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Federal Register

2–4–02 Monday
Vol. 67 No. 23 Feb. 4, 2002
Pages 5041–5194

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Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–058–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding Throckmorton and Young Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in grain grown in this area, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

EFFECTIVE DATE: The interim rule became effective June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 2001, and published in the **Federal Register** on June 14, 2001 (66 FR 32209–32210, Docket No. 01–058–1), we amended the Karnal bunt regulations in 7 CFR 301.89–3 by adding Throckmorton and Young Counties, in their entirety, to the list of regulated areas in Texas. This action was necessary due to the detection of bunted kernels in grain grown in this area.

Comments on the interim rule were required to be received on or before August 13, 2001.

We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Throckmorton and Young Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than $750,000 and are, therefore, small in size according to the U.S. Small Business Administration’s criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 1,042 acres on 141 farms in Throckmorton County in 1997; that grain had a market value of $4.785 million. In Young County, wheat was harvested for grain from 50,872 acres on 194 farms in 1997; that grain had a market value of $4,063 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000–2001 crop season was the first regulated crop season for Throckmorton and Young Counties, producers there were eligible for compensation payments of up to $1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Throckmorton and Young Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 32209–32210 on June 14, 2001.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC this 29th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–2603 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–381–AD; Amendment 39–12630; AD 2002–02–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that requires installation of a new support structure for the trailing edge beam and main landing gear uplock mechanism. This action is necessary to prevent cracking in the frame and adjacent structure near the attach bolt of the main landing gear uplock mechanism, which could lead to compromised structural integrity. This action is intended to address the identified unsafe condition.

DATES: Effective March 11, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38583). That action proposed to require installation of a new support structure for the trailing edge beam and main landing gear uplock mechanism.

Comments

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

Conclusion

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

Cost Impact

There are approximately 84 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,000 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $198,000, or $19,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–02–02 Boeing: Amendment 39–12630. Docket 2000–NM–381–AD.

Applicability: Model 707 and 720 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968.

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 cracking in the frame and adjacent structure near the attach bolt of the main landing gear (MLG) uplock mechanism, which could lead to compromised structural integrity of the MLG, accomplish the following:

Modification

(a) Prior to the accumulation of 20,000 flight cycles, or within 24 months from the effective date of this AD, whichever occurs later, install a new support structure for the MLG uplock mechanism in accordance with Part III—Modification Data of the Accomplishment Instructions of Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968.

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 11, 2002.

Issued in Renton, Washington, on January 25, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2319 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–03–AD; Amendment 39–12629; AD 2002–02–01]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft Pty. Ltd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Eagle Aircraft Pty. Ltd. (Eagle) Model 150B airplanes. This AD requires you to modify the attachment of the port and starboard throttle arms, and the starboard bushing of the throttle torque tube. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified by this AD are intended to prevent failure of the throttle control assembly caused by rivets of the wrong size. Such failure could lead to reduced control of the airplane.

DATES: This AD becomes effective on March 21, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 21, 2002.

ADDRESSES: You may get the service information referenced in this AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE–03-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: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports that Eagle manufactured certain Model 150B airplanes with rivets of the wrong size on the throttle control assembly. Installed rivets that are not the right size have resulted in reduced structural integrity of the throttle control assembly.

What Is the Potential Impact if FAA Took no Action?

If this condition is not corrected, failure of the throttle control assembly could result. Such failure could lead to reduced 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 Eagle Model 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 2001 (66 FR 55894). The NPRM proposed to require you to replace existing 3/32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1/8-inch solid-head rivets; and replace the 1/8-inch rivet in the starboard bushing of the throttle torque tube with a 5/32-inch screw.

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 5 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 modification:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
2 workhours × $60 = $120	$50	$170	$170 × 5 = $850.

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:

2002–02–01 Eagle Aircraft PTY. Ltd.: Amendment 39–12629; Docket No. 2001–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 through 021, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the throttle control assembly. Such failure could lead to reduced 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
Replace the existing 3⁄32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1⁄8-inch solid-head rivets, and replace the 1⁄8-inch rivet in the starboard bushing of the throttle torque tube with a 5⁄32-inch screw.	Within the next 100 hours time-in service (TIS) after March 21, 2002 (the effective date of this AD).	In accordance with Eagle Service Bulletin 1067, Revision 1, dated October 21, 1999.

(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, Los Angeles Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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 Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(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 Eagle Service Bulletin 1067, Revision 1, dated October 21, 1999. 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 Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia. 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.

Note 2: The subject of this AD is addressed in Australian AD Number X-TS/4, effective July 6, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on March 21, 2002.

