lower extremity amputation described in final listing 1.05B, will have an inability to ambulate effectively, as defined in 1.00B2b, when they are not using a prosthesis. This would be true whether they do not use a prosthesis because they cannot afford one, because a prosthesis has not been prescribed for them, or for other reasons. However, the condition of the stump should be evaluated without the prosthesis in place.

Also, in final 1.00J4 (hand-held assistive devices) we explain the importance of an evaluation with and without a hand-held assistive device. We explain that it is important to document the medical basis for the hand-held assistive device.

We expect that the medical basis for an orthotic, prosthetic or hand-held assistive device will be confirmed by a physician who has treated or examined the individual.

Final 1.00K (Proposed 1.00I) Disorders of the Spine

Final 1.00K (1.00I in the NPRM) revises current 1.00B. We reorganized and expanded the current rules.

The first sentence of final 1.00K corresponds to the first sentence of current 1.00B. In this sentence of the final rules and in the next sentence, we explain that various abnormalities may result in nerve root impingement (including impingement on those in the cauda equina) or impingement on the spinal cord, from a herniated nucleus pulposus (1.00K1), spinal arachnoiditis (1.00K2), or lumbar spinal stenosis resulting in pseudoclaudication (1.00K3). We expanded the second sentence of 1.00K to include other causes of limitations that should be evaluated under final listing 1.04. However, we do not describe every possible impairment that can cause neurological involvement because the effects of some of the impairments are identical to those we have described.

The third sentence of 1.00K corresponds to the last sentence of the second paragraph in current 1.00B, and is a brief restatement of current 1.00B and 1.00E. We clarified the language in the third sentence of final 1.00K from the way it appeared in the NPRM, because the original language was possibly ambiguous. It also is consistent with the statements added to final 1.00B1 about how to evaluate neurological impairments. No substantive change is intended from the current rule or the NPRM.

Final sections 1.00K1 through 1.00K4 describe the various impairments we refer to in 1.00K: herniated nucleus pulposus (1.00K1), spinal arachnoiditis (1.00K2), lumbar spinal stenosis (1.00K3), and other miscellaneous conditions (1.00K4). In these sections, we provide information about the causes of the conditions, the findings one should look for on clinical and laboratory examination, and the functional effects of the impairments. We also provide guidance about certain conditions, such as spinal dysrhaphism (e.g., spinal bifida), diastematomyelia, and tethered cord syndrome, that are more appropriately evaluated under the neurological listings.

We made a minor revision to the first sentence of 1.00K1 to make it clear that herniated nucleus pulposus is a common disorder ''frequently'' associated with the impingement of a nerve root since this is not an absolute; that is, the two are not always associated. We have made a very minor syntactical change to the final sentence of 1.00K3 because the original language

was awkward and possibly unclear. We have deleted the word ''obvious'' in the penultimate sentence of 1.00K4 and have combined this sentence with the last sentence, revising the syntax to be more compatible with the statement added to final 1.00B1 about where to evaluate neurological impairments.

Final 1.00L (Proposed 1.00J) Abnormal Curvatures of the Spine

We designated a new section as 1.00L (1.00J in the NPRM) to discuss evaluation of abnormal curvatures of the spine. We revised the language of the NPRM in response to comments, the first revision being to the first sentence. We no longer cite scoliosis, kyphosis, and kyphoscoliosis as examples of spinal curvature. Rather, we specify that these are the types of curvature we are considering under this section. The new section focuses on the impact of the abnormal curvature on the individual's ability to function, in keeping with our approach in revising the current listings. Thus, we explain in the final rule that abnormal curvatures may impair a number of functions and we cite as examples impaired ability to ambulate, restricted breathing, cardiac difficulties, and disfigurement resulting in withdrawal or isolation. When abnormal curvature of the spine results in impaired ambulation, evaluation of equivalence should be done by reference to final listing 14.09A, which describes impaired ambulation resulting from a deformed spine. When abnormal curvature of the spine results in symptoms related to fixation of the dorsolumbar or cervical spine, evaluation of equivalence should be done by reference to final listing 14.09B. When there is respiratory or cardiac involvement, or an associated mental disorder, evaluation should be done by reference to the respiratory listings, the cardiovascular listings, or the mental disorder listings, as appropriate.

Final 1.00M (Proposed 1.00K) Under Continuing Surgical Management

We added final 1.00M (1.00K in the NPRM) to explain what we mean by the term ''under continuing surgical management,'' which is a term we use in final listings 1.07 and 1.08 and in current listing 1.12. The new provision explains that ''surgical management'' includes more than the surgery itself. It includes various post-surgical procedures, complications of surgery, infections, or other medical complications, and other factors associated with surgery that delay the individual's attainment of maximum benefits from surgery.

Final 1.00N (Proposed 1.00L) After Maximum Benefit From Therapy Has Been Achieved

Final 1.00N (1.00L in the NPRM), which discusses evaluation after the achievement of maximum benefit from surgery or other medical therapy in certain situations, corresponds to current 1.00C. We revised and expanded the current provision to clarify our policy that an individual can have an impairment that meets the criteria of current listings 1.12 and 1.13 (final listings 1.07 and 1.08) because of functional limitations resulting from the impairment itself and because of the effects of the surgery or other medical management, including recovery time following intervention and any complications from the intervention. In response to comments, we revised the language from that in the NPRM, as discussed in more detail in the discussion of public comments that follows.

Final 1.00O Major Function of the Face and Head

As the result of public comments, we added a new section describing what we mean by major function of the face and head for purposes of listing 1.08. We also added a cross-reference to this new section in final listing 1.08.

Final 1.00P (Proposed 1.00M) When Surgical Procedures Have Been Performed

Final 1.00P (1.00M in the NPRM) is substantively the same as the sixth paragraph of current 1.00B. It states that the documentation should include a copy of operative notes and available pathology reports when surgery has been performed.

Final 1.00Q Effects of Obesity

Final 1.00Q (current 1.00F) is a new section that was not in the NPRM. On August 24, 1999, we published in the **Federal Register** (64 FR 46122) final rules to remove prior listing 9.09, ''Obesity.'' The rules became effective October 25, 1999. At that time, we added a paragraph (1.00F) to the introductory text of the musculoskeletal body system listing to provide guidance about the evaluation of claims for benefits involving obesity. Final 1.00Q is the same as current 1.00F.

1.01 Category of Impairments, Musculoskeletal

We removed the criteria for rheumatoid arthritis previously in listing 1.02 and have established new listing 14.09 in the Immune System listings. Rheumatoid arthritis is a connective tissue disorder that should be grouped with other connective tissue disorders. Final listing 14.09 will cover all the inflammatory arthritides, including rheumatoid arthritis. In addition to moving current listing 1.02 to 14.09, we removed two other listings. We removed the criteria in current listing 1.05B, which would be met if an individual had generalized osteoporosis with pain, limitation of motion, paravertebral muscle spasm, and vertebral fracture. As we stated in the NPRM, our experience showed that the listing was unclear. Moreover, our experience has shown that the number of applicants alleging disability on the basis of osteoporosis is small and no longer justifies a specific listing.

The final listings include criteria to evaluate individuals who have osteoporosis of listing-level severity by adding ''vertebral fractures'' in the list of examples of conditions that are included under final listing 1.04, for disorders of the spine resulting in compromise of a nerve root or the spinal cord.

Final listing 1.02A will cover the situations in which there is hip involvement resulting in inability to ambulate effectively, a situation that is not included in the current listing.

We also removed current listing 1.08, ''Osteomyelitis or septic arthritis.'' Again, as we explained in the NPRM, advances in treatment have made both osteomyelitis and septic arthritis much rarer than they were when we last issued these listings. More importantly, fundamental advances in antibiotic therapy have meant that, when they do occur, these conditions are not usually expected to last for 1 year. Therefore, we believe that cases of osteomyelitis and septic arthritis must be evaluated on a case-by-case basis to determine whether they are equivalent in severity to a listed impairment or result in a finding of disability at later steps in the sequential evaluation process for adults, and will meet the 12-month duration requirement. Residuals of these impairments may also result in disability. Any residuals (such as a fused hip or knee joint in a poor anatomic position) may be evaluated under the appropriate listings, or later in the sequential evaluation process for adults. As we stated earlier, current beneficiaries will not lose eligibility solely as a result of the removal of this listing. We may find these individuals disabled based on this listing section or other rules.

Septic arthritis that is associated with human immunodeficiency virus (HIV) infection is listed separately in our existing rules, under listing 14.08M.

1.02 Major Dysfunction of a Joint(s) (due to any cause)

As the result of a public comment, we changed the title of this listing from the proposed ''Deficit of musculoskeletal function of a major joint(s) (due to any cause)'' to ''Major dysfunction of a joint(s) (due to any cause).''

This final listing consolidates into one listing current listing 1.03A, ''Arthritis of a major weight-bearing joint (due to any cause),'' and current listing 1.04, ''Arthritis of one major joint in each of the upper extremities (due to any cause),'' because both listings describe gross anatomical deformities. We also have expanded the scope of the listing to include deficits of musculoskeletal function from residual deformity due to any cause, not just arthritis. Current listing 1.03B, for reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, has been retained as a separate listing 1.03, described below.

In keeping with the overall functional approach in our listings, the final listing encompasses any musculoskeletal condition that involves a major peripheral joint in one lower extremity and results in an inability to ambulate effectively (listing 1.02A), or that involves a major peripheral joint in each of the upper extremities, and results in an inability to perform fine and gross movements effectively (listing 1.02B). As in the current rules, the listing requires gross anatomical deformity, such as subluxation, contracture, bony or fibrous ankylosis, or instability, and chronic joint pain and stiffness with signs of limitation of motion of the affected joints. We removed the example of ''ulnar deviation'' because it is no longer germane in this context.

We broadened the criteria used to evaluate disability under final listing 1.02, for reasons similar to those that apply to the evaluation of disability under final listing 14.09, explained below. Diagnosis may be necessary to resolve duration issues, but the basis for finding that the listing is met or equaled is whether the medical condition causes functional limitations that are of listing-level severity.

Because final listing 1.02 is based on a criterion for gross anatomical deformity, it would also replace some of the criteria of current listing 1.09. Current listing 1.09 is met with amputation ''or anatomical deformity'' of both hands (current listing 1.09A), both feet (current listing 1.09B), or one hand and one foot (current listing 1.09C). In current listings 1.09B and 1.09C, the anatomic reference to the foot means the entire foot, to include the hindfoot which, as part of the ankle joint, is weight bearing. Final listing 1.02A requires gross anatomical deformity of one major peripheral weight-bearing joint and, therefore, replaces the requirement for deformity of two feet now in listing 1.09B with a less anatomically based, more functionally based criterion. The final criterion does not require involvement of both lower extremities or even specifically of the feet.

Final listing 1.02B replaces the requirement for involvement of both hands with a requirement for involvement of any major joint in each upper extremity and, again, is a functionally based criterion. There is no provision to correspond to current listing 1.09C, however, because we believe that individuals who have deformities of one hand and one foot should have their claims evaluated on a case-by-case basis. Such individuals do not always have impairments that would preclude the ability to do any gainful activity, and to determine if they are disabled, we may have to assess their residual functional capacity and consider their age, education, and work experience.

As already noted, under final 1.00F (proposed 1.00N in the NPRM), we clarified that major joints refers to the major peripheral joints. We also further defined the ankle-foot as a major peripheral joint and stated that the ankle is a major weight-bearing joint for purposes of final listing 1.02A. As throughout these listings, we updated the criterion for x-ray evidence by replacing it with a reference to ''appropriate medically acceptable imaging.'' Throughout the final rules we have added that the medically acceptable imaging must be ''appropriate.''

We also removed the term ''significant,'' used to describe the amount of joint space narrowing or bony destruction caused by the arthritis in current listings 1.03A and 1.04A, because there is a relative lack of correlation between findings on imaging and function of the joint. Furthermore, since final listing 1.02 would ultimately be met because of functional limitations resulting from the arthritis or any other condition, the term ''significant'' is unnecessary in the revised rule. We believe that the objective requirement for gross anatomical deformity and the other requirements in the listing are sufficient in themselves.

1.03 Reconstructive Surgery or Surgical Arthrodesis of a Major Weight-Bearing Joint

Final listing 1.03 corresponds to current listing 1.03B. The current listing describes individuals who have undergone reconstructive surgery or surgical arthrodesis of a major peripheral weight-bearing joint, and return to full weight-bearing status did not occur, or is not expected to occur within 12 months of onset. The final listing would change the criterion for failure to return to ''full weight-bearing status'' to the criterion for inability to ambulate effectively used in final listing 1.02 and other final listings. As we explained in the NPRM, with advances in surgical techniques and post-surgical treatment, some individuals who are not able to bear full weight on a lower extremity nevertheless have sufficient ability to ambulate to be able to work.

1.04 Disorders of the Spine

This final listing corresponds to current listing 1.05C, which we use for evaluating impairments like herniated nucleus pulposus and lumbar spinal stenosis. We have expanded the list of examples in the opening sentence to show that other conditions are also included, such as spinal arachnoiditis, osteoarthritis, degenerative disc disease, facet arthritis and vertebral fractures, which are all examples of conditions that may compromise nerve roots (including the cauda equina) or the spinal cord. As already stated, we also describe several—though not all—of these conditions and their effects in final 1.00K (1.00I in the NPRM). We have not described every possible impairment that can cause neurological involvement because the effects of some of the impairments are identical to those we have described.

Consistent with the discussions in final 1.00K, we have named three separate sets of criteria under listing 1.04, for nerve root compression (final listing 1.04A), spinal arachnoiditis (final listing 1.04B), and lumbar spinal stenosis resulting in pseudoclaudication (final listing 1.04C). Spinal arachnoiditis and lumbar spinal stenosis with pseudoclaudication are listed separately because they present different signs and symptoms than nerve root compression (which has many causes, including spinal stenosis) and neither condition is adequately covered by the current rules.

Final listing 1.04A corresponds most closely to current listing 1.05C. We replaced the examples in the current rule with the examples in final listing 1.04 and the discussions in final 1.00K.

We also added a criterion for positive straight-leg raising in the sitting and supine positions when there is involvement of the lower back. We also removed the requirement for muscle spasm in current listing 1.05C because the finding usually reflects an acute condition that will not persist for a year. Moreover, because spasm is often an intermittent finding, it may not be present on a given examination even though an individual might otherwise be significantly limited.

We also removed the requirement in current listing 1.05C that limitation of motion of the spine be ''significant.'' The requirement is imprecise. More importantly, we would consider any limitation of motion to be significant if it were accompanied by the other requirements of the final listing. Under the final listing, we no longer require anatomic or radicular distribution of both sensory and reflex abnormalities as required under the current listing, but require only that one or the other be present. This is because sensory and reflex abnormalities are not concurrent in all cases of nerve root compression that would nonetheless be disabling at the listing level. Depending on the level of the compression, both sensory and reflex abnormalities may not occur anatomically. However, the final listing does require a ''neuro-anatomic distribution'' of pain to make clear that the nerve root compression would have to be reasonably expected to cause the pain. This final requirement is consistent with our evaluation of pain and other symptoms pursuant to §§ 404.1529 and 416.929 of our rules. We also clarified in final 1.00E1 what we mean by ''motor loss''—that is, atrophy with associated muscle weakness, or muscle weakness alone. Atrophy in the absence of muscle weakness is not evidence of motor loss. We explain in final 1.00E, discussed earlier, what we require to show atrophy.

Final listing 1.04A does not contain the criteria in current listing 1.05C for persistence of signs and symptoms ''for at least 3 months despite prescribed therapy'' and that they be ''expected to last 12 months.'' This is because we no longer require that there must invariably be a record of at least 3 months. Instead we require that there be a longitudinal clinical record sufficient to assess the severity and expected duration of an impairment, as explained in final 1.00H. In final 1.00H we explain that when there is no longitudinal clinical record the evaluation will be based on all the available evidence.

Final listings 1.04B, for spinal arachnoiditis, and 1.04C, for lumbar spinal stenosis resulting in pseudoclaudication, list the characteristic signs and symptoms of their respective impairments and require appropriate limitations of function. Thus, final listing 1.04B describes severe burning or painful dysesthesia resulting in the need for frequent changes in position or posture, and final listing 1.04C describes chronic nonradicular pain and weakness resulting in an inability to ambulate effectively. In response to a public comment, final listing 1.04B contains a more precise description of what we mean by frequent changes in position or posture. The final rule states that the changes in position or posture must be more than once every 2 hours.

1.05 Amputation (due to any cause)

As the result of a public comment, we changed the title of this listing from ''Amputation,'' to ''Amputation (due to any cause),'' to make clear that impairments due to amputations, including amputations due to vascular disease, diabetes mellitus, or any other cause, may be evaluated under final listing 1.05.

We combined the two current listings that deal with amputations, 1.09 and 1.10, into a single listing 1.05. As stated earlier, the ''anatomical deformity'' criterion of current listing 1.09 will be evaluated under final listing 1.02.

Final listing 1.05A, amputation of both hands, corresponds to current listing 1.09A, and is unchanged.

We replaced the listings that previously included a criterion for amputation of the foot (current listings 1.09B and 1.09C) with listings based on inability to ambulate effectively. We also removed one listing that provides a criterion for amputation ''at or above the tarsal region'' as a result of peripheral vascular disease or diabetes mellitus (current listing 1.10B). Since we last published these listings, significant refinements in surgical techniques (e.g., development of improved soft tissue flaps) to cover the bone stump have been made. This has resulted in more durable stumps. Engineering advances have produced prosthetic devices which minimize and distribute stress so that some individuals wearing artificial limbs after amputation above the tarsal level for any reason (including diabetes mellitus, and vascular and arterial disease) are able to work. Although some individuals with these impairments will, of course, be disabled, the final revisions recognize that this is not a certainty and that we must assess the impairments of such individuals and how well these individuals are able to adapt to their impairments on a case-by-case basis.

Accordingly, final listing 1.05B replaces current listings 1.09B (amputation of both feet) and 1.10B and 1.10C (amputation of one lower extremity at or above the tarsal region due to peripheral vascular disease or diabetes mellitus, or inability to use a prosthesis effectively) with a requirement for stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, regardless of the cause of the amputation, the level of the amputation (at or above the tarsal region,) or whether there is amputation of one or both limbs. In the final rule we removed the phrase ''from onset'' which appeared in the NPRM and is in current listing 1.10C3 to make clear that for purposes of final listing 1.05B, the stump complications resulting in medical inability to use a prosthetic device to ambulate effectively have to last or be expected to last for at least 12 months. Similarly, final listing 1.05C replaces current listing 1.09C (amputation of one hand and one foot) with a requirement for amputation of one hand and one lower extremity at or above the tarsal region resulting in an inability to ambulate effectively without an obligatory hand-held assistive device. (We also added an exception to the definition of ''inability to ambulate effectively'' in final 1.00B2b to take this listing into account since individuals with amputation of a hand will not generally use bilateral upper limb assistance.)

Final listing 1.05C corresponds to current listing 1.09C (amputation of one hand and one foot) with a requirement for amputation of one hand and one lower extremity at or above the tarsal region resulting in an inability to ambulate effectively. In final listing 1.05C we deleted the phrase ''without an obligatory hand-held assistive device,'' which we had included in the NPRM. The change is not substantive, but only for clarity. The phrase was unnecessary since section 1.00B2b(1) defines ''ineffective ambulation'' as the inability to ambulate independently without the use of a hand-held assistive device(s).

In the NPRM, proposed listing 1.05D, hemipelvectomy or hip disarticulation also required that there be an amputation of the other lower extremity at or above the tarsal region. In response to public comment, we agree that, despite advances in treatment and technology, a hemipelvectomy or hip disarticulation is still, in itself, sufficient to establish the existence of an impairment of listing-level severity.

Therefore, we are not changing the criteria. Final listing 1.05D, for hemipelvectomy or hip disarticulation, corresponds to current listing 1.10A.

1.06 Fracture of the Femur, Tibia, Pelvis or One or More of the Tarsal Bones

Final listing 1.06 corresponds to current listing 1.11. We have revised the criterion requiring an inability to return to full weight-bearing status within 12 months of onset to a criterion requiring an inability to ambulate effectively for an expected 12 months or longer. This is essentially the same requirement as for final listing 1.03 (current listing 1.03B). Internal fixation devices (such as intramedullary rods) and external fixators can in some cases return an individual to effective ambulation even though the lower extremity is not fully weight bearing.

Because of the above revision, we restructured the listing for clarity. We are also changing the reference to the ''tarsal bone'' in the heading of the listing to ''one or more tarsal bones'' for technical reasons. There are a number of tarsal bones.