Issued in Kansas City, Missouri, on January 24, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2318 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–22]

Revision to Class E Surface Area at Marysville Yuba County Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends the hours of operation for Class E Surface Area airspace at Marysville Yuba County Airport, CA to reflect the fact the airport now provides full-time weather reporting service.

DATES: *Effective Date:* 0901 UTC April 18, 2002. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before March 6, 2002.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–22, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: This action amends the hours of operation for Class E Surface Area airspace at Marysville Yuba County Airport, CA to reflect the fact the airport now provides full-time weather reporting service. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace revision listed in this document will be published subsequently in that Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 01–AWP–22.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as a Surface Area for an airport.

* * * * *

AWP CA E2 Marysville Yuba County Airport, CA [Revised]

Marysville Yuba County Airport, CA
(Lat. 39°05′53″ N, long. 121°34′11″ W)
Marysville VOR/DME
(Lat. 39°05′56″ N, long. 121°34′23″ W)
Marysville Beale AFB, CA
(Lat. 39°08′10″ N, long. 121°26′12″ W)

Within a 4.1-mile radius of Yuba County Airport and within 1.8 miles each side of the Marysville VOR 152° radial, extending from the 4.1-mile radius to 7 miles southeast of the VOR and within 1.8 miles each side of the Marysville VOR 342° radial, extending from the 4.1-mile radius to 7 miles northwest of the VOR, excluding that portion within the Marysville Beale AFB, CA, Class C airspace area.

* * * * *

Issued in Los Angeles, California, on January 8, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–2538 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AA02

Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is amending its requirements for records and reports of adverse experiences and other information for approved new animal drugs. This interim final rule more clearly defines the kinds of information to be maintained and submitted by new animal drug applicants for a new animal drug application (NADA) or an abbreviated new animal drug application (ANADA). In addition, the interim final rule revises the timing and content of certain reports to enhance their usefulness. The regulation will provide for protection of public and animal health and reduce unnecessary recordkeeping and reporting requirements.

DATES: This interim rule is effective August 5, 2002. Submit written or electronic comments on new information on the interim final rule and the information collection requirements by April 5, 2002. Please note the agency will not consider any comments that have been previously considered during this rulemaking.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the Internet at http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6641, or wkeller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of December 17, 1991 (56 FR 65581), FDA (we) published a proposed rule (the proposed rule for records and reports) to revise § 510.300 (21 CFR 510.300) and to redesignate it as § 514.80 (21 CFR 514.80). This regulation implements section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(l)) which provides that, following approval of an NADA or ANADA, applicants must establish and maintain records and make reports to the agency as prescribed by regulation or order. We proposed the revision in order to more clearly define the kinds of information to be maintained and submitted by the applicant and to revise the timing and content of certain reports to enhance the usefulness of the information.

After considering comments submitted in response to the proposed rule for records and reports, FDA is adopting the rule in modified form. The scope and coverage of this interim final rule differs in some respects from the proposed rule for records and reports. The proposed rule for records and reports covered NADAs, ANADAs, and medicated feed applications (MFAs). In contrast, the interim final rule covers only NADAs and ANADAs. The Animal Drug Availability Act of 1996 (ADAA) (21 U.S.C. 360b(a) and 360b(m)) amended the statutory provisions in the act regarding medicated feeds and eliminated MFAs. Therefore, the interim final rule does not address MFAs. However, the interim final rule retains reporting requirements for serious adverse drug experiences with feeds incorporating approved Type A medicated articles.

While the proposed rule for records and reports proposed to remove 21 CFR 510.310, which addressed records and reports for new animal drugs approved before June 20, 1963, we issued a final rule that revoked this provision in response to the Administration's ''Reinventing Government Initiative'' (61 FR 37680, July 19, 1996).

The proposed rule for records and reports followed a style and format similar to the human drug records and reports regulations in part 314 (21 CFR part 314). The interim final rule maintains a similar style and format, but removes many of the proposed records and reports requirements that are not necessary to monitor animal drugs.

In response to concerns over duplicate reporting, FDA has removed proposed § 514.82, which concerned records and reports from manufacturers, packers, labelers, and distributors other than the applicant. However, the agency has retained certain record and report requirements for nonapplicants (defined in new § 514.3(f)) in § 514.80(b) of this interim final rule.