In final listing 1.06A we deleted the phrase ''when such determination is feasible,'' which we had included in the NPRM. The change is not substantive, but only for clarity. The phrase was clearly unnecessary since we would not make any determination or decision that was not ''feasible.''

1.07 Fracture of an Upper Extremity

Final listing 1.07 is identical to current listing 1.12 except for minor editorial changes.

1.08 Soft Tissue Injury (e.g., Burns) of an Upper or Lower Extremity, Trunk, or Face and Head

Final listing 1.08 corresponds to current listing 1.13. We revised the heading to make clear that the listing is appropriate for the evaluation of burns. We expanded the scope of the rule to include soft tissue injuries to the trunk or to the face and head. The criteria for ''surgical management'' are the same as in final listing 1.07. Therefore, we would no longer require surgical procedures to be ''staged.'' The surgical procedures required to restore function in injuries of the type covered by this listing are not always planned in advance and are, therefore, not necessarily ''staged.'' For further clarity, a reference to final listing 1.08, has been added to final 1.00M.

14.00 Immune System

For reasons explained above, we moved the criteria in current 1.00 that address rheumatoid arthritis and other inflammatory arthritides to the immune system listings so that these conditions can be grouped together with the other connective tissue disorders. We, therefore, established new sections in the introductory text to 14.00 and a new listing 14.09 which corresponds to current listing 1.02. We are also revising and broadening our criteria, as explained below.

14.00B

The fourth paragraph of final 14.00B is changed to include the inflammatory arthritides in the impairments mentioned therein.

We changed final 14.09D as the result of public comments.

We changed the term ''severe'' in the first sentence of the paragraph to ''serious.'' We also took the opportunity to correct a preexisting syntactical error in the same sentence. The phrase, ''loss of function in,'' as it appeared in two places in the sentence has been changed to ''loss of function because of disease affecting'' because an organ(s) of the body does not lose function in the manner we intended by our narrow definition of the term. It is the individual's ability to function about which we are concerned in the listings, and not whether an organ(s) is functioning from a medical standpoint.

14.00B6 Inflammatory Arthritis

Final 14.00B6 is a new section we added to address the inflammatory arthritides; it has no counterpart in current 1.00. Even though the primary feature of these disorders is joint involvement, they are connective tissue disorders, like systemic lupus erythematosus and scleroderma, and they cause extra-articular manifestations that may be disabling, just as the other connective tissue disorders do.

Final 14.00B6 provides examples of some of the disorders that affect the spine (inflammatory spondyloarthropathies). It also provides examples of disorders that affect the peripheral joints. The first group of disorders includes ankylosing spondylitis, Reiter's syndrome, Behiet's disease and other conditions. The second group includes rheumatoid arthritis, Sjgren's syndrome, psoriatic arthritis and other conditions.

We made a number of changes in this section in response to comments that asked us to clarify the provisions of proposed listing 14.09. The changes in final 14.00B6 respond to those comments as well. We provide a description of some of the factors that can cause functional deficits and clarify that their combined effects may produce serious functional limitations. In addition, we clarified the reminder in the rule that, when the conditions are quiescent but have caused persistent musculoskeletal deformity, it is still appropriate to use final listing 1.02, which describes gross anatomical deformity due to any cause, or final listing 1.03, which describes reconstructive surgery or surgical arthrodesis of a major peripheral weight-bearing joint, when such deformities are the dominant feature.

We added the word ''persistent'' to the last sentence in the opening paragraph to further emphasize this point.

We also deleted the fourth sentence of this paragraph from the NPRM. That sentence discussed chronic forms of the diseases and is no longer necessary because of the other clarifications we made in the paragraph and in final listing 14.09.

In the subsections of final 14.00B6, we provide explanations to make clear that the provisions in listing 14.09 use the same terms and definitions that are in the final musculoskeletal listings. Thus, the terms ''major joints,'' ''inability to ambulate effectively,'' and ''inability to perform fine and gross movements effectively'' have the same meaning as they do in final 1.00. Accordingly, we indicated in final 14.00B6a that the term ''major joints'' refers to major peripheral joints and have explained that because only the ankle joint is crucial to weight-bearing, the ankle and foot are considered separately for evaluation of weight-bearing. In final 14.00B6b we make clear that the inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last for at least 12 months. In final 14.00B6c, we do not provide a functional criterion for ankylosing spondylitis and other ankylosing spondyloarthropathies (final listing 14.09B), because the medical findings in that listing would invariably cause such functional limitations. Thus, once the requisite objective medical findings are established, we expect the individual will have functional limitations that result in an impairment of listing-level severity.

In final 14.00B6d, we provide guidance about establishing the existence of an impairment of listing-level severity based upon extra-articular features. We also provide examples of kinds of extra-articular features that may be seen with the inflammatory arthritides in the different body systems. Although many of the extra-articular features are the same as those that may be seen in other medical disorders, some (such as keratoconjunctivitis sicca,

which is seen in Sjögren's syndrome, and amyloidosis of the kidney, which is seen in rheumatoid arthritis) are specific to the disorders in listing 14.09. The term ''extra-articular features'' has replaced ''extra-articular findings'' in the NPRM. We also made syntactical changes to final 14.00B6d to clarify the listings as requested by commenters.

Final 14.00B6e is a new section added for consistency between the adult and childhood rules. The section, which corresponds to final rule 114.00E6, explains why steroid dependence in and of itself is insufficient to establish an impairment of listing-level severity.

14.09 Inflammatory Arthritis

For reasons explained above, we redesignated current listing 1.02 as final listing 14.09. We also changed its heading from ''Active rheumatoid arthritis and other inflammatory arthritis'' to ''Inflammatory arthritis'' to emphasize that we include a host of syndromes characterized by joint inflammation, not just rheumatoid arthritis. The final change also emphasizes the functional consequences of joint inflammation as a determinant of a disabling impairment rather than focusing on specific etiologic diagnoses. The final change recognizes that, although etiologic diagnosis is needed to distinguish chronic disorders from short-term disorders, as well as from other connective tissue disorders that are listed elsewhere, it is joint inflammation and its sequelae, and other symptoms and signs of these disorders, not etiologic diagnosis, that result in work-related functional limitations.

The final rule provides several methods for determining whether an impairment is of listing-level severity. It advances the concept of graded levels of severity of the diseased joint (i.e., articular process), which can result in disability because of the severity of the joint involvement itself, or because of joint involvement coupled with major signs and symptoms produced by the extra-articular features which together impair an individual's functioning to the degree described in these final listings. Thus, final listings 14.09A and 14.09B would be met with articular findings that are of such severity that they alone result in inability to ambulate effectively or to perform fine and gross movements effectively. Final listings 14.09C, 14.09D, and 14.09E would be met with less severe joint involvement than in final listings 14.09A and 14.09B, but with extra-articular features that establish the existence of an impairment of listing-level severity.

Final listing 14.09A replaces current listing 1.02A. It describes inflammatory arthritis of the major peripheral joints (i.e., the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot) which is of such severity that in itself it results in disability. We clarified and simplified the current provisions and replaced the requirement in current listing 1.02A for involvement of ''multiple'' major joints with the more precise requirement for ''two or more'' major joints. Consistent with other final listings, we replaced the current criterion for ''significant restriction of function of the affected joints'' with the more precise standard of inability to ambulate effectively or inability to perform fine and gross movements effectively. We removed the requirement for the listed findings despite prescribed therapy for at least 3 months and clinical activity expected to last at least 12 months from final listing 14.09A. This is because the third paragraph of current 14.00B already provides a general requirement for these findings, applicable to all of the connective tissue disorder listings.

In final listings 14.09A, C, and D, we removed the requirements in current listing 1.02B for corroboration of the existence of the impairment by specific laboratory tests. We retained the requirement for appropriate medically acceptable imaging in final listings 14.09B and E, as the imaging is necessary to document the impairment.

We made these changes because inflammatory arthritis with the findings described in final listing 14.09 is sufficient to establish the existence of an impairment of listing-level severity. Moreover, the laboratory findings described under current listing 1.02B are neither specific for diagnosis nor indicators of a level of functional limitation.

Ankylosing spondylitis, currently evaluated under listing 1.05A, will be evaluated under final listing 14.09B, which lists ''ankylosing spondylitis or other spondyloarthropathy.'' In the NPRM (proposed listing 14.09B) we inadvertently required fixation of both the dorsolumbar and cervical spine. In the final rule we corrected this. Consistent with the current rules, final listing 14.09B requires fixation of either the dorsolumbar or cervical spine. Because the emphasis in these final listings is on function, the final listing does not require the extensive x-ray evidence of calcification of spinal ligaments and abnormal apophyseal articulations, and bilateral ankylosis of the sacroiliac joints required in current listing 1.05A. Rather, the final listing provides for a degree of ankylosis of the cervical or dorsolumbar spines that correlates with an inability to ambulate effectively. We also broadened the current criterion for a finding of bilateral sacroiliac ankylosis to include those disorders that are characterized by either unilateral or bilateral sacroiliitis.

Final listing 14.09C is based on the other connective tissue disorders listings in 14.00, and provides for a finding of disability when an extra-articular feature of any inflammatory arthritis is disabling, as shown by reference to listings in other body systems. The final listing is similar to current listing 14.06, ''Undifferentiated connective tissue disorder,'' which cross-refers to the list of body systems established in current listing 14.02A so that repetition of that long list is unnecessary.

Final listing 14.09D is a listing for the inflammatory arthritides that affect the peripheral joints which would be met with less severe joint findings than in listing 14.09A and less severe extra-articular features than in listing 14.09C. It provides criteria similar to those in listings 14.02B, 14.03B, 14.04B, and 14.06; that is, significant, documented constitutional symptoms and signs with involvement of at least two other organs/body systems. To reflect the symptoms and signs of these particular disorders, the final rule calls for a history of joint pain, swelling, tenderness, and inflammation, which we included in 14.09D. As a result of public comments, in the final rule we removed the requirement in the NPRM for morning stiffness of at least 2 hours' duration, as we recognize that there is no reliable way to document a claimant's allegation of morning stiffness.

Similarly, final listing 14.09E is a listing for inflammatory spondyloarthropathies that do not meet the deformity requirements of final listing 14.09B or the extra-articular requirements of final listing 14.09C. The final rule calls for the extra-articular features described in 14.09D, which is more appropriate than the NPRM requirements for ''the extra-articular findings described in 14.09D.''

Revisions to Part B of Appendix 1

101.00 Musculoskeletal System

We reorganized, revised, and expanded 101.00, the introductory text to part B of the musculoskeletal listings, to be consistent with the final revisions in part A. When changes have been made from the NPRM for adults and parallel criteria existed in the NPRM for children, we have made the same changes in final part B for the same reasons as in final part A. However, we

also established additional criteria in final 101.00 to give appropriate consideration to the particular effects of the disease processes in children. For example, in 101.00B2b and 101.00B2c, we created specific definitions of the terms ''inability to ambulate effectively'' and ''inability to perform fine and gross movements effectively'' for infants and young children in terms that are appropriate to these children. Thus, final 101.00B2b(2) defines ineffective ambulation for children who would not yet be expected to walk in terms of a failure to achieve skills or performance involving the lower extremities at no greater than one-half of age-appropriate expectations based on an overall developmental assessment. Extreme limitations on use of the upper extremities is defined by reference to the descriptions of motor dysfunction in the listing for multiple body dysfunction, listing 110.07A.

In other instances, we altered in part B the criteria in final part A to address children, in order to underscore the importance of the criteria in childhood cases and to eliminate any question about their applicability to children.

As in part A, we moved current listing 101.02, for juvenile rheumatoid arthritis, to the immune system listings in 114.00. For this reason, we removed current 101.00A, which addresses the documentation of juvenile rheumatoid arthritis. We have not moved it into the introductory text of 114.00 because it explains that the documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, and we have expanded the listings to address all forms of inflammatory arthritis in children. As in the final adult rules, final listing 114.09A includes the findings of joint pain, swelling, tenderness, and inflammation noted in current 101.00A, but goes on to address the functional impact of any form of severe inflammatory arthritis by acknowledging that it may result in the inability to ambulate effectively or the inability to perform fine and gross movements effectively with the upper extremities.

We also removed the discussion currently in 101.00C. This section of the current rules explained that degenerative arthritis may be the end stage of many skeletal diseases and conditions. The discussion, though correct, has no special relevance to the final rules, which are functionally based.

101.01 Category of Impairments, Musculoskeletal

We removed current listings 101.05B, 101.05C, and 101.08 for the reasons set forth below.

We removed listing 101.05B, ''Scoliosis,'' and listing 101.05C, ''Kyphosis or lordosis,'' and added to the introductory text a new 101.00L, ''Abnormal curvatures of the spine,'' which corresponds to final 1.00L in the adult rules. We have removed the criteria for a spinal curve measuring 60° or greater in current listing 101.05B1 and for kyphosis or lordosis measuring 90° or greater in current listing 101.05C because these measurements do not focus on the functional impact of the abnormal curvature. We instead included a provision which parallels the provision for the adult listings, and focuses evaluation on the functional impact of abnormal curvatures; i.e., impaired ambulation, ventilatory restriction, cardiac difficulties, or disfigurement resulting in withdrawal or isolation. As in the final adult rules, we now make reference to listing 114.09A when the spinal deformity is so severe that it results in ineffective ambulation; the reference is to the respiratory listings in 103.00ff when there is restricted breathing because of the deformity, to the cardiovascular listings in 104.00ff when there is cardiac involvement and to the mental disorder listings in 112.00ff when there is an associated mental disorder.

We removed current listing 101.05B2, which provides that a child will be considered disabled for 1 year from the time of surgery based on a spinal fusion of six or more levels, because improvements in medical technology have shortened the period of recuperation following spinal fusion to less than a year. As a result, it is no longer possible to assume that the duration requirement will be met in all cases. Improved techniques with internal fixation devices (e.g., Harrington rods, Cotrel-Dubousset, and other fixation devices) have eliminated the need for turnbuckle casts and lengthy immobilization in plaster following spinal fusion. With the use of these improved techniques, a return to age-appropriate activities can now be expected in less than 1 year following spinal fusion.

The removal of current listing 101.05B will also correct a printing error. The current listing provided for ''FEV (vital capacity)'' of 50 percent or less of predicted normal. The abbreviation ''FEV,'' however, does not stand for ''vital capacity,'' but for ''forced expiratory volume,'' a measurement of obstructive lung disease, not of restrictive dysfunction. Our intent has always been to measure the restrictive breathing dysfunction that may be caused by the musculoskeletal deformity, the vital capacity or VC.

Finally, consistent with the revisions to the listings in part A, we also removed listing 101.08, ''Chronic osteomyelitis.'' We provide our reasons for this in the explanation under part A for the removal of current listing 1.08.

Final listings 101.02 through 101.08 are in most instances the same as the corresponding final adult rules explained above. Final listings 101.03 and 101.05 through 101.08 are new, and are the same as the corresponding final adult listings, 1.03 and 1.05 through 1.08. These listings will maintain structural and content consistency with the adult listings. The following is an explanation of final listings 101.02 and 101.04, which have revised current listings 101.03 and 101.05.

101.02 Major Dysfunction of a Joint(s) (Due to Any Cause)

This final listing corresponds to current listing 101.03, ''Deficit of musculoskeletal function.'' The final rule is the same as the corresponding adult rule. As in the adult rule, the proposal would broaden the listing to include deficit of functioning due to any cause, with involvement of either one major peripheral weight-bearing joint or one major peripheral joint in each upper extremity.

The functional limitations in the final listing encompass the criteria of current listings 101.03A, 101.03B, and 101.03C, and provide a uniform functional measure which applies to all children within their respective age-appropriate functional expectations. We believe the listing will be easier to use with the better-defined term ''inability to ambulate effectively.'' Current listing 101.03A (''Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices'') and current listing 101.03B (''Ambulation is possible only with obligatory bilateral upper limb assistance * * *'') have been subsumed under the definition of ''inability to ambulate effectively.'' Current listing 101.03C (''Inability to perform age-related personal self-care activities * * *'') has been subsumed under the definition of ''inability to perform fine and gross movements effectively.''

101.04 Disorders of the Spine

This final listing corresponds to current listing 101.05. Final listing 101.04 focuses on disorders that involve compromise of a nerve root(s)

(including the cauda equina) or the spinal cord. Although the listing is consistent with the final adult listing, it does not include criteria for spinal arachnoiditis or lumbar spinal stenosis resulting in pseudoclaudication. These conditions generally develop over time and with age and are rarely seen in children. Should a child need to be evaluated for spinal arachnoiditis or lumbar spinal stenosis, the part A listings should be used.

We removed current listing 101.05A, for fracture of a vertebra with spinal cord involvement, because it describes a spinal cord injury and is more appropriately a neurological disorder than a musculoskeletal disorder. Current listing 111.06 describes the limitations resulting from such an injury.

114.00 Immune System

For reasons we have given under the explanation of the corresponding adult rules, 14.00 of the introductory text to the immune system listings in part A and final listing 14.09, we changed the heading of listing 114.09 (formerly 101.02) from ''Juvenile rheumatoid arthritis'' to ''Inflammatory arthritis.'' This revision provides a more comprehensive consideration of the features and functional impact of any of the inflammatory arthritides and moves all of the criteria for juvenile rheumatoid arthritis and the inflammatory arthritides into 114.00. In final 114.00E, we provide essentially the same provision for children that we provide for the inflammatory arthritides for adults, with appropriate changes to address the particular presentation and effects of the disorders in children. The difference in numbering of the sections in part A and part B reflects the differences between the current part A and part B sections. Final 114.00E1, however, has no counterpart in final part A. Final 114.00E1 explains the importance of differentiating the inflammatory arthritides from other connective tissue disorders in children and of determining whether the disorder is chronic or short-term, because children may have more limited antigenic exposure and immune reactivity than adults.

For reasons we explain below, we removed current listing 101.02B, which provides that a child with rheumatoid arthritis who is dependent on steroids meets the listing. In final 114.00E6, we explain why steroid dependence in and of itself is insufficient to establish an impairment of listing-level severity.

We revised 114.00B, which currently refers to the descriptions of the connective tissue disorders in 14.00B, to add a cross-reference to final 114.00E. We made technical revisions to 114.00B so that it will parallel 14.00B. The changes bring conformity to the two sections, but do not substantively change the rules. Rather, they remove any question that might arise from our using slightly different language in two sections that are intended to say the same thing.

We added a new second sentence in 114.00C2, which describes growth impairments resulting from connective tissue disorders. The new provision explains that children with inflammatory arthritides have growth impairments because of the diseases' effects on the immature skeleton, open epiphyses, and young cartilage and bone. In the final rule, we deleted the ''many'' as a modifier as we are not certain that this is a true reflection of the incidence of growth impairment as a result of the inflammatory arthritides.

The final listing criteria in 114.09 are the same as the corresponding adult listing in part A and replace the criteria in current listing 101.02A. Again, changes we made to final 114.00E and 114.09 that are identical to changes made in the corresponding part A sections that were not in the NPRM have been made for the same reasons.

As noted above, we removed current listing 101.02B, which provided that a child with rheumatoid arthritis who is dependent on steroids meets the listing. Although this was an appropriate listing when we first published it, advances in treatment have made the listing obsolete. Advances in the administration of steroids have corrected some of the previously disabling consequences of continuous steroid use, and it is no longer appropriate to assume that every child who is dependent on steroids will have an impairment of listing-level severity. Moreover, there are few instances when systemic corticosteroids are used in the long-term management of children with inflammatory arthritis. When steroid treatment is indicated, it is usually given only on a short-term basis, with the drug dosage being gradually reduced and discontinued within a few weeks or months.

Other Changes

Because current listing 1.10B in part A (amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus) has been removed, we also removed the listings with similar criteria in other body systems, listing 4.12C (''Amputation at or above the tarsal region due to peripheral vascular disease'') and listing 9.08C (''Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease'') to be consistent with our approach that assesses disability on the basis of how the individual is functioning. Our experience has shown that many individuals who have undergone amputation at or above the tarsal level for vascular disease or diabetes mellitus are able to return successfully to gainful work. Those individuals who are unable to ambulate effectively due to stump complications may still have their impairments evaluated under final listing 1.05B. Current listing 9.08D has become listing 9.08C. We believe that these cases must be evaluated on a case-by-case basis to determine whether they are equivalent in severity to a listed impairment or result in a finding of disability at later steps in the sequential evaluation process for adults, and will meet the 12-month duration requirement. As we stated earlier, current beneficiaries will not lose eligibility solely as a result of this listing being removed. We may find these individuals disabled based on this listing section or other rules.

In addition, we made a technical change to the current listing for systemic lupus erythematosus. Current listing 14.02A provides cross-references to ten body systems in which impairments of listing-level severity that result from the primary condition are described. We inadvertently omitted from this list an eleventh possibility, hematologic disorders, which would be evaluated under the listings in 7.00ff.

As we explain in current 14.00B1, systemic lupus erythematosus frequently results in anemia, leukopenia, and thrombocytopenia, and it is, therefore, possible that an individual would have an impairment of listing-level severity based on a hematologic disorder. We added a reference to the hemic and lymphatic body system. In keeping with the format of listing 14.02A, which lists the body systems in their order of appearance in appendix 1, the new provision has become listing 14.02A8. For this reason, we redesignated current listings 14.02A8 through 14.02A10 as listings 14.02A9 through 14.02A11.

No similar change is required in part B. Current listing 114.02A includes a reference to the hemic and lymphatic listings.

For consistency, in the final rules, we also made changes in two of the examples in § 416.926a(m), ''Examples of impairments that functionally equal the listings.'' In the second example, the requirement for ''a series of staged surgical procedures,'' has been changed to a requirement for ''continuing

surgical management.'' As explained above, we no longer require surgical procedures to be ''staged.'' We have also made a small change in the fourth example to make clear that it is the inability to maintain effective ambulation that makes a condition functionally equivalent to a listed impairment.

Also for consistency, in the final rules we made technical changes in §§ 416.933, ''How we make a finding of presumptive disability or presumptive blindness,'' and 416.934, ''Impairments which may warrant a finding of presumptive disability or presumptive blindness,'' based on our change in assessing disability on how the individual is functioning. In § 416.933 we have amended the second sentence by removing ''amputation of extremities'' as an example of a readily observable impairment upon which we can find an individual disabled without medical or other evidence. In § 416.934 we have removed current impairment categories (a) and (h). Our experience has shown that we can no longer presume that an individual who has undergone amputation of two limbs (impairment category (a)) or an individual with diabetes who has undergone amputation of a foot (impairment category (h)) would be unable to successfully perform gainful work.

Throughout the final rules, we made nonsubstantive editorial changes from the NPRM. For example, in several places in final 101.00, we deleted the words, ''given age ranges'' from the phrase ''given normal developmental expectations for given age ranges'' because ''developmental expectations'' already implies consideration of age. Deleting the words does not change the meaning of the statement. In the NPRM, we used ''motor deficit'' and ''motor loss'' interchangeably. For consistency, throughout the final rules we use ''motor loss.''

Public Comments

Subsequent to the publication of the NPRM in the **Federal Register** (58 FR 67574) on December 21, 1993, we mailed copies to national medical organizations and professionals whose responsibilities and interests provide them with some expertise in the evaluation of musculoskeletal impairments. We also sent copies to Federal and State agencies (including the State agencies that make disability determinations for us) interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from advocacy groups, as well as from legal service organizations.

We received 34 letters and telefaxes containing comments pertaining to the changes we proposed. We carefully considered all of the comments and adopted many of the recommendations. A number of the comments were quite long and detailed. Of necessity, we have had to condense, summarize, or paraphrase them. Nevertheless, we have tried to present all views adequately and to respond to all of the relevant issues raised by the commenters. We provide our reasons for adopting or not adopting the recommendations in the summaries of the comments and our responses below.

General Comments

Emphasis on Function

Comment: A number of commenters expressed general approval of the proposed listings. One commenter stated that the changes are reasonable and probably necessary in light of the fact that there have been advances in medical knowledge and diagnoses since changes were last considered several years ago. Other commenters specifically praised the emphasis on function, on the results of physical examination rather than on diagnosis, and on a longitudinal picture of the claimant's impairment in the proposed listings. These commenters were impressed generally with the expansion of the introductory text to the proposed listings to include definitions of terms and examples. One of these commenters stated that the definitions of ambiguous terms and examples would promote uniformity of decisionmaking. These commenters had no specific suggestions.

Response: We agree with the commenter who stated that the changes are reasonable and necessary in light of the fact that there have been advances in medical knowledge, diagnosis, and treatment. In the past, it may have been reasonable to assume that individuals with particular diagnoses were disabled once the diagnoses were objectively established. However, with state-of-the-art medicine, we can no longer reach the same conclusions. It is more important now to determine how an individual is functioning with treatment and use of technological advances in such devices as prostheses than it is to know the diagnosis of the individual.

Proposed Listings More Restrictive Than Past Listings

Comment: Some commenters, however, expressed concerns about the functional aspects of the proposals. Several commenters noted that the proposed revisions reflect the trend to write listings which rely on the assessment of function, rather than on diagnosis, to determine if a listing is met. While all of these commenters did not necessarily disagree with this trend, there were various concerns, such as that the proposed listings are possibly more restrictive than past listings and that with an emphasis on function comes the potential need for detailed development of activities of daily living on a larger number of cases. In the view of some commenters, the proposed listings require or at least imply the need for a more extreme level of functional loss to meet the listings than did prior listings.

Response: The proposed and final listings describe a level of impairment severity that represents the inability to perform any gainful activity. We believe the new listings describe this level of impairment severity more clearly and will therefore promote greater consistency in decisionmaking. Furthermore, if an individual does not have an impairment that meets a listing, this does not mean that the claim will be denied. This is because we do not make a determination or decision regarding disability based solely on whether or not an individual's impairment(s) meets a listing. The impairment(s)also could be found to equal a listing. If the severity of an adult claimant's impairment(s) does not meet or medically equal the severity of an impairment in the medical listings, the claimant can be found disabled at a later step in the sequential evaluation process. (In the case of a child claiming benefits under title XVI of the Act, the impairment(s) must cause marked and severe functional limitations as defined in § 416.906.)

Proposed Listings May Result In More Documentation and Delays

Comment: Some commenters stated that the listing changes could lead to more decisions at steps four and five of the sequential evaluation process for adults than at step three. Based on a premise that more documentation is required at these later steps of the sequential evaluation process, these commenters also thought the proposed listings may require more development and longer case processing time.

One commenter also stated that the proposed listings will require more documentation because they emphasize the need for and reliance on existing medical evidence, and the course of an impairment must be documented with a longitudinal clinical record covering at least 3 months of management and

evaluation. This commenter pointed out that the expanded criteria included the need to look at ''surgical management,'' not just ''staged surgical treatment,'' which, in the commenter's view, also will require more documentation of such things as information regarding various procedures post-surgery, complications of surgery, infections, and other factors associated with surgery, which adjudicators will need in order to determine functional limitations.

Response: We are not convinced that, even if there are more decisions at steps four and five of the sequential evaluation process, this will result in more development and increased processing time. The intent of the listings is to identify impairments that preclude the ability to perform any gainful activity (or, in the case of a child applying for SSI benefits based on disability, results in marked and severe functional limitations). Several of the current listings already include criteria based on functioning, and a degree of functioning has always been implicit in the other listings. Furthermore, we believe that if there are any increases in required documentation or processing time, they will be counterbalanced by the positive impact of the clarifications made in the new listings and the resulting uniformity of determinations and decisions. This will help ensure that the correct decision is made as early in the adjudicative process as possible, thereby reducing the number of appeals. However, in response to these comments, we added language in final 1.00B2a and 101.00B2a to make clear that we are not requiring additional documentation about the individual's ability to perform the specific activities that we list as examples in this section.

Although we disagree with the comment that the requirement for a longitudinal clinical history of management and evaluation for at least 3 months after alleged onset of the impairment in many cases would have resulted in more documentation and delays, we adopted the comment and deleted the 3-month requirement in favor of more general language on the need to establish a longitudinal history. In final 1.00H we make clear that, while a longitudinal clinical record is generally important for the assessment of severity and expected duration of an impairment, it is not always required.

''Level of Proof'' Needed To Show Loss of Function

Comment: One commenter suggested that we should define the ''level of proof'' needed in order for a physician to reach a conclusion regarding a condition and its effect on function. Physicians generally are asked if something is ''possible,'' ''probable,'' (more likely than not) or beyond a reasonable doubt. The commenter stated that there are a variety of references throughout this text which need this clarification. The same commenter was concerned that the proposed listings may not clearly show how physicians should determine functional ability. This commenter voiced the opinion that there is no more difficult determination that physicians have to make than to objectively evaluate functional capacity. Another commenter stated, ''If the intent is to make a more functional evaluation, then a more objective standard should be utilized.''

Response: We believe the ''level of proof'' issue, that is a better definition of how physicians will determine functional loss, is comprehensively discussed in our existing regulations at §§ 404.1512(b)(2) through (6), 404.1513(b)(1), (4), and (5), 404.1528(b) and (c), 404.1529, 416.912(b)(2) through (6), 416.913(b)(1), (4), and (5), 416.928(b) and (c), and 416.929. These sections stress that there must be objective medical evidence of a medically determinable impairment, and what is meant by objective medical evidence and other evidence. They also emphasize how we will consider all such evidence in determining how an impairment and related symptoms will be considered in determining their impact on an individual's ability to function. Regarding the concern that the listings do not teach physicians how to determine functional ability, the listings are not intended as a vehicle for training physicians. Rather, the listings provide guidelines for evaluating disability claims and provide an administrative means for screening in obviously disabled individuals. However, we do provide information on functional assessments as part of our professional relations outreach at medical conventions, forums, etc. We believe this is a more appropriate and effective approach to educating doctors and other medical professionals than using the regulatory process.

We agree that it is difficult for physicians to reach conclusions about an individual's functional ability. As we stress in §§ 404.1527 and 416.927, a physician's medical opinion on an individual's functional ability should be based on the medical signs and laboratory findings, the individual's symptoms, diagnosis and prognosis and the physician's own observations of the individual. However, the ultimate decision about a claimant's residual functional capacity (RFC) and whether the individual is disabled is reserved to the Commissioner of Social Security.

Muscle Spasm as an Indication of Impairment

Comment: One commenter suggested that the regulations should still require that muscle spasm be reported when it is present in back impairments, even if the finding may not be constantly present, because it helps to establish a severe impairment.

Response: We agree and have added language to final 1.00E and 101.00E that muscle spasm, when present, should be reported. We trust it is clear that, because muscle spasm is not always present in severe back impairments and is often a transient finding when it occurs, it need not be present to support a finding of disability. This is stated in our policy on pain and other symptoms at §§ 404.1529(c)(2) and 416.929(c)(2). This is also why sections 1.00D and 101.00D discuss the need for establishing a record of such intermittent findings as muscle spasm over a period of time, whenever possible.

Medical History

Comment: One commenter stated that the introductory text to the listings contains no guidance or requirement that a standard medical history be taken, nor does it include a description of the elements that should be included in the history. The commenter would add a section that discusses specific elements that the history should contain. The commenter suggested that the introduction should discuss acceptable methods of obtaining information regarding functioning, and that it should clarify that information regarding function should be obtained through a medical history, which may be supplemented by information obtained directly from claimants or third parties by adjudicators. The commenter also suggested that, when appropriate, the history should specify why treatment is not commensurate with the claimant's alleged level of symptoms to better address issues of credibility.

Response: We have not adopted this comment because most of the suggested revisions are covered adequately in other sections of the existing regulations and Social Security Rulings (SSRs), which are better vehicles for issues such as relating claimants' medical histories to their levels of functioning and addressing credibility. Current §§ 404.1512(d), 404.1513(b), 416.912(d), and 416.913(b) stress the need for a medical history in all medical reports, regardless of the nature of the

impairment, and state that we will make every reasonable effort to obtain this history. The suggestion that information regarding functioning should be obtained through a medical history supplemented by non-medical evidence need not be included in these rules because this is already required by §§ 404.1545(a) and 416.945(a).

We believe the suggestion that adjudicators should obtain information that explains why a claimant has not sought treatment commensurate with his or her allegations is already required in the regulations at §§ 404.1529 and 416.929. These regulations require adjudicators to consider, among other things, the type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate pain or other symptoms; treatment other than medication that the claimant receives or has received to relieve symptoms; any other measures used to relieve symptoms; and other factors concerning the claimant's functional limitations and restrictions due to symptoms. The regulations go on to state that in determining the extent to which symptoms affect the claimant's ability to perform basic work activities, we will evaluate the claimant's statements in relation to the objective medical evidence and other evidence in reaching a conclusion concerning disability. Further, we will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the claimant's statements and the rest of the evidence. To make sure that adjudicators fully understand how to consider the level of a claimant's treatment in assessing his or her credibility, we published SSR 96–7p, ''Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements,'' on July 2, 1996 (61 FR 34483), to further clarify the intent of these regulations.

We do not see further need to specify what goes into a history taken by an examining physician. Sections 1.00B2d–1.00E2 and 101.00B2d–101.00E2 include statements about what is needed to evaluate an impairment under these listings, and this includes the elements of a complete musculoskeletal history.

Proposed Obsolescence of Listing for Osteomyelitis

Comment: Another commenter stated that the listing for osteomyelitis and septic arthritis should be retained because she indicated that she knows of some individuals who continue to meet this listing.

Response: As we stated above and in the NPRM, advances in antibiotic therapy and in treatment have made osteomyelitis and septic arthritis rare occurrences, and cases that would last or be expected to last 12 months are even rarer. This does not mean that we would never find an individual disabled based on these conditions. It simply means that their occurrence is sufficiently rare that we can no longer justify a specific listing just for the occasional case we may encounter. As we stated in the NPRM, individual occurrences should be handled on a case-by-case basis to determine if they are equivalent in severity to a listed impairment or if they reduce RFC sufficiently to result in an allowance at a later step of the sequential evaluation process.

An individual who has been found disabled because of a listing for osteomyelitis or septic arthritis would not be disadvantaged because we later removed the listing. We do conduct periodic ''continuing disability reviews'' of individuals on the rolls to determine whether they are still disabled. However, when we conduct continuing disability reviews, we do not find that disability has ended solely based on a change in the listing. In most cases, we must show that an individual's impairment(s) has medically improved and that any medical improvement is ''related to the ability to work.'' If an individual's impairment(s) has not medically improved, we will generally find that the individual is still disabled. Even if the impairment has medically improved, our regulations provide that the improvement is not ''related to the ability to work,'' if the impairment(s) continues to meet or equal the ''same listing section used to make our most recent favorable decision.'' This is true even if, as in these final rules, we have removed the listing section that we used to make the most recent favorable decision. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A) of our regulations. (A similar provision for continuing disability reviews for children eligible for SSI based on disability appears in § 416.994a(b)(2).) In a case where we find that medical improvement is not related to the ability to work (or the impairment still meets or equals the prior listing, in the case of an individual under age 18), we will find that disability continues, unless an exception to medical improvement applies.

Need for Training/Education

Comment: Some commenters thought that any change in listings such as these will require re-education of the medical community and disability adjudicators. As one commenter noted, there may be an initial slowing of adjudication because of requests for clarification of the doctors' reports. This should be only temporary, however, and should be resolved in a relatively short time. Another commenter strongly recommended that SSA involve itself in the process of educating the medical community and motivating them to provide timely, complete information.

Response: Any changes in policy raise some issues during transition, but as always, we will train our adjudicators on the final regulations so that they will be familiar with the new criteria. We would expect physicians in the community who are involved with the program to learn about the changes through the usual channels provided under our auspices (e.g., public relations forums and meetings with professional relations officers).

1.00A Disorders of the Musculoskeletal System

Comment: A commenter asked (apparently for informational purposes) if hemophilic arthritides are also included under this section of the listings, but did not ask for any changes to the listings.

Response: Joint problems in people with hemophilia are caused by either acute bleeding into the joints or chronic changes related to prior joint bleeding. Because this is not a true inflammatory or infectious process, the term ''arthrosis'' rather than ''arthritis'' is actually more technically correct. Children, as well as adults, are affected by this condition, although children more frequently present with acute problems and adults more frequently present with chronic problems. Thus, hemophilic arthrosis would be included in the general conditions considered under 1.00A and 101.00A, and the effects of this condition generally would be considered under the listings that follow. Occasionally, chronic septic arthritis can occur in a hemophiliac with joint bleeding from frequent needle withdrawal of fluid from the joints. If this occurs, then the resulting impairment would be evaluated under listings 14.09 or 114.09.

1.00B Loss of Function

Comment: One commenter asked, ''Since these functional criteria are similar to 11.04B, shouldn't there be a referral to Listing 11.00ff if the restriction is due to a neurological problem?''

Response: We agree with this suggestion and have added statements

to this effect to final 1.00B1 and 101.00B1.

Terminology Used in 1.00B

Comment: One commenter called the term ''sustained basis'' an open-ended term that could use further definition. Several other commenters believed that the terms ''inability to ambulate effectively'' and ''inability to perform fine and gross movements effectively'' need clarification because they are open to interpretation and may make consistency of decisionmaking and review difficult. In addition, a commenter suggested that we need to provide some guidance on how to verify the degree to which a claimant's ability to ambulate is diminished. Another commenter suggested that the ''term 'extreme' is nonspecific and will not provide appropriate guidance to decision makers.'' Still another commenter suggested that the criteria for inability to ambulate provide more specific examples than the inability to perform fine and gross movements, and an explanation of how much or to what extent the ability or inability to reach, push and/or pull has in determining severity is needed. The commenter also stated that further explanation about intermittent assistance in buttoning and tying should be included. Similarly, another commenter suggested that we need to define exactly what we mean by intermittent assistance.

Response: We disagree, but we clarified the rules in response to these comments. We believe that it is clear from the examples cited in 1.00B2b, 1.00B2c, 101.00B2b, and 101.00B2c what we mean by ''the inability to ambulate effectively on a sustained basis or the inability to perform fine and gross movements effectively on a sustained basis.'' Further, we do not believe that assessing a claimant's ability to ambulate will be any different from any other assessment of the individual's ability to function. Thus, no further ''verification'' should be necessary.

The term ''extreme'' is not a new one to our disability adjudicators and is, in fact, defined, as it relates to children, in § 416.926a(e)(3) of our regulations. We disagree that the examples for inability to ambulate are any more specific than the examples for inability to perform fine and gross movements.

However, in response to these and other comments, we made several changes in final 1.00B2 and 101.00B2 that we believe will help clarify our intent. In 1.00B2b, 1.00B2c, 101.00B2b, and 101.00B2c we expanded the first sentence to better explain what we mean by an ''extreme'' loss of function when we talk about the ''inability to ambulate effectively'' and the ''inability to perform fine and gross movements effectively.'' In response to the comments indicating that the example of ''intermittent assistance'' in buttoning and tying shoes was not clear, we deleted this example.

In final 101.00B2b(2) we have made an additional modification of the first sentence to make it clear that consideration of function in children too young to walk independently must be based on assessment of the limitations in the ability to perform comparable age-appropriate activities with the lower extremities, given normal developmental expectations. This makes it clear that ''extreme'' levels of limitation will not necessarily mean a complete inability to do age-appropriate activities. We made a similar change in final 101.00B2c(2) regarding limitations in the ability to perform fine and gross movements for very young children.

Comment: Without making a specific recommendation, two commenters asked for clarification of the second sentence of 1.00B1 in the NPRM (final 1.00B2b). They wondered why the definition would require limitations to both upper extremities if a hand-held assistive device were required for adequate ambulation. They also asked if a cane would qualify under this section. Furthermore, would holding a device in one hand with only minimal assistance of the other hand constitute functional limitations of both upper extremities, or must the hand-held device require limitations of both hands (i.e., crutches, walker, etc.).

Response: We believe that the sentence is clear in its intent that an individual with one hand free while using an assistive device in walking would not meet the definition if he or she were otherwise ambulating effectively as defined in final 1.00B2b. As we repeatedly stress, the criteria expressed in the listings are intended to define limitations that prevent any gainful activity. A claimant requiring a cane or other device in only one hand to effectively ambulate might be severely impaired and could possibly be allowed at a later step of the sequential evaluation process, but he or she would not necessarily be unable to perform any gainful activity.

Comment: In related comments, two respondents implied that the required limitations to both upper extremities if a hand-held assistive device is required for adequate ambulation is a restatement of our policy. One of the two indicated that the proposed criteria are too restrictive, while the other believed the change is a good idea but would require training of adjudicators.

Response: We believe that the change is consistent with the intent of all listings regardless of the body system (i.e., as stated in the previous response, the listings are intended to define limitations that they would prevent any gainful activity.) Some individuals who walk reasonably well with a cane might be capable of some jobs and would need to be evaluated at later steps of the sequential evaluation process. To the degree that these changes require training for our adjudicators, we will provide such training just as we do with all new listings. Furthermore, the change is consistent with SSR 96–9p, ''Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work'' (61 FR 34478 (1996)), which deals with evaluating the vocational impact of using a hand-held assistive device.