For purposes of clarity, the agency has made some changes to the text and organization of the interim final rule. The following list provides examples of changes not intended to affect the substantive requirements of the rule:

- All definitions in the proposed rule for records and reports have been consolidated in new § 514.3 *Definitions*. Specifically, definitions for the terms ''applicant'' and ''nonapplicant'' that appeared in text of the proposed rule for records and reports have now been moved to § 514.3.
- Proposed § 514.80(a) discussed the requirements for ''establish[ing] and maintain[ing] records and mak[ing] reports'' in one paragraph. For easier reading, FDA has broken the paragraph down in this interim final rule to discuss the recordkeeping and reporting requirements separately.
- New § 514.80(a)(2) discusses the reporting requirements in slightly greater detail than had been done in the proposed rule. This is intended to provide a road map of the requirements contained in other parts of the interim rule.
- Final § 514.80(a)(5) was added to clarify that the records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations.
- The interim final rule combines the proposed periodic adverse drug experience reports with the proposed annual reports (designated as § 514.80(d)(3) and (d)(4), respectively, in the proposed rule), because both reports require the same information. The combined report, which is now found at § 514.80(b)(4), is entitled ''Periodic drug experience report'' in the interim final rule.
- Reporting requirements for reports of adverse drug experiences in the

published literature were found in the proposed rule in the ‘‘General requirements’’ section (proposed § 514.80(e)). Similarly, reporting requirements for adverse drug experiences that occur during postapproval studies were also found in this section in the proposed rule. Because both of these requirements are part of the ‘‘Periodic drug experience report,’’ these sections have been moved in the interim final rule to § 514.80(b)(4) *Periodic drug experience report*. Specifically, the requirements for reports of adverse drug experiences in the published literature are now found in final § 514.80(b)(4)(iv)(B), and requirements for adverse drug experiences that occur during postapproval studies are now found in final § 514.80(b)(4)(iv)(C).

II. Response to Comments

The agency received 12 comments on the proposed rule for records and reports, 8 NADA applicants, 3 industry associations, and 1 association of regulatory professionals. A discussion of the comments and our response follows. Because sections of the proposed rule have been rearranged in the interim final rule, we are providing the following conversion tables to aid readers in comparing the proposed and interim final rules:

CONVERSION TABLE 1.

Proposed Rule Section	Interim Final Rule Section
514.80(a) Applicability	514.80(a)
514.80(b) Definitions	514.3
514.80(c) Records to be maintained	514.80(e)
514.80(d) Reporting requirements	514.80(b)
514.80(d)(5)(iii) Statements of NADA approval status	Not included in interim final rule
514.80(e) General requirements	514.80(c)
514.80(f) Reporting forms	514.80(d) and 514.80(g)
514.80(g) Access to records and reports	514.80(f)
514.80(h) Withdrawal of approval	514.80(h)
514.81 Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect	Not included in interim final rule
514.82 Records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant	514.80(b)(3)

A. General Comments

(Comment 1) A number of comments questioned the need to change the existing regulation. These comments characterized the proposed changes as an unnecessary effort to make the animal drug regulations mimic the parallel regulations for human drugs. The comments emphasized the differences between human and veterinary medicine in treatment goals, dosing protocols, and evaluation of treatment responses. In light of these differences, the comments suggested that the record and reporting regulation for animal drugs should differ from the regulation for human drugs.

We agree that the regulations for human and animal drugs should differ in some areas. We changed the interim final rule in response to specific comments. Thus, the changes make the human and animal drug regulations similar but not identical.

(Comment 2) Some comments criticized our estimates of the annual reporting and recordkeeping burden. We estimated the proposed rule would require an additional 400 responses above the number required under the previous regulation from 200 businesses. The estimated increased total annual workload from the proposed rule was 200 hours, or approximately 1 hour per business. Representatives of the animal drug industry suggested that the added reporting burden would be 930 hours per respondent, with a total burden of 186,000 hours per year. This comment suggested that 500 hours per year were attributable to the proposed NADA-field alert report (proposed § 514.80(d)(1)), 90 hours per year to the proposed 15-day alert report followups (proposed § 514.80(d)(2)(ii)), 60 hours per year to the proposed periodic adverse drug experience reports (proposed § 514.80(d)(3)), and 280 hours per year to the proposed annual report (proposed § 514.80(d)(4)). The comments stated that the added burden was unjustified in the absence of any significant threat to the public health.

Our estimates of the annual reporting and recordkeeping burden in the proposed rule addressed only the increased burden resulting from the new provisions of the proposed regulation. The estimate did not include the workload resulting from previously existing provisions of the regulation. We have amended the estimated reporting and recordkeeping burden charts to reflect the total burden of the rule. Furthermore, our estimates are for the number of hours required to complete each response, not the number of hours per year per NADA holder as suggested in the comment. Thus, FDA’s estimates are not directly comparable to those in the comment.