Comment: Three commenters were opposed to the new criteria because they were apparently of the impression that we will now require individuals to use an assistive device with both hands to meet the criteria, which they, in turn, seem to equate with disability. One commenter stated, ''It has been my experience in working with disability claimants who have musculoskeletal impairments that would require the use of a hand held assistive device for ambulation, that even in the most extreme cases, an individual does not necessarily use a hand held assistive device that limits the functioning of both upper extremities.'' Another stated, ''The new proposal requiring the use of an ambulatory aid which uses both hands to be classified as the 'inability to ambulate effectively' is unjustified and absurd. By this proposal you are saying that a person who needs a cane to safely and effectively get around is not disabled.'' This individual also wanted to know how a case would be handled ''if a person has no use of an upper extremity because of C[erebral] V[ascular] A[ccident] or amputation.'' The third commenter suggested that, unless a claimant were in a wheelchair, he or she would not meet the ambulatory criteria, and that ''the slightest ability to ambulate would, in effect, rule out your meeting and/or equalling [sic]'' the musculoskeletal listings.

Response: We believe that these comments stem from a misinterpretation of the criteria. The criteria do not require an individual to use an assistive device of any kind. The first sentence of final 1.00B2b stresses that ''[i]nability to

ambulate effectively means an extreme limitation of the ability to walk.'' The ensuing explanation and examples should make it clear that this applies to anyone who cannot walk adequately. The explanation is intended to mean that individuals who can only walk with the aid of hand-held assistive devices requiring the use of both upper extremities would meet the definition of inability to ambulate effectively. In addition, anyone with an ineffective gait who cannot use assistive devices would also meet the definition of inability to ambulate effectively. An individual who can walk adequately with a cane or other device that affects only one upper extremity cannot be considered as incapable of any gainful activity, but such an individual might well be found disabled at later steps of the sequential evaluation process.

Thus, we recognize that individuals with extreme inability to ambulate do not necessarily use assistive devices. Furthermore, we recognize that an individual who uses a cane may be disabled. In addition, we state in the explanations at 1.00B2b and 101.00B2b(1) that listings 1.05C and 101.05C are exceptions to the general rule because an individual evaluated under these listings would have only one upper extremity. If an individual, for any reason, could only use a cane and no other assistive device and could not effectively ambulate, he or she would meet the criteria. Furthermore, we hope it is clear that the criteria are not intended to exclude all but those confined to wheelchairs. We believe that the language in final 1.00B2b and 101.00B2b(1) clarifies confusing language in the current listings.

Comment: One commenter stated that proposed 1.00B (final 1.00B2b) ''is contrary to the intent of the S[ocial] S[ecurity] Act, which defines a listed impairment as any impairment in which medical factors alone are presumed to preclude substantial gainful activity.'' The commenter suggested that we change the language to reflect that an individual would be disabled with the ''ability to walk only short distances (e.g., a city block) before resting,'' or the ''ability to walk only with the use of any ambulatory aid (e.g., one cane or crutch), as long as the other criteria of the Listings (e.g., joint pain, swelling, tenderness, and signs of inflammation or deformity on current physical examination in 14.09) are met.''

Response: We do not believe that the criteria in any way conflict with the Act. The Act does not, in fact, make any provision for the listings at all. The listings are an administrative convenience established by regulation to identify obviously disabled individuals. Furthermore, we believe the final criteria better identify obviously disabled individuals than would the suggested criteria. The suggestion might result in erroneous awards of benefits to individuals who could perform substantial gainful activity.

Comment: Another two commenters indicated that the introductory text should provide a definition and or example of what constitutes ''reasonable pace.'' One of the two wanted to know if it is having the ability to walk for one block on uneven surfaces in 5 minutes.

Response: We do not believe that ''reasonable pace'' can be easily limited to a particular distance in a specific amount of time. Disability determinations and decisions require a certain amount of judgment, no matter how specifically we define our terminology. The total medical and other evidence, including, but not limited to, what is learned about the individual's activities of daily living, and third party observations, must be utilized. By providing specific examples, we believe that we are providing adjudicators with sufficiently defined terms to make reasonable and consistent determinations and decisions.

Comment: One commenter disagreed with our decision not to consider the ability to stand in the definition for ambulation. The commenter stated, ''This section addresses only an ability to walk, not the ability to stand because standing is 'not an accurate gauge of functioning.' Standing is often a frequent function of many jobs, whereas, walking may only be occasional. For example, most assembly line workers stand a majority of the day in one spot, with minimal walking.'' The commenter further stated that standard SSA vocational documentation forms ''list walking and standing as separate physical activities when describing job duties.''

Response: The commenter has taken issue with the explanatory section of the draft regulations, and we agree that this explanation may have been confusing. We did not mean to imply that standing is not considered in an individual's ability to function. The primary intention for not including standing as a measure of function in final 1.00B2b (1.00B1 in the NPRM) is because, as we state in the explanation, ''profoundly impaired individuals can often stand for a period of time, although they may not be able to walk effectively.'' By including standing as a criterion, we might have incorrectly denied some claims by individuals who are disabled. A focus on ambulation rather than on standing does not mean that an individual who cannot stand for a period of time would not be disabled. Such an individual could quite possibly be unable to ambulate effectively. If an adult's impairment(s) did not meet or equal the requirements of the listings because the individual could walk without much difficulty but was unable to stand for long periods of time, as in the case of an individual with a back impairment who must alternate standing and sitting, the claim would be evaluated at the later steps of the sequential evaluation process.

Comment: Another commenter stated that in proposed 1.00B1, inability to ambulate effectively is defined as needing a hand-held assistive device that limits the functioning of both upper extremities, i.e., the claimant cannot walk without two canes or crutches, but the second paragraph of this section appears to describe a severe impairment, but less severe than the need for two assistive devices. The commenter suggested that either we change the first paragraph or we state that ineffective ambulation means the claimant needs two hand-held assistive devices and omit the rest of the description. Another commenter suggested that the regulations should include one other example of inability to ambulate effectively, the inability to walk without the use of a walker or two canes.

Response: We do not want to say that a claimant needs two hand-held assistive devices in order to exhibit inability to ambulate effectively because this would mean that people who cannot walk at all or who do not use any device but still cannot ambulate effectively would not meet the definition. The definition requires only that the claimant not be able to ambulate effectively and that effective ambulation would not occur if the only way an individual could get around would be with an assistive device that requires use of both upper extremities. Nonetheless, we have adopted the second suggestion, which may also satisfy the first commenter's concerns.

Comment: Two commenters believed there were additional inconsistencies within the definitions themselves. One commenter suggested that the first example listed in proposed 1.00B1 and 101.00B1, ''inability to climb,'' seems to be significantly more stringent than a later example, ''inability to use standard public transportation.'' Because most commuter trains and subways involve climbing up/down one or more flights of stairs, the commenter reasoned that inability to use public transit will

include many more people than those who are unable to climb ''a few steps.'' Asking if these examples are to be considered ''comparable'' in the level of severity, the commenter suggested that perhaps additional examples would help illustrate the level intended.

The other commenter believed that the second sentences of proposed 1.00B2 and 101.00B2, which stated, in part, that ''to use their upper extremities effectively, individuals must be capable of sustaining reasonable use of both upper extremities,'' could be interpreted to mean that individuals who can use only one upper extremity for pushing, pulling, grasping and fingering would have an impairment of listing-level severity because they do not have reasonable use of both upper extremities. The commenter believed this interpretation is inconsistent with a finding that an individual with a total amputation of one arm but no restriction in the use of the other arm would not meet any listing. The commenter recommended that the section be revised to indicate that individuals who are unable to perform such functions as reaching, pushing, and pulling with either upper extremity are not capable of sustaining reasonable use of the upper extremities.

Response: We added one example in connection with the previous comment, which may also help to clear up any concerns about inequities in final 1.00B2b and 101.00B2b. Nevertheless, we do not believe there is a problem with these sections. We do not intend the examples to be equivalent to each other, but to illustrate that even ''extreme'' limitation represents a range of severity. We list other examples and we make clear in final 1.00B2b and 101.00B2b that inability to ambulate effectively is not limited to these examples. For this reason, we did not change the example of inability to use ''standard public transportation.''

We did not agree with the commenter's suggestion that any individual who has lost, or lost the use of, an upper extremity should be found to meet a listing even if he or she has no other functional limitation. However, the comment made us realize that proposed 1.00B2 and 101.00B2 could have been misinterpreted. Therefore, in response to this comment we revised final 1.00B2c and 101.00B2c to make it clear that an individual must be unable to sustain such functions as reaching, pushing, pulling, grasping and fingering, regardless of whether he or she has the use of one or both upper extremities.

Comment: One commenter wanted to know how the examples in proposed 1.00B1 and 2 are to be developed and applied. The commenter wanted to know if some examples are ''critical'' to a decision of disability and how a claim would be decided if the claimant met some of the criteria but not others.

Response: Because the criteria mentioned are intended as examples of what would be extreme loss of function and not as individual requirements of a listing, it is not intended that some are more ''critical'' to a decision than others, any more than that some should be construed as more ''stringent'' than others. A claimant's loss of function may be evident through some other description than is found in any of the examples. This is why we are careful to state that these are examples and inability to ambulate or use the upper extremities is not limited to these examples.

Documentation Issues

Comment: Some commenters questioned how adjudicators should obtain the documentation required to meet the proposed 1.00B or 101.00B criteria, specifically inquiring whether adjudicators should attempt to get the evidence from physicians who treat or examine the individual or from lay sources, such as spouses, relatives, neighbors, or claimants, themselves. This led to the concern that getting the documentation might necessitate purchasing more examinations. One commenter stated that the ''emphasis on 'effective ambulation' will be very difficult to document objectively, since it will depend on the claimant's description of their activities.''

Response: As we noted in response to a prior comment, we added language in final 1.00B2a and 101.00B2a to explain that we are not requiring additional documentation about the individual's ability to perform the specific activities that we list as examples in final 1.00B2 and 101.00B2. In obtaining the evidence necessary to determine whether a claimant has an extreme loss of ability to ambulate or to use the upper extremities, adjudicators should follow the rules of evidence in §§ 404.1512 through 404.1513 and 416.912 through 416.913. Thus, we do not see this as an ''either/or'' question. Rather, we would consider statements from both medical sources and lay sources to assess the claimant's ability to do these things, ascribing appropriate weight to the statements as explained in these rules. We do not believe that the new rules will result in the purchase of more examinations or in the need for increased documentation. Even when documentation is insufficient to establish listing-level severity, many adults' claims may be allowed at a succeeding step in the sequential evaluation process.

We do not see lack of objectivity as an issue. A claimant's own statements about his or her functioning have always been factored into a decision, because symptoms are the claimant's statements about how an impairment affects the individual. We base disability determinations and decisions on all of the evidence in file, objective and subjective, and we consider whether there are any conflicts between the objective evidence and the claimant's own statements.

Pain or Other Symptoms

Comment: One commenter considered it problematic to include pain as a reason for loss of function, stating that with regard to the definitions of inability to ambulate and inability to perform fine and gross movements, including pain could create problems. The commenter indicated that this language might blur the lines between assessing the impairment severity based on objective findings, and then subsequently evaluating symptoms to see if there is a further reduction in function. Another commenter suggested we clarify the pain standard in this section. Still another commenter was concerned that this section will require the purchase of more consultative examinations.

Response: Under final 1.00B2d and 101.00B2d, we stress that in order for pain or other symptoms to be found to affect an individual's ability to perform work activities, there must first be objective medical evidence to support the existence of a medically determinable impairment that could reasonably be expected to produce the symptom. Considering pain as a factor in an individual's loss of function is consistent with §§ 404.1529 and 416.929 on evaluation of symptoms, including pain. Because the language in these final regulations is consistent with the current regulatory language regarding pain and other symptoms, it should not affect documentation requirements or practices, nor do we see any need for further clarification of the pain standard.

1.00C Diagnosis and Evaluation

Comment: Two commenters questioned whether this section might lead to purchase of extremely expensive tests. To avoid unnecessary purchase of such tests, one suggested it might be useful to include an explanation of the limitations inherent in using electromyography to assess impairment severity or functional limitations, and

that the section should specifically state that tests such as computerized axial tomography (CAT) scan or magnetic resonance imaging (MRI) should be reserved for difficult cases. Also, the commenter wanted to know if it would be possible to address the role of such newer testing as thermography. The other commenter asked, ''Since diagnosis and evaluation will be supported by medically acceptable imaging techniques such as CAT scan, MRI and radionuclear bone scans, will SSA be considering purchase of these techniques, if not part of the medical evidence of record?''

Response: SSA has never routinely purchased the types of tests mentioned in proposed 1.00C and 101.00C, nor do we see these sections as endorsing such a purchase. Rather, we will consider the results of such tests when they are part of the existing evidence in the case record. Such evidence normally would not be necessary because of the functional aspects of the revised listings. The ultimate degree of impairment severity is determined by how the claimant is functioning. Thus, although the types of tests mentioned are useful, they are usually not required for establishing a diagnosis and are rarely required for evaluating function. Nevertheless, in order to avoid unnecessary purchase of expensive tests, we have provided clarification in final 1.00C2 and 101.00C2 that we do not routinely purchase certain types of tests which are expensive and do not order other tests, such as myelograms, which are invasive and may pose significant risk to the claimant. In final 1.00C1 and 101.00C1 we have also explained that the medically acceptable imaging must be ''appropriate'' to ensure that the technique is one which can support the evaluation and diagnosis of an impairment.

A discussion of such newer techniques as thermography is not necessary since the tests mentioned are examples and not an exhaustive list. Tests such as electromyography, which are generally accepted by health care professionals as useful in establishing a diagnosis, would be acceptable to SSA. We state in final 1.00C3, with a minor clarification of the NPRM, that electrodiagnostic procedures may be useful in establishing the clinical diagnosis, but do not provide evidence which can be used to assess function for purposes of listing 1.04.

Comment: One commenter asked, ''Why is myelography (with or without post-myelographic CAT) not considered an acceptable imaging study? Are not the 'acceptable' imaging studies diagnostic procedures in the same vein and only helpful in establishing (supporting) the history of symptoms and physical signs?''

Response: This commenter seems to have misinterpreted the intent of the section. We do not state that these tests are not ''acceptable.'' We state that they may be ''useful'' in establishing diagnosis. However, because they do not, in and of themselves, measure functional ability they are not a substitute for the other requirements of the listings. The commenter is correct in noting that myelography is a form of medically acceptable imaging. We have added myelography to the list of examples in final 1.00C1 and 101.00C1. However, as explained above, this is an invasive procedure which may involve significant risk to the claimant. Therefore, we will consider the results of this testing when it is in the evidence in the case record, but we will never order the test.

1.00D The Physical Examination

Comment: One commenter suggested that ''[t]his section requires 'alternative' testing methods'' be used to verify abnormal findings'' and wanted to know, if alternate methods are not reported, would additional development be required to obtain them. Another commenter stated that use of alternative testing methods could result in apparent conflicts and delays in claims processing to resolve these conflicts. However, the commenter added that the provision recognizing that musculoskeletal impairments may be intermittent is a positive one.

Response: In response to the first commenter's concern, 1.00D does not require alternative testing methods in all cases. In some cases disability might be so obvious that alternative tests would not be needed. An adjudicator would only delay adjudication of a case if alternative methods were specifically required. Such a decision would be made on a case-by-case basis. We do not see such a need as a frequent occurrence because alternative tests are routinely performed in a general examination. The main reason why we included straight-leg raising in both the supine and the sitting positions as an example in this section is that these two versions of this test are routinely done to verify findings on examination. We should add that the language about which the commenters have expressed concern was not new to the NPRM. Rather, it is longstanding policy, having been part of current 1.00B.

We agree with the second commenter that in the event of a conflict, further investigation may be necessary. This, too, is consistent with longstanding policy. We believe that the type of thorough examination in which such cross-checks are performed will help ensure sound determinations and decisions and will in no way disadvantage disabled individuals. The statement that recognizes the intermittent nature of the presenting signs and symptoms of some impairments has been in the introduction to the musculoskeletal listings for some time and is there to safeguard the rights of disabled individuals. Current 1.00B contains an almost identical statement to the one in the proposed and final rule.

1.00E Examination of the Spine

Comment: Several commenters presented suggestions and concerns regarding the specificity needed for findings of muscle atrophy, motor abnormalities, and ranges of motion. One commenter suggested that a straight-leg raising test is meaningless if simply reported as ''positive,'' and that if pain is produced during straight-leg raising, it is necessary to know the location, pattern, and character of the pain. Another commenter suggested the listings should request that examining and treating physicians provide the Lasegue's sign. Some commenters also questioned the value of physicians merely reporting atrophy. One commenter suggested that a slight asymmetry of comparative circumference measurements may be unrelated to strength and could even be the result of errors in methods of measurement. Similarly, other commenters suggested that general statements regarding loss of muscle strength are of limited value and suggested the need for standard guidelines for measuring muscle strength. One commenter suggested the commonly used ratings of 0–5 with 5 representing normal muscle strength. Concerning ranges of motion, one commenter asked whether they should be given quantitatively, while another asked if anything less than the normal values listed in the ''Guides to the Evaluation of Permanent Impairment'' (the Guides) be considered a limitation of motion. He stated, ''For example the normal range of motion for flexion of the shoulder is listed as 180o. The rule should clarify what degree of flexion of the shoulder, e.g., 175o or 179o, is to be considered as a limitation of motion.''

Response: We agree that a statement of positive straight-leg raising alone is insufficient, which is why we request that it be reported in degrees and why we prefer that it be reported from both the supine and sitting positions (cf. 1.00D). We agree that the Lasegue's sign,

or any other appropriate tension signs, be provided, and we have added a phrase to this effect to final 1.00E1. We believe that this addition, together with the statement that observations of the individual during the examination should be reported, will be adequate to determine the significance of pain on straight-leg raising, especially because we already consider the location, pattern, and character of any pain under our regulations at §§ 404.1529(c)(3) and 416.929(c)(3). Furthermore, listing 1.04A, to which this discussion of straight-leg raising refers, calls for a ''neuro-anatomic distribution of pain.''

We also agree that measurement of muscle strength via the 5-point scale would be useful in conjunction with reports of atrophy for assessing motor function. Therefore, we have added language to final 1.00E1 and 101.00E1 that a report of atrophy should be accompanied by some form of measurement of the strength of the muscle(s) in question, and that we suggest that the 0 to 5 scale be used.

Concerning ranges of motion, experience in the past has shown that the criteria in the Guides have been sufficient for proper adjudication of musculoskeletal impairments. No further descriptions are really needed. Anything less than normal range of motion is clearly defined in the Guides and should be considered a limitation of motion.

Comment: One commenter thought that residual neurological deficit after surgery or other resolution of the underlying problem should be able to satisfy listing 1.04.

Response: As we stated in the explanation of the proposed rules in the NPRM, the second paragraph of proposed 1.00E (final 1.00E2), which is the section in question, is a clarification of the language in the current listings. As such, it represents a longstanding policy. Because the listing presupposes certain complications, such as significant disability due to pain, caused by active compromise of a nerve root, it is sound and logical from a medical standpoint to evaluate residual impairment under the more appropriate neurological listings once the compromise has been alleviated.

Proposed 1.00F (Final 1.00H) Documentation

Comment: Two commenters indicated that the section on Duration of Impairment (1.00F in the NPRM) needed clarification because it implied that 3 months of treatment history is needed in all cases. One commenter suggested that ''[t]here are many musculoskeletal impairments in which we do not need to have a record of at least 3 months of management and evaluation,'' while the other was concerned that ''the impression is that musculoskeletal conditions all improve with time.'' The latter suggested rewording the phrase, ''musculoskeletal impairments frequently improve with time or respond to treatment'' to ''musculoskeletal impairments frequently improve or respond to treatment within a three-month period after onset; degree of improvement can vary, and some impairments ultimately result in progressive disability.'' Two additional commenters were concerned that the 3-month requirement could result in delays and increased expense, and one of the two asked for clarification of what we mean by a favorable decision because if ''favorable'' means ''fully favorable'' and all other cases require a 3-month history, this would delay development of the majority of cases. Another commenter asked for clarifying language on how to handle this requirement when there is no treating source.

Response: As already noted, we deleted the requirement for a 3-month history in response to these and other comments, although we continue to stress the importance of a longitudinal history. In final 1.00H, we explain that, in the absence of a longitudinal clinical record, we will make a determination based on all the available evidence.

In responding to these comments, we also realized that the heading of the section was inaccurate because the section was not exclusively about ''Duration.'' In final 1.00H (and final 101.00H) we have changed the title to ''Documentation,'' which better describes the provisions in this section.

The fact that an individual may not have a treating or other medical source does not mean that we cannot establish a longitudinal clinical record. If necessary, we may purchase a consultative examination for comparison with earlier evidence. Also, we made several changes in response to this and other comments. We clarified final 1.00H and 101.00H by stating that a longitudinal picture of the individual's impairment(s) in terms of medical severity, functioning, and symptomatology is important even when the individual has not received ongoing treatment. We also added final 1.00H3 and 101.00H3, ''When there is no record of ongoing treatment.'' The language is taken from the introductory texts to other body systems; see, e.g., 4.00A, third paragraph, in the cardiovascular system. It only repeats our longstanding policy. In both the NPRM and final 1.00H and 101.00H, we state that it is not necessary to defer a determination or decision when the evidence establishes that the claimant is disabled.

Proposed 1.00G (Final 1.00I) Effects of Treatment

Comment: One commenter wanted to know how the issue of duration figures into the positive or negative effects of pain medication, while another asked how the impact of adverse side effects should be documented or evaluated.

Response: We believe that these issues are adequately addressed in the regulations on pain and other symptoms found in §§ 404.1529 and 416.929. The effects of any medications used for symptoms are considered together with all medical and other evidence in determining the severity and expected duration of an impairment. Findings that medication relieves pain only sporadically or that side effects are long lasting and particularly debilitating would impact adversely on the claimant's overall ability to function for extended periods, while extended periods of relief with few side effects might improve ability to function. However, the regulations do not intend that the effects of medication be considered alone. Rather, these effects should be considered with a number of factors outlined in §§ 404.1529(c)(3) and 416.929(c)(3), as well as the objective medical evidence and all other available evidence, in measuring the total impact of symptoms on the ability to function. Nevertheless, we added the phrase, ''or judgment about future functioning,'' to the end of the last sentence of final 1.00I3 and 101.00I3 to make clear that we are ultimately concerned with how treatment, be it medication, surgery, or any other measures, affects or will affect the individual's ability to function.

Proposed 1.00H (Final 1.00J) Orthotic, Prosthetic, or Assistive Devices

Comment: One commenter questioned the logic for assessing an individual without the aid of a hand-held device, especially because it has already been deemed ''medically'' necessary. Another commenter liked the concept, but together with a third commenter, foresaw practical difficulties with getting the information. The former suggested that it is unlikely that claimants will voluntarily relinquish their devices, and he doubted that consulting physicians will remove them forcibly. The other commenter stated, ''The new listings require information as to exactly what function a person has without the device if one is usually used, including how far he/she can ambulate without it, and on what kind

of surfaces. Not all claimants are treated by specialists prepared to provide such details.''

Response: In response to these comments we have removed the phrase, ''medically necessary'' and have restructured the section to clarify when an examination with or without an orthotic, prosthetic, or assistive device is important.

We explain in final 1.00J4 (hand-held assistive devices), the importance of an evaluation with and without a hand-held assistive device, and why it is important to document the need for the device. We would not require an examination without the assistive device if such an examination is contraindicated by the medical judgment of a physician who has treated or examined the individual.

In final 1.00J2 (orthotics) we explain that it is unnecessary to routinely evaluate an individual's ability to function without the orthosis in place. If an individual with an impairment of a lower extremity or extremities cannot use an orthotic device, the examination should include information on how the individual ambulates without the device. However, we do not expect a physician to examine the individual without the device if contraindicated by medical judgment.

In final 1.00J3 (prosthetics) we explain that the examination should be with the prosthetic device in place. We make clear that where an amputation involves a lower extremity or extremities, we do not require an evaluation of an individual's ability to walk without the prosthesis, but we do require an evaluation of the individual's medical ability to use a prosthetic device to ambulate effectively as defined in 1.00B2b. We also explain that the condition of the stump should be evaluated without the prosthesis in place.

We expect that the appropriate medical need for an orthotic, prosthetic, or hand-held assistive device will be confirmed by a physician who has treated or examined the individual.

Proposed 1.00I (Final 1.00K) Disorders of the Spine

Comment: One commenter suggested that arachnoiditis can be determined through CAT and MRI scans, rather than only through surgery and subsequent pathology report. Another was concerned that this section does not mention scarring from surgery, which is one of the most common causes of arachnoiditis. A third commenter indicated that the listings for impairments such as spinal arachnoiditis and lumbar stenosis call for a description of pain sufficiently detailed to determine whether or not it follows the required anatomical distribution and persists despite prescribed therapy. By implication, the commenter seemed to be suggesting that this would lead to increased documentation of claims.

Response: We agree with the first commenter and believe this is adequately covered by our statement in final 1.00K2b that arachnoiditis can be confirmed by ''appropriate medically acceptable imaging.'' Concerning the second comment, we do not list any causes of arachnoiditis but only that it may be related to certain factors. In fact, we specifically stated in 1.00K2 of the NPRM that ''the cause of spinal arachnoiditis often remains obscure.'' In the event that this language may have been ambiguous, we have revised the sentence to indicate that ''[a]lthough the cause of spinal arachnoiditis is not always clear, it may be associated with chronic compression or irritation of nerve roots (including the cauda equina) or the spinal cord.'' We have also revised the last sentence of 1.00K2b to make it clear that it is particularly arachnoiditis of the lumbosacral spine that generally makes it difficult for an individual to sustain a given position or posture for more than a short period of time due to pain.

We do not believe that the description of pain required to document either spinal arachnoiditis or lumbar stenosis deviates in any way from longstanding policy set forth in the regulations at §§ 404.1529 and 416.929. The regulations require that any symptom(s) must be reasonably expected to be produced by the impairment. Generally, if a symptom is a criterion of a listing, the symptom need only be present along with the other requisite criteria. It is usually not necessary to determine whether there is functional loss associated with the symptom. It is the interrelationship of the set of medical findings, not the individual criteria, that establishes listing-level severity. Information about the nature of the pain, its intensity, persistence or limiting effects is appropriate in certain listings to establish the required level of severity. Thus, we do not believe that the requirements under proposed 1.00I and final 1.00K will affect the way claims are documented.

Proposed 1.00J (Final 1.00L) Abnormal Curvatures of the Spine

Comment: One commenter suggested that we include ''outside parameters'' of degrees of curvature, even though the primary focus of the listings is on functioning.

Response: We did not adopt the comment. As the commenter noted, the emphasis of this section is on functioning, and we do not think it would be practical to set a level of curvature beyond which we would presume the appropriate degree of functional limitation.

Comment: One commenter referred to our statement in the NPRM that marked disfigurement may result in emotional withdrawal and isolation. This commenter asked whether such a mental impairment should be evaluated separately since any marked deformity could have a similar impact. Another commenter suggested that we expand our list of examples to include ''cardiac, gastrointestinal, neurologic, and immune system compromise'' in addition to ''pulmonary complications'' and ''disfigurement with emotional withdrawal or isolation.''

Response: We revised the rules to address these comments, although the first comment was not entirely clear to us. We expanded the section to provide guidance about other impairments an individual with abnormal curvature of the spine may have.

We provide guidance in this section about the potential emotional effects of disfigurement to remind our adjudicators to be alert to this possibility when they evaluate the effects of the impairment on each individual. However, as in the NPRM, we also provide that associated mental disorders may be evaluated separately under the mental disorders listings, consistent with the suggestion in the first comment.

Proposed 1.00K (Final 1.00M) Under Continuing Surgical Management

Comment: One commenter asked us to clarify this section. Essentially, the inquirer wanted to know if ''continuing surgical management'' meant only surgery or if other treatment modalities, such as closed reduction, casting, bracing, bone stimulation, etc., with nonunion of the radius or ulna lasting more than 12 months, would satisfy the criteria for listing 1.07.

Response: The types of alternatives to surgery mentioned in the question would satisfy the requirements of the listings, as we believe is made clear by the language in 1.00M. This is why we use such terms as ''surgical procedures and any other associated treatments,'' ''other medical complications,'' and ''related treatments'' in our discussion of what we mean by surgical management. In our explanation of changes we did state that ''surgical management'' means more than surgery itself.

Proposed 1.00L (Final 1.00N) After Maximum Benefit From Therapy Has Been Achieved

Comment: There were three separate suggestions for clarification of this section. One suggestion was that the section should make some mention of how to apply the guides when the 12-month duration period has already been met, not merely when there has been no surgical intervention for 6 months. Another commenter was concerned that ''[a]s written, this section would require multiple surgical procedures. Is this the intent or could the listing be met with more conservative treatment without surgical intervention?'' The third commenter was concerned about how to apply the medical improvement review standard in §§ 404.1594 and 416.994 when surgeries ''appeared to be in progress at the time of the initial allowance'' but no further surgery was done and no ''substantial increase in function has occurred.'' This commenter recommended adding language to proposed 1.00L to address this situation.

Response: We do not see the need to discuss how to address duration if a condition has lasted at listing-level for at least 12 months and then stabilized following surgical or medical intervention during this period. If this were the situation, we believe it is obvious that the claimant's impairment would be disabling for at least a closed period, and any further finding of disability would depend on how the individual's demonstrable residuals affect him or her, using the guidelines set forth in proposed 1.00L (final 1.00N).

We did not intend for 1.00L (final 1.00N) to exclude more conservative treatment, as evidenced by our phrase approximately midway through the proposed and final sections, ''surgical or medical intervention.'' To clarify our intent, we have added a similar phrase to the first sentence of final 1.00N. What once read, ''last definitive surgical procedure,'' in this sentence, now reads ''last definitive surgical procedure or other medical intervention.''

We revised the language of the last two sentences in final 1.00N and 101.00N to attempt to clear up any ambiguities that might have arisen. We believe the revised text addresses the third commenter's concern.

Proposed 1.00M (Final 1.00P) When Surgical Procedures Have Been Performed

Comment: A commenter wanted to know if we really mean to state that a copy of operative notes and available pathology reports ''should'' be included or do we mean that they ''must'' be included. If it is not imperative that they be included, the commenter suggested that a summary of the surgery, usually included in hospitalization summaries, would be sufficient and that a statement to this effect should be added.

Response: In most cases, the operative notes and pathology reports would be preferred, but we recognize that they are not always available. If a summary is sufficiently detailed and the actual report is either not provided or unavailable, we would not require the actual report. The proposed language is nearly identical to the statement in 1.00B it has replaced, and there have been no adjudicative problems associated with this language in the past. We believe that our adjudicators can use sound judgment in applying this guideline in case situations.

Proposed 1.00N (Final 1.00F) Major Joints

Comment: One commenter suggested that this section and 1.00O be placed more logically after 1.00E and that 101.00N and 101.00O be placed after 101.00E. Another suggested that the ''ankle'' joint is so crucial to the ability to ambulate, it should be considered a major weight-bearing joint without being combined with the foot. A third inquirer wanted to know if the fact that we consider the wrist and hand to be a major joint requires impairment of both the wrist and hand and whether an impairment of the fingers alone can be considered a major joint.

Response: We agree with the first suggestion and have redesignated all affected sections accordingly. We also agree that for purposes of weight bearing, the ankle and foot should be considered separately for the reasons stated by the commenter, and we have reworded this section and listing 1.02A to reflect this change. In the final rules we clarified that ''major joints'' as used in 1.00F and 101.00F and in listings 1.02 and 101.02 refers to major peripheral joints as opposed to other peripheral joints, (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine). For purposes of meeting the ''listings test'' for disability, we must consider the hand and wrist as a major joint. Impairment of either the hand (including fingers) or wrist, alone, would not be of listing-level severity. However, this does not mean that an adult could not be disabled at a later step of the sequential evaluation process with only impairment to the fingers, hand, or wrist.

1.02 Major Dysfunction of a Joint(s) (Due to Any Cause)

Comment: One commenter wanted to know if any degree of limitation of motion will satisfy the requirements of the listing.

Response: Yes. As we stated in our response to a similar inquiry involving 1.00E, anything less than normal range of motion is clearly defined in the ''Guides to the Evaluation of Permanent Impairment'' and should be considered a limitation of motion.

Comment: Another commenter proposed adding another subsection to the listing requiring involvement of one hand and one foot, with less severe restrictions than are required in A and B.

Response: As we stated in other responses, the listings are intended to define such extreme limitations that they would prevent any gainful activity. Although we agree with the commenter that the suggested impairment would likely be severe, and might prevent many types of gainful activity, we do not think that such an impairment with fewer limitations than are contemplated by either listing 1.02A or B would necessarily prevent any gainful activity. Therefore, we have not added the suggested listing. Rather, in adult claims, we would continue to evaluate any severe impairment that falls short of listing-level severity at later steps of the sequential evaluation process.

Comment: A physician commented that the title of this listing is confusing and should be changed to ''Major Joint Dysfunction.'' He also stated that the listing is too rigid and requires too many physical findings. Because the A and B sections of the listing require extreme loss of function, the commenter suggested that requiring such extensive physical findings could result in delays of decisions and unnecessary development to attempt to obtain missing findings, when all that is really required is that an individual have a medically determinable impairment that has resulted in the functional loss required by section A or B. He suggested language for revising the listing.

Response: We have partially accepted the suggestion in that we have changed the title of the listing to ''Major dysfunction of a joint(s) (due to any cause).'' We disagree with the suggested language revisions to the listing, however. Findings such as subluxation or fixation of a joint can be due to a wide variety of causes, and some cases are amenable to treatment. Therefore, we believe that the findings on appropriate medically acceptable imaging, which aid both in determining

the cause and in defining the chronicity of an impairment, are vital to fulfilling the requirements of this listing.

1.03 Reconstructive Surgery or Surgical Arthrodesis of a Major Weight-Bearing Joint

Comment: One commenter stated that return of effective ambulation within 12 months is subjective and may cause difficulties from an adjudicative standpoint. Another commenter suggested that the new listing is too restrictive because it replaces the return to full weight bearing with the more restrictive ''inability to ambulate effectively.''

Response: These concerns stem from the same issues raised by other commenters under 1.00B. We believe we have already explained, in both the NPRM and in final 1.00B, that the need for the new functional criteria and for revising this listing is to place more emphasis on the functional impact of impairments on a person's ability to work. We agree with the second commenter that many individuals might be prevented from working under the current criteria. But with advances in surgical techniques and post-surgical treatment, some individuals who are not considered fully weight bearing on a lower extremity have sufficient ability to ambulate to be able to work. Individuals who cannot return to past relevant work because return to full weight-bearing status has not occurred will be evaluated at the appropriate steps in the sequential evaluation process.

1.04 Disorders of the Spine

Comment: At least two commenters specifically indicated that this listing would be helpful and an improvement over previous listings. Three others asked for clarification of some of the terminology in this listing. One commenter pointed out that proposed listing 1.04A requires evidence of a ''motor deficit (atrophy or muscle weakness)'' while proposed listing 1.04C requires evidence of ''weakness'' alone. The commenter asked whether we intend that motor deficit, which would include either weakness or atrophy, be a requirement for proposed listing 1.04C. A second commenter asked what would be positive for straight-leg raising and how the need for frequent changes in position or posture would be documented. The third commenter suggested that the meaning of ''frequent'' in proposed listing 1.04B needs to be more clearly defined.

Response: We made some changes in final listing 1.04A to make clear that we are referring to neuro-anatomic distribution of pain. The terms ''motor loss'' and ''motor deficit'' were used interchangeably in the NPRM. For consistency in the final rules, we refer to ''motor loss'' in listing 1.04A. We further clarified that atrophy as evidence of motor loss must be associated with muscle weakness. However, we purposely did not require atrophy as a requisite for meeting listing 1.04C. As we stated in the explanation of the revisions in the NPRM, we list both spinal arachnoiditis and lumbar spinal stenosis with pseudoclaudication separately from nerve root compression because they present different signs and symptoms. While atrophy can often be an outcome of nerve root compression, this usually will not be the case with spinal stenosis. In addition, in order to meet final listing 1.04C, an individual must be unable to ambulate effectively, as defined in 1.00B1 in the NPRM (final 1.00B2b,) which is not a requirement to meet final listing 1.04A. Such inability to ambulate would be indicative of ''motor loss'' associated with extreme spinal stenosis.

We presume that the second questioner is asking what would be positive for purposes of our program. We have provided the answer to this question in our response to comments at 1.00E. The need for frequent changes in position or posture would be documented from observations by treating or examining physicians, to be supplemented by appropriate lay testimony, as needed. We do not see this as a new requirement, as we have historically sought to obtain such evidence in support of any condition that causes pain or discomfort. However, we agree with the third commenter that we need to more clearly define ''frequent'' as used in proposed listing 1.04B. In final listing 1.04 we have clarified that the changes in position or posture must be more than once every 2 hours. We believe that a longitudinal record of the effects of arachnoiditis on an individual will provide sufficient data for adjudicators to determine whether the listing is met.

1.05 Amputation (Due to Any Cause)

Comment: One commenter indicated that listing 1.05C is redundant, because both listings 1.05B and C involve amputation of a leg at or above the tarsal region with ineffective ambulation as defined in 1.00B1 in the NPRM (final 1.00B2b.)

Response: We do not agree that the listings are redundant because they are based on different circumstances stemming from different impairment mechanics. Under final listing 1.05B, an individual would be disabled if he or she has stump complications which result in the medical inability to use a prosthetic device to ambulate effectively. If there are no stump complications, modern surgery and advances in prosthetic devices should enable an individual to ambulate effectively. Final listing 1.05C would apply to someone who has had an amputation of the leg at or above the tarsal region but can only walk with a hand-held assistive device, and given that the other hand is absent, such an individual would have effectively lost the use of both upper extremities.

Comment: Two commenters suggested that listing 1.05, in general, is punitive in nature. One stated that the proposed listing presumes that individuals will have benefited from the latest in surgical techniques and prosthetic devices. This commenter stated that individuals who have not, including those who had their surgery prior to the advances in surgical and engineering techniques or those who could not afford to replace an older prosthesis with a newly perfected type, would be penalized by the new listing. The other commenter simply stated that the impairments described by the existing listings would be severe enough to be disabling and should stand. Several other commenters also disagreed with the decision to revise the existing listing for a hemipelvectomy or hip disarticulation. While one commenter agreed with this decision, the commenter and a number of others disagreed with the decision to remove the listings for amputations due to peripheral vascular disease or diabetes mellitus. In addition, one commenter suggested retaining both listings for amputations of both feet and for one hand and one foot, while another recommended retention of the listing for one hand and one foot.

Response: We already made clear our reasons for revising the listings in our explanation of revisions in the NPRM.

Overall, we believe that the level of concern expressed by the commenters results from a misunderstanding of our intent. We are not proposing that individuals who would have met the current listings will never be found disabled. Nor do we believe that these rules will disadvantage individuals who had their surgery or were fitted with a prosthesis before recent advances in surgical and engineering techniques, or individuals who could not afford a newer prosthesis. Rather, these rules reflect our judgment that surgical and engineering techniques have progressed to the point where it is no longer a relative certainty that individuals with the level of impairment described in the

current listings can automatically be deemed disabled.

Some individuals who have not benefited from recent surgical and engineering techniques can still be found to have an impairment of listing-level severity if they have insufficient lower extremity functioning to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. As with some of our other listings, other individuals may well be found disabled at later steps in the sequential evaluation process and, we believe, at relatively little cost in time or resources to adjudicators.

The inability to afford the cost of a replacement prosthesis was an issue in the application of current listing 1.10C in Gamble v. Chater, 68 F.3d 319 (9th Cir. 1995). We issued a Social Security Acquiescence Ruling (AR) 97–2(9) (62 FR 1791) to explain our policies and how we apply the holding of the United States Court of Appeals for the Ninth Circuit in this case. In these final rules we replaced current listing 1.10C with final listing 1.05B and expanded the guidance in final 1.00J. Final listing 1.05B requires that an individual with an amputation of a lower extremity or extremities at or above the tarsal region be medically unable to use a prosthetic device to ambulate effectively as defined in 1.00B2b. In final 1.00J3 we explain that it is unnecessary to evaluate the individual's ability to walk without the prosthesis in place. We added this explanation because we recognize that individuals with the type of lower extremity amputation described in final listing 1.05B, will have an inability to ambulate effectively, as defined in 1.00B2b, when they are not using a prosthesis. This would be true whether they do not use a prosthesis because they cannot afford one, because a prosthesis has not been prescribed for them, or for other reasons. For that reason, it would be unnecessary to evaluate the individual's ability to walk without the prosthesis in place. However, we do require an evaluation of the individual's medical ability to use a prosthetic device to ambulate effectively. As the final rules sufficiently clarify the issue in Gamble, we are rescinding AR 97–2(9) under the authority of §§ 404.985(e)(4) and 416.1485(e)(4) of our regulations concurrently with these final rules.

As we already noted, medical advances in disability evaluation and treatment and program experience require that we periodically review and update the medical criteria in the listings. This is an ongoing process which we will continue. However, as indicated above, after reviewing the comments and the literature, we agree with those commenters who felt that a hemipelvectomy or hip disarticulation is still in itself sufficient to establish the existence of an impairment of listing-level severity. Therefore, final listing 1.05D has been revised to reflect the same criteria as current listing 1.10A.

Comment: One commenter noted that on page 67583 of the NPRM we state that individuals who are unable to ambulate effectively due to stump complications resulting from diabetes or other disease, may have their impairments evaluated under listing 1.05B. The commenter suggested we add a statement to this effect to the introduction to the listings.

Response: In final listing 1.05B, ''stump complications,'' means any stump complications regardless of the cause. However, to clarify that an individual with an amputation(s) due to any cause, including diabetes mellitus or other disease, will have his or her impairment evaluated under listing 1.05, we changed the title of the listing from ''Amputation,'' to ''Amputation (due to any cause).''

1.06 Fracture of the Femur, Tibia, Pelvis, or One or More of the Tarsal Bones

Comment: One commenter suggested that the listings should provide for individuals who may have achieved a solid union of their fractures in fewer than 12 months but who will take 12 months or longer, in total, to return to work.

Response: Individuals with solid union of their fractures occurring in fewer than 12 months, but with residual soft tissue damage or soft tissue complications (e.g., of muscle or connective tissue) requiring surgical or medical intervention for 12 months or longer related to the efforts directed toward the salvage or restoration of major function of the affected part could equal listing 1.08. An adult whose residual impairment is either not of listing-level severity or not expected to be of listing-level severity at 12 months after the fracture would still be evaluated at steps 4 and 5 of the sequential evaluation process.

Comment: Another commenter suggested that this listing is punitive and open to subjective interpretation, apparently because it is linked to the requirement for independent ambulation. The commenter suggested that this term needs a uniform definition.

Response: We already answered this concern, at least indirectly, under our responses to comments on proposed 1.00B1. We believe that the term is clearly defined by way of the examples provided as ways in which ambulation would be considered as ineffective.

1.08 Soft Tissue Injury (e.g., Burns) of an Upper or Lower Extremity, Trunk or Face and Head

Comment: Two commenters sought clarification of what we mean by ''major function'' of the face and head.

Response: In policy memoranda and manuals, we have generally considered such function to be related to sight, hearing, speech, mastication, and the initiation of the digestive process. In the final rules we have added new sections 1.00O and 101.00O to describe what we mean by major function of the face and head for purposes of listing 1.08. (1.00O in the NPRM will now be final 1.00G.)

Comment: One commenter questioned the role of pain for this listing, while hypothesizing that chronic lumbago and fibromyalgia might be considered under this listing, and seemed to want more objective criteria for evaluation of this listing.

Response: We do not see how fibromyalgia or lumbago would be evaluated under this listing because the listing involves surgical management of the affected soft tissue areas. To the degree that pain factors into this listing or any other musculoskeletal listing, we believe the statements provided in 1.00B2d of the introductory text to these listings, as well as in §§ 404.1529 and 416.929 of the regulations adequately describe how we consider pain and the factors used to determine how it affects an individual's ability to function.

4.12 Peripheral Arterial Disease

Comment: One commenter stated that this listing appears to have been assigned the wrong number and that it should remain 4.13, unless our intent is to eliminate current listing 4.12 for chronic venous insufficiency.

Response: The revised regulations on cardiovascular impairments published at 59 FR 6468 on February 10, 1994, renumbered chronic venous insufficiency as listing 4.11 and peripheral arterial disease as listing 4.12.

14.00B

Comment: One commenter remarked, ''The discussion of the use of the term 'severe' in the listings to describe medical severity is ambiguous. The statement that it does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation process does not adequately address the differences in the use of the term in the

listing and at step two of sequential evaluation.''

Response: The language in this section regarding how we use the term ''severe'' was not new but was in the existing Immune System listings. It describes how we use the term in a number of existing listings, not in any of the new listings introduced by the final revisions to the musculoskeletal listings. The overall severe loss of function would result in an impairment that would be profoundly disabling and not merely ''severe'' for program purposes as defined in §§ 404.1520, 416.920, and 416.924 of existing regulations. Therefore, we are not changing it.

However, we agree that the first use of ''severe'' in the paragraph to describe loss of function might be somewhat confusing, so we have changed the phrase to read, ''serious loss of function.'' Also, it is not function of the body's organs with which we are concerned in disability evaluation, but with function of the whole individual. Therefore, we have further revised this first sentence in two places to read that functional loss is ''because of disease affecting'' an organ(s) and not because of functional loss ''in'' the organ(s).

14.09 Inflammatory Arthritis

Comment: One commenter suggested rewriting this listing to avoid the potential difficulty of the listing inadequately specifying diagnostic criteria for the long list of disorders named in the introductory text to the listings. The commenter suggested that inflammatory arthritis be documented as described in 14.00B6 and that 14.09A would be met if the inflammatory arthritis were diagnosed in accordance with the criteria of a current widely accepted medical text or journal, and it resulted in inability to ambulate effectively or inability to perform fine and gross movements effectively as defined in proposed 14.00B6b and 1.00B1 and B2.

Response: The suggested revision would actually change the intent of 14.09A. The intent is that the inflammatory process itself is still active and has involved or affected two or more major joints. The suggested revision would raise the possibility that disability could be established solely on allegations of pain in an individual with a prior diagnosis of an inflammatory arthritis. Also, to suggest that inflammatory arthritis be ''diagnosed in accord with the criteria of a current widely accepted medical text or journal'' leaves the issue open to very broad interpretation and judgment.

Comment: Another commenter suggested that listing 14.09A should refer back to 1.00G (final 1.00I) on effects of treatment.

Response: Although we recognize that an individual with inflammatory arthritis likely will be under active therapy for the condition, we do not think that the effects need to be expressly considered herein. Whether effects are positive or negative is immaterial, given the degree of limitation needed to meet the criteria of listing 14.09A. According to these criteria, an individual's disease would be active and would result in inability to ambulate effectively or to perform fine and gross movements effectively.

14.09B Ankylosing Spondylitis

Comment: One commenter interpreted proposed listing 14.09B as not requiring x-ray evidence and believed this was a good decision.

Response: We believe this commenter misinterpreted our intent. We removed the requirement for corroboration of the existence of the impairment by specific laboratory tests, to include x-ray or other appropriate medically acceptable imaging, in both proposed and final listings 14.09A, C, and D. However, we have retained the requirement for appropriate medically acceptable imaging in listings 14.09B and 14.09E as the imaging is necessary to document the impairments evaluated under these listings.

Comment: Several commenters stated the new range of motion restrictions required to meet this listing and others in this section are too stringent, suggesting that fixation of the spine be left at 30° rather than 45°. One of these commenters also objected to the requirement that fixation be of the dorsolumbar and cervical spines, stating that fixation of either be considered severe enough to be presumed disabling.

Response: As with other listings, we recognize that an individual might be unable to perform many forms of gainful activity with the level of impairment contemplated in the current listings, but we do not agree that the impairment would preclude any gainful activity. However, we realize that the NPRM incorrectly required fixation of both the dorsolumbar and the cervical spines. We agree with the commenter that the required fixation of either the dorsolumbar or cervical spine is sufficiently severe to be considered disabling and we changed final 14.09B accordingly. Lesser degrees of involvement will be evaluated at later steps of the sequential evaluation process.

Comment: One commenter recommended an additional listing for individuals who are developing ankylosing spondylitis, but whose spines have not yet ankylosed. The reasoning was that in these cases the disability produced by ankylosing spondylitis is actually less once the spine has ankylosed. Before that time, the individual is in severe pain, and on the basis of this severe pain, disability should be established.

Response: Because pain is variable and some individuals might function fairly well while the process is occurring, while others might be more incapacitated by the pain, we cannot create a listing that would rely so exclusively on a symptom alone. We believe that the regulations on pain and other symptoms at §§ 404.1529 and 416.929 provide sufficient guidance on how to handle the types of situations described in the recommendation.

14.09D and E

Comment: One commenter called listing 14.09D too complicated and stated that it will be difficult for adjudicators to apply, while others considered it and 14.09E vague. One suggested that the many cross-references to other listings and the nonspecific criteria in D2 make these listings difficult to use. Three others called for more precise wording and definition of terms, particularly the term ''moderate.'' Another commenter asked what ''lesser deformity than in B'' and ''lesser articular findings'' called for in 14.09E mean and suggested these terms be defined. Still another commenter suggested that these same three terms as used in the childhood listing, 114.09, need clarification. The same commenter asked how duration of morning stiffness can be documented.

Response: We did not adopt all of these comments, but we did clarify the rules somewhat, as explained above in the summary of the changes. Listing 14.09D (and 114.09D) is based on, and uses the same criteria as, listings 14.02B, 14.03B, 14.04B, 14.05B and their counterparts in part B of the listings. As such, the new listing for inflammatory arthritides is consistent with our other existing listings for connective tissue disorders.

101.00B Loss of Function

Comment: One commenter noted, ''This section discusses functioning, but not sequential evaluation. We feel there should be a stronger reference to 'age appropriate activities.'' '

Response: The listings are not intended as a vehicle for describing the full sequential evaluation process.

Rather, this complex process is discussed throughout our regulations. Nevertheless, we recognize that musculoskeletal impairments impact differently on children depending on their ages, and we consider our references to ''age-appropriate activities'' to adequately detail this point. In final 101.00B2b(2), we explicitly state that, for children who are too young to walk independently, assessment of inability to ambulate effectively must be in terms of age-appropriate activities and normal developmental expectations, and we specifically define ''an extreme level of limitation'' for such children in terms of age-appropriate activities. In final 101.00B2c(2), we provide similar language concerning inability to perform fine and gross movements effectively, and we cross-refer to listing 110.07A which describes motor dysfunction in infants and young children.

Comment: One commenter found the criteria for evaluation of ineffective ambulation for children who are too young to be expected to walk independently ''a valuable addition to the listing as is the discussion of evaluation of the inability to perform fine and gross movements of the upper extremities for very young children in section B.2.'' However, another commenter suggested that listing-level disability for young children could be served by one set of criteria. The commenter suggested utilizing the criteria in listing 112.02B1a for gross and fine motor development for children 1–3 and 112.12B for motor development for infants up to age 1 year as an appropriate description of functional loss for ambulation, as well as fine and gross movement. These listings require motor development of no more than one-half of the child's chronological age. The commenter suggested that if the paragraphs are not changed, the examples given should be more specific for each age group.

Response: We made a minor clarifying revision to the language in the sections in question, although we have not made the changes suggested. The language in the NPRM and the final sections already utilizes the concepts and, to a degree, the language of listings 112.02B1a and 112.12B, as recommended, and we consider what we mean by loss of function for different aged children to be well-explained as written.

101.04 Disorders of the Spine

Comment: One commenter stated that current listing 101.05B should be retained, because the commenter did not consider proposed listing 114.09B to adequately apply to cases of scoliosis. However, another commenter agreed with the changes, stating that the new language in proposed 101.00J (final 101.00L) brings the listings up to basis would be evaluated under the criteria in date. A third commenter stated that if spina bifida and related impairments should be evaluated under this listing, we should spell it out.

Response: Concerning scoliosis, we agree with the second commenter, which is why we are removing the current listing. Not only does this bring the listings up to date, but it enables the adult and childhood listings to more closely parallel each other. In paragraph 101.00K2, we indicate that with disorders such as spinal dysrhaphism there may be the types of difficulties evaluated under listing 101.04. Difficulties caused by dysrhaphism on a neurogenic 111.00ff. Although we believe this is sufficiently clear to explain how and where any form of dysrhaphism, including spina bifida would be evaluated, we have added the parenthetical remark, ''(e.g., spina bifida)'' after the words, ''spinal dysrhaphism,'' to both 1.00K4, and 101.00K2 for further clarification.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these final regulations meet the criteria for an economically significant regulatory action under Executive Order (E.O.) 12866. They are also a ''major'' rule under 5 U.S.C. 801 ff. The following is a discussion of the potential costs and benefits of this regulatory action. This assessment also contains an analysis of alternatives we considered and chose not to adopt.

These final rules benefit society by updating the current listings to provide criteria that reflect state-of-the-art medical science and technology. The final rules ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

We are projecting savings in program expenditures and increases in administrative costs as a result of these actions, described in more detail below.

Program Savings

1. Title II

We estimate that these rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the title II program ($305 million total in a 5-year period beginning FY 2001).

Fiscal year:	
2001	$10
2002	35
2003	60
2004	85
2005	110
Total [1]	305

[1] 5-year total may not be equal to the sum of the annual totals due to rounding-out.

2. Title XVI

We estimate that these rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program ($55 million total in a 5-year period beginning FY 2001).

Fiscal year:	
2001	5$
2002	5
2003	10
2004	15
2005	20
Total [1]	55

[1] 5-year total may not be equal to the sum of the annual totals due to rounding-out.

3. Title XVIII

We estimate that these rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the title XVIII program ($60 million total in a 5-year period beginning FY 2001).

Fiscal year:	
2001	$0
2002	0
2003	10
2004	20
2005	30
Total [1]	60

[1] 5-year total may not be equal to the sum of the annual totals due to rounding-out.

4. Title XIX

We estimate that these rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the XIX program ($117 million total in a 5-year period beginning FY 2001).

Fiscal year:	
2001	$4
2002	13
2003	23
2004	33
2005	44
Total [1]	117

[1] 5-year total may not be equal to the sum of the annual totals due to rounding-out.

Program Costs

We do not expect any program costs to result from these regulations.

Administrative Savings

We do not expect any administrative savings to result from these regulations.

Administrative Costs

We expect there will be some administrative costs associated with these final rules. The final rules are expected to result in administrative costs of about 18WYs or about $1.5 million per year.

Policy Alternatives

We considered keeping the current listing criteria with only minor technical changes. When the musculoskeletal listings were last revised and published in the Federal Register we indicated that medical advances in disability evaluationa nd treatment and program experience would require that we periodically review and update the medical criteria in the listings. The current listings are now over 15 years old. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings are not an accurate reflection of state-of-the-art medical science and technology. A simple technical change would not be sufficient to provide state-of-the-art criteria for deciding listing-level severity in musculoskeletal impairments. Therefore, we rejected this alternative.

If we kept the current listing criteria and made only minor technical changes, the program and administrative costs would be the same as under the current rules.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This final rules contain reporting requirements at: 1.00B; 1.00C; 1.00D; 1.00E; 1.00H; 1.00I; 1.00J; 1.00K; 1.00P; 14.09A; 101.00B; 101.00C; 101.00D; 101.00E; 101.00H; 101.00I; 101.00J; 101.00P; and 114.09A. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in the rule. We are seeking clearance of the burden referenced in the rules because these rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. While these rules will be effective 90 days from publication, these burdens will not be effective until cleared by OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB approval of the informational collection requirement(s). Comments should be submitted to the OMB Desk Officer for SSA within 30 days of publication of this final rule at the following address:

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20530.

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

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: October 16, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

2. Item 2 in the introductory text before part A of appendix 1 to subpart P of part 404 is revised to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

2. Musculoskeletal System (1.00 and 101.00): February 19, 2009.

* * * * *

3. Listing 1.00, Musculoskeletal System, of part A of appendix 1 of subpart P of part 404 is revised to read as follows:

1.00 MUSCULOSKELETAL SYSTEM

A. *Disorders of the musculoskeletal system* may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. *Loss of function.*

1. *General.* Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. For inflammatory arthritides that may result in loss of function because of inflammatory peripheral joint or axial arthritis or sequelae, or because of extra-articular features, see 14.00B6. Impairments with neurological causes are to be evaluated under 11.00ff.

2. How We Define Loss of Function in These Listings

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used. We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What We Mean by Inability to Ambulate Effectively

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of

the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) *To ambulate effectively,* individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. *What we mean by inability to perform fine and gross movements effectively.* Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

d. *Pain or other symptoms.* Pain or other symptoms may be an important factor contributing to functional loss. In order for pain or other symptoms to be found to affect an individual's ability to perform basic work activities, medical signs or laboratory findings must show the existence of a medically determinable impairment(s) that could reasonably be expected to produce the pain or other symptoms. The musculoskeletal listings that include pain or other symptoms among their criteria also include criteria for limitations in functioning as a result of the listed impairment, including limitations caused by pain. It is, therefore, important to evaluate the intensity and persistence of such pain or other symptoms carefully in order to determine their impact on the individual's functioning under these listings. See also §§ 404.1525(f) and 404.1529 of this part, and §§ 416.925(f) and 416.929 of part 416 of this chapter.

C. Diagnosis and Evaluation

1. *General.* Diagnosis and evaluation of musculoskeletal impairments should be supported, as applicable, by detailed descriptions of the joints, including ranges of motion, condition of the musculature (e.g., weakness, atrophy), sensory or reflex changes, circulatory deficits, and laboratory findings, including findings on x-ray or other appropriate medically acceptable imaging. Medically acceptable imaging includes, but is not limited to, x-ray imaging, computerized axial tomography (CAT scan) or magnetic resonance imaging (MRI), with or without contrast material, myelography, and radionuclear bone scans. ''Appropriate'' means that the technique used is the proper one to support the evaluation and diagnosis of the impairment.

2. *Purchase of certain medically acceptable imaging.* While any appropriate medically acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, some tests, such as CAT scans and MRIs, are quite expensive, and we will not routinely purchase them. Some, such as myelograms, are invasive and may involve significant risk. We will not order such tests. However, when the results of any of these tests are part of the existing evidence in the case record we will consider them together with the other relevant evidence.

3. *Consideration of electrodiagnostic procedures.* Electrodiagnostic procedures may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements of 1.04.

D. *The physical examination* must include a detailed description of the rheumatological, orthopedic, neurological, and other findings appropriate to the specific impairment being evaluated. These physical findings must be determined on the basis of objective observation during the examination and not simply a report of the individual's allegation; e.g., ''He says his leg is weak, numb.'' Alternative testing methods should be used to verify the abnormal findings; e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Because abnormal physical findings may be intermittent, their presence over a period of time must be established by a record of ongoing management and evaluation. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

E. Examination of the Spine

1. *General.* Examination of the spine should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising from the sitting and supine position (zero degrees), any other appropriate tension signs, motor and sensory abnormalities, muscle spasm, when present, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examination table. Inability to walk on the heels or toes, to squat, or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs, or both upper and lower arms, as appropriate, at a stated point above and below the knee or elbow given in inches or centimeters. Additionally, a report of atrophy should be accompanied by measurement of the strength of the muscle(s) in question generally based on a grading system of 0 to 5, with 0 being complete loss of strength and 5 being maximum strength. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip and pinch strength.

2. *When neurological abnormalities persist.* Neurological abnormalities may not completely subside after treatment or with the passage of time. Therefore, residual neurological abnormalities that persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present will not satisfy the required findings in 1.04. More serious neurological deficits (paraparesis, paraplegia) are to be evaluated under the criteria in 11.00ff.

F. *Major joints* refers to the major peripheral joints, which are the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot, as opposed to other peripheral joints (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine.) The wrist and hand are considered together as one major joint, as are the ankle and foot. Since only the ankle joint, which consists of the juncture of the bones of the lower leg (tibia and fibula) with the hindfoot (tarsal bones), but not the forefoot, is crucial to weight bearing, the ankle and foot are considered separately in evaluating weight bearing.

G. *Measurements of joint motion* are based on the techniques described in the chapter on the extremities, spine, and pelvis in the current edition of the ''Guides to the Evaluation of Permanent Impairment'' published by the American Medical Association.

H. Documentation

1. *General.* Musculoskeletal impairments frequently improve with time or respond to treatment. Therefore, a longitudinal clinical record is generally important for the assessment of severity and expected duration of an impairment unless the claim can be decided favorably on the basis of the current evidence.

2. *Documentation of medically prescribed treatment and response.* Many individuals, especially those who have listing-level impairments, will have received the benefit of medically prescribed treatment. Whenever evidence of such treatment is available it must be considered.

3. *When there is no record of ongoing treatment.* Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective

medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience.

4. *Evaluation when the criteria of a musculoskeletal listing are not met.* These listings are only examples of common musculoskeletal disorders that are severe enough to prevent a person from engaging in gainful activity. Therefore, in any case in which an individual has a medically determinable impairment that is not listed, an impairment that does not meet the requirements of a listing, or a combination of impairments no one of which meets the requirements of a listing, we will consider medical equivalence. (See §§ 404.1526 and 416.926.) Individuals who have an impairment(s) with a level of severity that does not meet or equal the criteria of the musculoskeletal listings may or may not have the RFC that would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals should proceed through the final steps of the sequential evaluation process in §§ 404.1520 and 416.920 (or, as appropriate, the steps in the medical improvement review standard in §§ 404.1594 and 416.994).

I. Effects of Treatment

1. *General.* Treatments for musculoskeletal disorders may have beneficial effects or adverse side effects. Therefore, medical treatment (including surgical treatment) must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the disorder, and in terms of any side effects that may further limit the individual.

2. *Response to treatment.* Response to treatment and adverse consequences of treatment may vary widely. For example, a pain medication may relieve an individual's pain completely, partially, or not at all. It may also result in adverse effects, e.g., drowsiness, dizziness, or disorientation, that compromise the individual's ability to function. Therefore, each case must be considered on an individual basis, and include consideration of the effects of treatment on the individual's ability to function.

3. *Documentation.* A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long-term. As such, the finding regarding the impact of treatment must be based on a sufficient period of treatment to permit proper consideration or judgment about future functioning.

J. Orthotic, Prosthetic, or Assistive Devices

1. *General.* Consistent with clinical practice, individuals with musculoskeletal impairments may be examined with and without the use of any orthotic, prosthetic, or assistive devices as explained in this section.

2. *Orthotic devices.* Examination should be with the orthotic device in place and should include an evaluation of the individual's maximum ability to function effectively with the orthosis. It is unnecessary to routinely evaluate the individual's ability to function without the orthosis in place. If the individual has difficulty with, or is unable to use, the orthotic device, the medical basis for the difficulty should be documented. In such cases, if the impairment involves a lower extremity or extremities, the examination should include information on the individual's ability to ambulate effectively without the device in place unless contraindicated by the medical judgment of a physician who has treated or examined the individual.

3. *Prosthetic devices.* Examination should be with the prosthetic device in place. In amputations involving a lower extremity or extremities, it is unnecessary to evaluate the individual's ability to walk without the prosthesis in place. However, the individual's medical ability to use a prosthesis to ambulate effectively, as defined in 1.00B2b, should be evaluated. The condition of the stump should be evaluated without the prosthesis in place.

4. *Hand-held assistive devices.* When an individual with an impairment involving a lower extremity or extremities uses a hand-held assistive device, such as a cane, crutch or walker, examination should be with and without the use of the assistive device unless contraindicated by the medical judgment of a physician who has treated or examined the individual. The individual's ability to ambulate with and without the device provides information as to whether, or the extent to which, the individual is able to ambulate without assistance. The medical basis for the use of any assistive device (e.g., instability, weakness) should be documented. The requirement to use a hand-held assistive device may also impact on the individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling.

K. *Disorders of the spine,* listed in 1.04, result in limitations because of distortion of the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissue may result from a herniated nucleus pulposus, spinal stenosis, arachnoiditis, or other miscellaneous conditions. Neurological abnormalities resulting from these disorders are to be evaluated by referral to the neurological listings in 11.00ff, as appropriate. (See also 1.00B and E.)

1. *Herniated nucleus pulposus* is a disorder frequently associated with the impingement of a nerve root. Nerve root compression results in a specific neuro-anatomic distribution of symptoms and signs depending upon the nerve root(s) compromised.

2. Spinal Arachnoiditis

a. *General.* Spinal arachnoiditis is a condition characterized by adhesive thickening of the arachnoid which may cause intermittent ill-defined burning pain and sensory dysesthesia, and may cause neurogenic bladder or bowel incontinence when the cauda equina is involved.

b. *Documentation.* Although the cause of spinal arachnoiditis is not always clear, it may be associated with chronic compression or irritation of nerve roots (including the cauda equina) or the spinal cord. For example, there may be evidence of spinal stenosis, or a history of spinal trauma or meningitis. Diagnosis must be confirmed at the time of surgery by gross description, microscopic examination of biopsied tissue, or by findings on appropriate medically acceptable imaging. Arachnoiditis is sometimes used as a diagnosis when such a diagnosis is unsupported by clinical or laboratory findings. Therefore, care must be taken to ensure that the diagnosis is documented as described in 1.04B. Individuals with arachnoiditis, particularly when it involves the lumbosacral spine, are generally unable to sustain any given position or posture for more than a short period of time due to pain.

3. *Lumbar spinal stenosis* is a condition that may occur in association with degenerative processes, or as a result of a congenital anomaly or trauma, or in association with Paget's disease of the bone. *Pseudoclaudication,* which may result from lumbar spinal stenosis, is manifested as pain and weakness, and may impair ambulation. Symptoms are usually bilateral, in the low back, buttocks, or thighs, although some individuals may experience only leg pain and, in a few cases, the leg pain may be unilateral. The pain generally does not follow a particular neuro-anatomical distribution, i.e., it is distinctly different from the radicular type of pain seen with a herniated intervertebral disc, is often of a dull, aching quality, which may be described as ''discomfort'' or an ''unpleasant sensation,'' or may be of even greater severity, usually in the low back and radiating into the buttocks region bilaterally. The pain is provoked by extension of the spine, as in walking or merely standing, but is reduced by leaning forward. The distance the individual has to walk before the pain comes on may vary. Pseudoclaudication differs from peripheral vascular claudication in several ways. Pedal pulses and Doppler examinations are unaffected by pseudoclaudication. Leg pain resulting from peripheral vascular claudication involves the calves, and the leg pain in vascular claudication is ordinarily more severe than any back pain that may also be present. An individual with vascular claudication will experience pain after walking the same distance time after time, and the pain will be relieved quickly when walking stops.

4. *Other miscellaneous conditions* that may cause weakness of the lower extremities, sensory changes, areflexia, trophic ulceration, bladder or bowel incontinence, and that should be evaluated under 1.04 include, but are not limited to, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture. Disorders such as spinal dysrhaphism (e.g., spina bifida), diastematomyelia, and tethered cord

syndrome may also cause such abnormalities. In these cases, there may be gait difficulty and deformity of the lower extremities based on neurological abnormalities, and the neurological effects are to be evaluated under the criteria in 11.00ff.

L. *Abnormal curvatures of the spine.* Abnormal curvatures of the spine (specifically, scoliosis, kyphosis and kyphoscoliosis) can result in impaired ambulation, but may also adversely affect functioning in body systems other than the musculoskeletal system. For example, an individual's ability to breathe may be affected; there may be cardiac difficulties (e.g., impaired myocardial function); or there may be disfigurement resulting in withdrawal or isolation. When there is impaired ambulation, evaluation of equivalence may be made by reference to 14.09A. When the abnormal curvature of the spine results in symptoms related to fixation of the dorsolumbar or cervical spine, evaluation of equivalence may be made by reference to 14.09B. When there is respiratory or cardiac involvement or an associated mental disorder, evaluation may be made under 3.00ff, 4.00ff, or 12.00ff, as appropriate. Other consequences should be evaluated according to the listing for the affected body system.

M. *Under continuing surgical management,* as used in 1.07 and 1.08, refers to surgical procedures and any other associated treatments related to the efforts directed toward the salvage or restoration of functional use of the affected part. It may include such factors as post-surgical procedures, surgical complications, infections, or other medical complications, related illnesses, or related treatments that delay the individual's attainment of maximum benefit from therapy.

N. *After maximum benefit from therapy has been achieved* in situations involving fractures of an upper extremity (1.07), or soft tissue injuries (1.08), i.e., there have been no significant changes in physical findings or on appropriate medically acceptable imaging for any 6-month period after the last definitive surgical procedure or other medical intervention, evaluation must be made on the basis of the demonstrable residuals, if any. A finding that 1.07 or 1.08 is met must be based on a consideration of the symptoms, signs, and laboratory findings associated with recent or anticipated surgical procedures and the resulting recuperative periods, including any related medical complications, such as infections, illnesses, and therapies which impede or delay the efforts toward restoration of function. Generally, when there has been no surgical or medical intervention for 6 months after the last definitive surgical procedure, it can be concluded that maximum therapeutic benefit has been reached. Evaluation at this point must be made on the basis of the demonstrable residual limitations, if any, considering the individual's impairment-related symptoms, signs, and laboratory findings, any residual symptoms, signs, and laboratory findings associated with such surgeries, complications, and recuperative periods, and other relevant evidence.

O. *Major function of the face and head,* for purposes of listing 1.08, relates to impact on any or all of the activities involving vision, hearing, speech, mastication, and the initiation of the digestive process.

P. *When surgical procedures have been performed,* documentation should include a copy of the operative notes and available pathology reports.

Q. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with musculoskeletal impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

1.01 Category of Impairments, Musculoskeletal

1.02 *Major dysfunction of a joint(s) (due to any cause):* Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

1.03 *Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint,* with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Disorders of the spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

1.05 *Amputation (due to any cause).*

A. Both hands; or

or

B. One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, as defined in 1.00B2b, which have lasted or are expected to last for at least 12 months;

or

C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 1.00B2b;

OR

D. Hemipelvectomy or hip disarticulation.

1.06 *Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones.* With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 *Fracture of an upper extremity* with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management, as defined in 1.00M, directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months of onset.

1.08 *Soft tissue injury (e.g., burns)* of an upper or lower extremity, trunk, or face and head, under continuing surgical management, as defined in 1.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 1.000.

4. Under listing 4.00, Cadiovascular System, listing 4.12, *Peripheral arterial disease,* of part A of appendix 1 of subpart P of part 404 is revised to read as follows:

4.00 CARDIOVASCULAR SYSTEM

* * * * *

4.12 *Peripheral arterial disease.* With one of the following:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity;

or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at the ankle on exercise (see 4.00E4) of 50 percent or more of pre-exercise level at the ankle, and requiring 10 minutes or more to return to pre-exercise level.

5. Under listing 9.00, Endocrine System, listing 9.08, *Diabetes mellitus* of part A of appendix 1 of subpart P of part 404 is amended by removing listing 9.08C and redesignating listing 9.08D as listing 9.08C.

6. Listing 14.00, Immune System, of part A of appendix 1 of subpart P of part 404 is amended by revising the fourth and sixth paragraphs within 14.00 B and by adding a new section 14.00B6 to read as follows:

14.00 IMMUNE SYSTEM

* * * * *

B. * * *

To permit appropriate application of a listing, the specific diagnostic features that should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SLE), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, undifferentiated connective tissue disorders, and the inflammatory arthritides.

* * * * *

These disorders may preclude performance of any gainful activity by reason of serious loss of function because of disease affecting a single organ or body system, or lesser degrees of functional loss because of disease affecting two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, weight loss, and joint pain and stiffness. We use the term ''severe'' in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

* * * * *

6. *Inflammatory arthritis (14.09)* includes a vast array of disorders that differ in cause, course, and outcome. For example, inflammatory spondyloarthropathies include ankylosing spondylitis, Reiter's syndrome and other reactive arthropathies, psoriatic arthropathy, Behçet's disease, and Whipple's disease, as well as undifferentiated spondylitis. Inflammatory arthritis of peripheral joints likewise comprises many disorders, including rheumatoid arthritis, Sjögren's syndrome, psoriatic arthritis, crystal deposition disorders, and Lyme disease. Clinically, inflammation of major joints may be the dominant problem causing difficulties with ambulation or fine and gross movements, or the arthritis may involve other joints or cause less restriction of ambulation or other movements but be complicated by extra-articular features that cumulatively result in serious functional deficit. When persistent deformity without ongoing inflammation is the dominant feature of the impairment, it should be evaluated under 1.02, or, if there has been surgical reconstruction, 1.03.

a. In 14.09A, the term *major joints* refers to the major peripheral joints, which are the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot, as opposed to other peripheral joints (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine.) The wrist and hand are considered together as one major joint, as are the ankle and foot. Since only the ankle joint, which consists of the juncture of the bones of the lower leg (tibia and fibula) with the hindfoot (tarsal bones), but not the forefoot, is crucial to weight bearing, the ankle and foot are considered separately in evaluating weight bearing.

b. The terms *inability to ambulate effectively and inability to perform fine and gross movements effectively* in 14.09A have the same meaning as in 1.00B2b and 1.00B2c and must have lasted, or be expected to last, for at least 12 months.

c. Inability to ambulate effectively is implicit in 14.09B. Even though individuals who demonstrate the findings of 14.09B will not ordinarily require bilateral upper limb assistance, the required ankylosis of the cervical or dorsolumbar spine will result in an extreme loss of the ability to see ahead, above, and to the side.

d. As in 14.02 through 14.06, extra-articular features of an inflammatory arthritis may satisfy the criteria for a listing in an involved extra-articular body system. Such impairments may be found to meet a criterion of 14.09C. Extra-articular impairments of lesser severity should be evaluated under 14.09D and 14.09E. Commonly occurring extra-articular impairments include keratoconjunctivitis sicca, uveitis, iridocyclitis, pleuritis, pulmonary fibrosis or nodules, restrictive lung disease, pericarditis, myocarditis, cardiac arrhythmias, aortic valve insufficiency, coronary arteritis, Raynaud's phenomena, systemic vasculitis, amyloidosis of the kidney, chronic anemia, thrombocytopenia, hypersplenism with compromised immune competence (Felty's syndrome), peripheral neuropathy, radiculopathy, spinal cord or cauda equina compression with sensory and motor loss, and heel enthesopathy with functionally limiting pain.

e. The fact that an individual is dependent on steroids, or any other drug, for the control of inflammatory arthritis is, in and of itself, insufficient to find disability. Advances in the treatment of inflammatory connective tissue disease and in the administration of steroids for its treatment have corrected some of the previously disabling consequences of continuous steroid use. Therefore, each case must be evaluated on its own merits, taking into consideration the severity of the underlying impairment and any adverse effects of treatment.

* * * * *

7. In listing 14.02A, listings 14.02A8 through 14.02A10 are redesignated as listings 14.02A9 through 14.02A11, respectively and a new listing 14.02A8 is added reading as follows:

14.02 *Systemic lupus erythematosus.* * * *

A. One of the following:

* * * * *

8. Hematologic involvement, as described under the criteria in 7.00ff; or

* * * * *

8. A new listing 14.09 is added to read as follows:

14.09 *Inflammatory arthritis.* Documented as described in 14.00B6, with one of the following:

A. History of joint pain, swelling, and tenderness, and signs on current physical examination of joint inflammation or deformity in two or more major joints resulting in inability to ambulate effectively or inability to perform fine and gross movements effectively, as defined in 14.00B6b and 1.00B2b and B2c;

or

B. Ankylosing spondylitis or other spondyloarthropathy, with diagnosis established by findings of unilateral or bilateral sacroiliitis (e.g., erosions or fusions), shown by appropriate medically acceptable imaging, with both:

1. History of back pain, tenderness, and stiffness, and

2. Findings on physical examination of ankylosis (fixation) of the dorsolumbar or cervical spine at 45° or more of flexion measured from the vertical position (zero degrees);

or

C. An impairment as described under the criteria in 14.02A.

or

D. Inflammatory arthritis, with signs of peripheral joint inflammation on current examination, but with lesser joint involvement than in A and lesser extra-articular features than in C, and:

1. Significant, documented constitutional symptoms and signs (e.g., fatigue, fever, malaise, weight loss), and

2. Involvement of two or more organs/body systems (see 14.00B6d). At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

E. Inflammatory spondylitis or other inflammatory spondyloarthropathies, with lesser deformity than in B and lesser extra-articular features than in C, with signs of unilateral or bilateral sacroiliitis on appropriate medically acceptable imaging; and with the extra-articular features described in 14.09D.

9. Listing 101.00, Musculoskeletal System, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

101.00 Musculoskeletal System

A. *Disorders of the musculoskeletal system* may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. Loss of Function

1. *General.* Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. For inflammatory arthritides that result in loss of function because of inflammatory peripheral joint or axial arthritis or sequelae, or because of extra-articular features, see 114.00E. Impairments with neurological causes are to be evaluated under 111.00ff.

2. How We Define Loss of Function in These Listings

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 112.00ff are to be used. We will determine whether a child can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the child's ability to perform the specific activities listed as examples in 101.00B2b(2) and (3) and 101.00B2c(2) and (3).

b. What We Mean by Inability to Ambulate Effectively

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment that interferes very seriously with the child's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 101.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 101.05C is an exception to this general definition because the child has the use of only one upper extremity due to amputation of a hand.)

(2) How We Assess inability to ambulate effectively for children too young to be expected to walk independently. For children who are too young to be expected to walk independently, consideration of function must be based on assessment of limitations in the ability to perform comparable age-appropriate activities with the lower extremities, given normal developmental expectations. For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment rather than on one or two isolated skills.

(3) *How we assess inability to ambulate effectively for older children.* Older children, who would be expected to be able to walk when compared to other children the same age who do not have impairments, must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out age-appropriate activities. They must have the ability to travel age-appropriately without extraordinary assistance to and from school or a place of employment. Therefore, examples of ineffective ambulation for older children include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out age-appropriate school activities independently, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about the child's home or a short distance at school without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What We Mean by Inability To Perform Fine and Gross Movements Effectively

(1) *Definition.* Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; i.e., an impairment that interferes very seriously with the child's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, a child must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering in an age-appropriate manner to be able to carry out age-appropriate activities.

(2) *How we assess inability to perform fine and gross movements in very young children.* For very young children, the consideration is limitations in the ability to perform comparable age-appropriate activities involving the upper extremities given normal developmental expectations. Determinations of extreme limitation in such children should be made by comparison with the limitations for persistent motor dysfunction for infants and young children described in 110.07A.

(3) *How we assess inability to perform fine and gross movements in older children.* For older children, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, or the inability to sort and handle papers or files, depending upon which activities are age-appropriate.

d. *Pain or other symptoms.* Pain or other symptoms may be an important factor contributing to functional loss. In order for pain or other symptoms to be found to affect a child's ability to function in an age-appropriate manner or to perform basic work activities, medical signs or laboratory findings must show the existence of a medically determinable impairment(s) that could reasonably be expected to produce the pain or other symptoms. The musculoskeletal listings that include pain or other symptoms among their criteria also include criteria for limitations in functioning as a result of the listed impairment, including limitations caused by pain. It is, therefore, important to evaluate the intensity and persistence of such pain or other symptoms carefully in order to determine their impact on the child's functioning under these listings. See also §§ 404.1525(f) and 404.1529 of this part, and §§ 416.925(f) and 416.929 of part 416 of this chapter.

C. Diagnosis and Evaluation

1. *General.* Diagnosis and evaluation of musculoskeletal impairments should be supported, as applicable, by detailed descriptions of the joints, including ranges of motion, condition of the musculature (e.g., weakness, atrophy), sensory or reflex changes, circulatory deficits, and laboratory findings, including findings on x-ray or other appropriate medically acceptable imaging. Medically acceptable imaging includes, but is not limited to, x-ray imaging, computerized axial tomography (CAT scan) or magnetic resonance imaging (MRI), with or without contrast material, myelography, and radionuclear bone scans. ''Appropriate'' means that the technique used is the proper one to support the evaluation and diagnosis of the impairment.

2. *Purchase of certain medically acceptable imaging.* While any appropriate medically acceptable imaging is useful in establishing the diagnosis of musculoskeletal impairments, some tests, such as CAT scans and MRIs, are quite expensive, and we will not routinely purchase them. Some, such as myelograms, are invasive and may involve significant risk. We will not order such tests. However, when the results of any of these tests are part of the existing evidence in the case record we will consider them together with the other relevant evidence.

3. *Consideration of electrodiagnostic procedures.* Electrodiagnostic procedures may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements of 101.04.

D. *The physical examination* must include a detailed description of the rheumatological, orthopedic, neurological, and other findings appropriate to the specific impairment being evaluated. These physical findings must be determined on the basis of objective observation during the examination and not simply a report of the child's allegation; e.g., ''He says his leg is weak, numb.'' Alternative testing methods should be used to verify the abnormal findings; e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Because abnormal physical

findings may be intermittent, their presence over a period of time must be established by a record of ongoing management and evaluation. Care must be taken to ascertain that the reported examination findings are consistent with the child's age and activities.

E. Examination of the Spine

1. *General.* Examination of the spine should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising from the sitting and supine position (zero degrees), any other appropriate tension signs, motor and sensory abnormalities, muscle spasm, when present, and deep tendon reflexes. Observations of the child during the examination should be reported; e.g., how he or she gets on and off the examination table. Inability to walk on the heels or toes, to squat, or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs, or both upper and lower arms, as appropriate, at a stated point above and below the knee or elbow given in inches or centimeters. Additionally, a report of atrophy should be accompanied by measurement of the strength of the muscle(s) in question generally based on a grading system of 0 to 5, with 0 being complete loss of strength and 5 being maximum strength. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip and pinch strength. However, because of the unreliability of such measurement in younger children, these data are not applicable to children under 5 years of age.

2. *When neurological abnormalities persist.* Neurological abnormalities may not completely subside after treatment or with the passage of time. Therefore, residual neurological abnormalities that persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present will not satisfy the required findings in 101.04. More serious neurological deficits (paraparesis, paraplegia) are to be evaluated under the criteria in 111.00ff.

F. *Major joints* refers to the major peripheral joints, which are the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot, as opposed to other peripheral joints (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine.) The wrist and hand are considered together as one major joint, as are the ankle and foot. Since only the ankle joint, which consists of the juncture of the bones of the lower leg (tibia and fibula) with the hindfoot (tarsal bones), but not the forefoot, is crucial to weight bearing, the ankle and foot are considered separately in evaluating weight bearing.

G. *Measurements of joint motion* are based on the techniques described in the chapter on the extremities, spine, and pelvis in the current edition of the ''Guides to the Evaluation of Permanent Impairment'' published by the American Medical Association.

H. Documentation.

1. *General.* Musculoskeletal impairments frequently improve with time or respond to treatment. Therefore, a longitudinal clinical record is generally important for the assessment of severity and expected duration of an impairment unless the child is a newborn or the claim can be decided favorably on the basis of the current evidence.

2. *Documentation of medically prescribed treatment and response.* Many children, especially those who have listing-level impairments, will have received the benefit of medically prescribed treatment. Whenever evidence of such treatment is available it must be considered.

3. *When there is no record of ongoing treatment.* Some children will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the child's medical history, symptoms, and medical source opinions. Even though a child who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the child may have an impairment(s) that is either medically or, in the case of a claim for benefits under part 416 of this chapter, functionally equivalent in severity to one of the listed impairments.

4. *Evaluation when the criteria of a musculoskeletal listing are not met.* These listings are only examples of common musculoskeletal disorders that are severe enough to find a child disabled. Therefore, in any case in which a child has a medically determinable impairment that is not listed, an impairment that does not meet the requirements of a listing, or a combination of impairments no one of which meets the requirements of a listing, we will consider whether the child's impairment(s) is medically or, in the case of a claim for benefits under part 416 of this chapter, functionally equivalent in severity to the criteria of a listing. (See §§ 404.1526, 416.926, and 416.926a.) Individuals with claims for benefits under part 404, who have an impairment(s) with a level of severity that does not meet or equal the criteria of the musculoskeletal listings may or may not have the RFC that would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals should proceed through the final steps of the sequential evaluation process in § 404.1520 (or, as appropriate, the steps in the medical improvement review standard in § 404.1594).

I. Effects of Treatment

1. *General.* Treatments for musculoskeletal disorders may have beneficial effects or adverse side effects. Therefore, medical treatment (including surgical treatment) must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the disorder, and in terms of any side effects that may further limit the child.

2. *Response to treatment.* Response to treatment and adverse consequences of treatment may vary widely. For example, a pain medication may relieve a child's pain completely, partially, or not at all. It may also result in adverse effects, e.g., drowsiness, dizziness, or disorientation, that compromise the child's ability to function. Therefore, each case must be considered on an individual basis, and include consideration of the effects of treatment on the child's ability to function.

3. *Documentation.* A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long-term. As such, the finding regarding the impact of treatment must be based on a sufficient period of treatment to permit proper consideration or judgment about future functioning.

J. Orthotic, Prosthetic, or Assistive Devices

1. *General.* Consistent with clinical practice, children with musculoskeletal impairments may be examined with and without the use of any orthotic, prosthetic, or assistive devices as explained in this section.

2. *Orthotic devices.* Examination should be with the orthotic device in place and should include an evaluation of the child's maximum ability to function effectively with the orthosis. It is unnecessary to routinely evaluate the child's ability to function without the orthosis in place. If the child has difficulty with, or is unable to use, the orthotic device, the medical basis for the difficulty should be documented. In such cases, if the impairment involves a lower extremity or extremities, the examination should include information on the child's ability to ambulate effectively without the device in place unless contraindicated by the medical judgment of a physician who has treated or examined the child.

3. *Prosthetic devices.* Examination should be with the prosthetic device in place. In amputations involving a lower extremity or extremities, it is unnecessary to evaluate the child's ability to walk without the prosthesis in place. However, the child's medical ability to use a prosthesis to ambulate effectively, as defined in 101.00B2b, should be evaluated. The condition of the stump should be evaluated without the prosthesis in place.

4. *Hand-held assistive devices.* When a child with an impairment involving a lower extremity or extremities uses a hand-held assistive device, such as a cane, crutch or walker, examination should be with and without the use of the assistive device unless contraindicated by the medical judgment of a physician who has treated or examined the child. The child's ability to ambulate with and without the device provides information as to whether, or the extent to which, the child is able to ambulate without assistance. The medical basis for the use of any assistive device (e.g., instability, weakness) should be documented. The requirement to use a hand-held assistive device may also impact on the child's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling.

K. *Disorders of the spine,* listed in 101.04, result in limitations because of distortion of

the bony and ligamentous architecture of the spine and associated impingement on nerve roots (including the cauda equina) or spinal cord. Such impingement on nerve tissue may result from a herniated nucleus pulposus or other miscellaneous conditions. Neurological abnormalities resulting from these disorders are to be evaluated by referral to the neurological listings in 111.00ff, as appropriate. (See also 101.00B and E.)

1. *Herniated nucleus pulposus* is a disorder frequently associated with the impingement of a nerve root, but occurs infrequently in children. Nerve root compression results in a specific neuro-anatomic distribution of symptoms and signs depending upon the nerve root(s) compromised.

2. *Other miscellaneous conditions* that may cause weakness of the lower extremities, sensory changes, areflexia, trophic ulceration, bladder or bowel incontinence, and that should be evaluated under 101.04 include, but are not limited to, lysosomal disorders, metabolic disorders, vertebral osteomyelitis, vertebral fractures and achondroplasia. Disorders such as spinal dysrhaphism, (e.g., spina bifida) diastematomyelia, and tethered cord syndrome may also cause such abnormalities. In these cases, there may be gait difficulty and deformity of the lower extremities based on neurological abnormalities, and the neurological effects are to be evaluated under the criteria in 111.00ff.

L. *Abnormal curvatures of the spine.* Abnormal curvatures of the spine (specifically, scoliosis, kyphosis and kyphoscoliosis) can result in impaired ambulation, but may also adversely affect functioning in body systems other than the musculoskeletal system. For example, a child's ability to breathe may be affected; there may be cardiac difficulties (e.g., impaired myocardial function); or there may be disfigurement resulting in withdrawal or isolation. When there is impaired ambulation, evaluation of equivalence may be made by reference to 114.09A. When the abnormal curvature of the spine results in symptoms related to fixation of the dorsolumbar or cervical spine, evaluation of equivalence may be made by reference to 114.09B. When there is respiratory or cardiac involvement or an associated mental disorder, evaluation may be made under 103.00ff, 104.00ff, or 112.00ff, as appropriate. Other consequences should be evaluated according to the listing for the affected body system.

M. *Under continuing surgical management,* as used in 101.07 and 101.08, refers to surgical procedures and any other associated treatments related to the efforts directed toward the salvage or restoration of functional use of the affected part. It may include such factors as post-surgical procedures, surgical complications, infections, or other medical complications, related illnesses, or related treatments that delay the child's attainment of maximum benefit from therapy.

N. *After maximum benefit from therapy has been achieved* in situations involving fractures of an upper extremity (101.07), or soft tissue injuries (101.08), i.e., there have been no significant changes in physical findings or on appropriate medically acceptable imaging for any 6-month period after the last definitive surgical procedure or other medical intervention, evaluation must be made on the basis of the demonstrable residuals, if any. A finding that 101.07 or 101.08 is met must be based on a consideration of the symptoms, signs, and laboratory findings associated with recent or anticipated surgical procedures and the resulting recuperative periods, including any related medical complications, such as infections, illnesses, and therapies which impede or delay the efforts toward restoration of function. Generally, when there has been no surgical or medical intervention for 6 months after the last definitive surgical procedure, it can be concluded that maximum therapeutic benefit has been reached. Evaluation at this point must be made on the basis of the demonstrable residual limitations, if any, considering the child's impairment-related symptoms, signs, and laboratory findings, any residual symptoms, signs, and laboratory findings associated with such surgeries, complications, and recuperative periods, and other relevant evidence.

O. *Major function of the face and head,* for purposes of listing 101.08, relates to impact on any or all of the activities involving vision, hearing, speech, mastication, and the initiation of the digestive process.

P. *When surgical procedures have been performed,* documentation should include a copy of the operative notes and available pathology reports.

101.01 Category of Impairments, Musculoskeletal

101.02 *Major dysfunction of a joint(s) (due to any cause):* Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 101.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 101.00B2c.

101.03 *Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint,* with inability to ambulate effectively, as defined in 101.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

101.04 *Disorders of the spine* (e.g., lysosomal disorders, metabolic disorders, vertebral osteomyelitis, vertebral fracture, achondroplasia) resulting in compromise of a nerve root (including the cauda equina) or the spinal cord, with evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

101.05 *Amputation (due to any cause).*

A. Both hands;

or

B. One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, as defined in 101.00B2b, which have lasted or are expected to last for at least 12 months;

or

C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 101.00B2b;

or

D. Hemipelvectomy or hip disarticulation.

101.06 *Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones.* With:

A. Solid union not evident on appropriate medically acceptable imaging, and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 101.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

101.07 *Fracture of an upper extremity* with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management, as defined in 101.00M, directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months of onset.

101.08 *Soft tissue injury (e.g., burns)* of an upper or lower extremity, trunk, or face and head, under continuing surgical management, as defined in 101.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 101.00O.

10. Listing 114.00, Immune System, of part B of appendix 1 of subpart P of part 404 is amended by revising the first and sixth paragraphs of 114.00B, by revising 114.00C2, and by adding a new section 114.00E to read as follows:

114.00 IMMUNE SYSTEM

* * * * *

B. *Dysregulation of the immune system* may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. These disorders are described in part A, 14.00B; inflammatory arthritis is also described in 114.00E.

* * * * *

In children the impairment may affect growth, development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be

the result of serious loss of function because of disease affecting a single organ or body system, or lesser degrees of functional loss because of disease affecting two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, weight loss, and joint pain and stiffness. We use the term ''severe'' in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

C. Allergies, Growth Impairments and Kawasaki Disease

* * * * *

2. If growth is affected by the disorder or its treatment by immunosuppressive drugs, 100.00, Growth impairment, may apply. Children may have growth impairment as a result of the inflammatory arthritides because of the diseases' potential effects on the immature skeleton, open epiphyses, and young cartilage and bone. In such situations, the growth impairment should be evaluated under 100.00ff.

* * * * *

E. *Inflammatory arthritis (114.09)* includes a vast array of disorders that differ in cause, course, and outcome. For example, in children inflammatory spondyloarthropathies include juvenile ankylosing spondylitis, reactive arthropathies, psoriatic arthropathy, and Behçet's disease, as well as undifferentiated spondylitis. Inflammatory arthritis of peripheral joints likewise comprises many disorders, including juvenile rheumatoid arthritis, Sjögren's syndrome, psoriatic arthritis, crystal deposition disorders, and Lyme disease. Clinically, inflammation of major joints may be the dominant problem causing difficulties with ambulation or fine and gross movements, or the arthritis may involve other joints or cause less restriction of age-appropriate ambulation or other movements but be complicated by extra-articular features that cumulatively result in serious functional deficit. When persistent deformity without ongoing inflammation is the dominant feature of the impairment, it should be evaluated under 101.02, or, if there has been surgical reconstruction, 101.03.

1. Because the features of inflammatory connective tissue diseases in children are modified by such factors as the child's limited antigenic exposure and immune reactivity, the acute inflammatory connective tissue diseases must be differentiated from each other in order to evaluate duration factors and responses to specific treatments. Chronic conditions must be differentiated from short-term reversible disorders, and also from other connective tissue diseases.

2. In 114.09A, the term *major joints* refers to the major peripheral joints, which are the hip, knee, shoulder, elbow, wrist-hand, and ankle-foot, as opposed to other peripheral joints (e.g., the joints of the hand or forefoot) or axial joints (i.e., the joints of the spine.) The wrist and hand are considered together as one major joint, as are the ankle and foot. Since only the ankle joint, which consists of the juncture of the bones of the lower leg (tibia and fibula) with the hindfoot (tarsal bones), but not the forefoot, is crucial to weight bearing, the ankle and foot are considered separately in evaluating weight bearing.

3. The terms *inability to ambulate effectively* and *inability to perform fine and gross movements effectively* in 114.09A have the same meaning as in 101.00B2b and 101.00B2c and must have lasted, or be expected to last, for at least 12 months.

4. Inability to ambulate effectively is implicit in 114.09B. Even though children who demonstrate the findings of 114.09B will not ordinarily require bilateral upper limb assistance, the required ankylosis of the cervical or dorsolumbar spine will result in an extreme loss of the ability to see ahead, above, and to the side.

5. As in 114.02 through 114.06, extra-articular features of an inflammatory arthritis may satisfy the criteria for a listing in an involved extra-articular body system. Such impairments may be found to meet a criterion of 114.09C. Extra-articular impairments of lesser severity should be evaluated under 114.09D and 114.09E. Commonly occurring extra-articular impairments include keratoconjunctivitis sicca, uveitis, iridocyclitis, pleuritis, pulmonary fibrosis or nodules, restrictive lung disease, pericarditis, myocarditis, cardiac arrhythmias, aortic valve insufficiency, coronary arteritis, Raynaud's phenomena, systemic vasculitis, amyloidosis of the kidney, chronic anemia, thrombocytopenia, hypersplenism with compromised immune competence (Felty's syndrome), peripheral neuropathy, radiculopathy, spinal cord or cauda equina compression with sensory and motor loss, and heel enthesopathy with functionally limiting pain.

6. The fact that a child is dependent on steroids, or any other drug, for the control of inflammatory arthritis is, in and of itself, insufficient to find disability. Advances in the treatment of inflammatory connective tissue disease and in the administration of steroids for its treatment have corrected some of the previously disabling consequences of continuous steroid use. Therefore, each case must be evaluated on its own merits, taking into consideration the severity of the underlying impairment and any adverse effects of treatment.

11. A new listing 114.09 is added to read as follows:

114.09 *Inflammatory arthritis.* Documented as described in 114.00E, with one of the following:

A. History of joint pain, swelling, and tenderness, and signs on current physical examination of joint inflammation or deformity in two or more major joints resulting in inability to ambulate effectively or inability to perform fine and gross movements effectively, as defined in 114.00E3 and 101.00B2b and B2c;

or

B. Ankylosing spondylitis or other spondyloarthropathy, with diagnosis established by findings of unilateral or bilateral sacroiliitis (e.g., erosions or fusions), shown by appropriate medically acceptable imaging, with both:

1. History of back pain, tenderness, and stiffness, and

2. Findings on physical examination of ankylosis (fixation) of the dorsolumbar or cervical spine at 45° or more of flexion measured from the vertical position (zero degrees);

or

C. An impairment as described under the criteria in 114.02A.

or

D. Inflammatory arthritis, with signs of peripheral joint inflammation on current examination, but with lesser joint involvement than in A and lesser extra-articular features than in C, and:

1. Significant, documented constitutional symptoms and signs (e.g., fatigue, fever, malaise, weight loss), and

2. Involvement of two or more organs/body systems (see 114.00E5). At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

E. Inflammatory spondylitis or other inflammatory spondyloarthropathies, with lesser deformity than in B and lesser extra-articular features than in C, with signs of unilateral or bilateral sacroiliitis on appropriate medically acceptable imaging; and with the extra-articular features described in 114.09D.

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

Subpart I—[Amended]

12. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

13. Section 416.926a is amended by revising paragraphs (m)(2) and (m)(4) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(m) * * *

(2) Any condition that is disabling at the time of onset, requiring continuing surgical management within 12 months after onset as a life-saving measure or for salvage or restoration of function, and such major function is not restored or is not expected to be restored within 12 months after onset of this condition.

* * * * *

(4) Effective ambulation possible only with obligatory bilateral upper limb assistance.

* * * * *

14. Section 416.933 is amended by revising the second sentence to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

* * * In the case of readily observable impairments (e.g., total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. * * *

15. Section 416.934 is amended by removing paragraphs (a) and (h) and redesignating paragraphs (b) through (g) as paragraphs (a) through (f) and paragraphs (i) through (j) as paragraphs (g) through (h).

[FR Doc. 01–28456 Filed 11–16–01; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 97–2(9)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 97–2(9)—*Gamble* v. *Chater,* 68 F.3d. 319 (9th Cir. 1995).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 97–2(9).

EFFECTIVE DATE: This notice of rescission is effective February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5044.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind a Social Security Acquiescence Ruling as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On January 13, 1997, we published Acquiescence Ruling (AR) 97–2(9) (62 FR 1791) to reflect the holding in *Gamble* v. *Chater,* 68 F.3d 319 (9th Cir. 1995). In *Gamble,* the United States Court of Appeals for the Ninth Circuit held that a claimant whose leg was amputated at or above the tarsal region satisfied current Listing 1.10C if he or she ''is unable to use any prosthesis that is reasonably available to him.'' The court concluded that a claimant who cannot afford a prosthesis, even if he could use one, does not have, as a practical matter, a prosthesis reasonably available to him or her.

The AR applies to cases in which the claimant resides in Alaska, Arizona, California, Guam, Hawaii, (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon and Washington at time of the determination or decision at any level of administrative review.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, replace current Listing 1.10C with a final Listing 1.05B and added section 1.00J of the introductory text. Listing 1.05B in the final rules requires that an individual with an amputation of one or both lower extremities at or above the tarsal region have stump complications that result in the medical inability to use a prosthetic device to ambulate effectively, as defined in section 1.00B2b of the musculoskeletal system listings, which have lasted or are expected to last for at least 12 months. Consequently, the final rules clarify that the inability to use a prosthetic device to ambulate effectively refers to a ''medical'' inability to use a prosthetic device as a result of stump complications. The inability to afford a prosthetic device does not represent a ''medical'' inability to use a prosthetic device to ambulate effectively.

We also clarify in section 1.00J3 of the final rules that, in amputation involving a lower extremity or extremities, it is unnecessary to evaluate the individual's ability to walk without the prosthesis in place. As we explain the preamble to the final rules, this is because we recognize that individuals with the type of lower extremity amputation described in final listings 1.05B will have an inability to ambulate effectively, as defined in section 1.00B2b, when they are not using a prosthesis. This would be true whether they do not use a prosthesis because they cannot afford one, because a prosthesis has not been prescribed for them, or for other reasons.

Accordingly, since the rule that was the subject of the *Gamble* AR has now been revised, we are rescinding AR 97–2(9) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: July 5, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–28458 Filed 11–16–01; 8:45 am]

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Privacy Act; implementation; comments due by 11-26-01; published 10-26-01 [FR 01-27003]

VETERANS AFFAIRS DEPARTMENT
Acquisition regulations:
Construction and architect-engineer contracts; comments due by 11-26-01; published 9-27-01 [FR 01-23772]
Disabilties rating schedule:
Substantially gainful employment, inability of individual to engage in; total disability ratings; comments due by 11-30-01; published 10-1-01 [FR 01-24272]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 2311/P.L. 107–66
Energy and Water Development Appropriations

Act, 2002 (Nov. 12, 2001; 115 Stat. 486)

H.R. 2590/P.L. 107–67

Treasury and General Government Appropriations Act, 2002 (Nov. 12, 2001; 115 Stat. 514)

H.R. 2647/P.L. 107–68

Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2002, and for other purposes. (Nov. 12, 2001; 115 Stat. 560)

H.R. 2925/P.L. 107–69

To amend the Reclamation Recreation Management Act of 1992 in order to provide for the security of dams, facilities, and resources under the jurisdiction of the Bureau of Reclamation. (Nov. 12, 2001; 115 Stat. 593)

Last List November 8, 2001

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4] Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869–044–00002–4)	36.00	[1] Jan. 1, 2001
4	(869–044–00003–2)	9.00	Jan. 1, 2001
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7 Parts:			
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210–299	(869–044–00010–5)	56.00	Jan. 1, 2001
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700–899	(869–044–00013–0)	50.00	Jan. 1, 2001
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11	(869–044–00029–6)	31.00	Jan. 1, 2001
12 Parts:			
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24 Parts:			
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266–299	(869–044–00156–0)	45.00	July 1, 2001
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Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..