Additionally, the agency has made revisions in this interim final rule to provide for reduced reporting requirements under appropriate circumstances, thereby substantially reducing the reporting burden compared to the proposed rule. We have changed the reporting requirement for the 3-day NADA/ANADA field alert reports in the interim final rule (§ 514.80(b)(1)) so that applicants or nonapplicants must include only information pertaining to ‘‘product and manufacturing defects that may result in serious adverse drug events’’ instead of ‘‘any manufacturing defect’’ as was required in the proposed rule for records and reports (proposed § 514.80(d)(1)). This change will reduce the recordkeeping burden for this provision to a total of 60 hours.

Further, the periodic adverse drug experience report and annual report proposed in § 514.80(d)(3) and (d)(4) were combined into a single periodic drug experience report under § 514.80(b)(4). Finally, we agreed with comments that the requirement in § 514.80(d)(3) of the proposed rule for quarterly submissions of periodic drug experience reports for 3 years was excessive. Thus, the agency reduced this reporting requirement in § 514.80(b)(4) of the interim final rule to every 6 months for the first 2 years. The interim final rule requires 5 periodic drug experience reports within 3 years of approval; the proposed rule required 12 periodic drug experience reports within 3 years of approval.

We added provisions in interim final § 514.80(b)(4) that allow applicants to petition us to change the date of submission of yearly periodic drug experience reports or the frequency of reporting to intervals greater than annually. This provision will substantially reduce the number of periodic drug experience reports.

B. Definition of an Adverse Drug Experience (New § 514.3(a))

(Comment 3) Several comments characterized the phrase ''whether or not considered drug-related'' found in the proposed definition of ''adverse drug experience'' as being too broad in scope.

We agree that the definition is broad. However, we believe that such a broad definition is necessary in light of the agency's goal to encourage reporting that captures all possible adverse drug experiences. For example, it is often difficult to determine drug-relatedness in an individual case, but FDA, by seeing many reports, may see drug-relatedness that is not clear in individual instances. To prevent under-reporting and the possibility that rare or unexpected adverse drug reactions may be missed, the agency has decided to adopt the definition as proposed. However, in response to concerns over the implications of a broad definition, the agency has added a disclaimer in new § 514.80(i) which states that submission of a report or information does not necessarily constitute a conclusion or admission that a drug caused or contributed to an adverse effect.

(Comment 4) One comment suggested that reporting of adverse drug experiences be limited to ''significant or meaningful events.''

We believe that limiting reporting as suggested could hinder postapproval surveillance because the significance of an event may not be apparent at the time of its occurrence. We desire to maintain and increase the availability and diversity of new animal drugs without compromising their safety and effectiveness. Postapproval reporting provides a source of vital information about the continued safety and effectiveness of a drug product over an extended period of time under field conditions. Therefore, we are maintaining the scope of the record and reporting requirements in this interim final rule.

(Comment 5) One comment questioned the rationale for defining ''adverse drug experience'' to include adverse events occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug. Several comments suggested that monitoring human health problems associated with exposure to new animal drugs is a responsibility of the Occupational Safety and Health Administration (OSHA) rather than FDA.

Under the act, we are required to consider the human health factor when approving new animal drugs. For example, FDA requires that appropriate warnings regarding potential adverse effects to human health be included in the labeling of new animal drugs. FDA's role in worker safety is complementary to OSHA's role. Furthermore, not all human exposure to new animal drugs would be through occupational exposure. We believe continued reporting of human adverse drug experiences as related to animal drugs is appropriate and important. This reporting provides the agency with the information it needs to fulfill its mandate to consider human health effects. Thus, the agency is retaining this element of the definition in the interim final rule.

(Comment 6) Comments asserted that the language used in proposed § 514.80(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) is inappropriate for new animal drugs. In particular, the comments questioned defining ''adverse drug experience'' in these sections to include an ''adverse event occurring from animal drug overdose,'' an ''adverse drug event occurring from animal drug abuse,'' and an ''adverse event occurring from animal drug withdrawal.''

We agree that the phrases are not appropriate for animal drugs. These sections have been removed from the definition of ''adverse drug experience'' in new § 514.3(a) to more accurately reflect the practices of veterinary medicine and animal agriculture.

(Comment 7) Some comments questioned the phrase ''failure of an animal drug product to produce its expected pharmacological action'' in the definition of ''adverse drug experience'' in proposed § 514.80(b)(1)(v). Some of these comments suggested that the phrase be changed to say ''unusual failure of an animal drug product * * * '' and noted that when animals are treated as a group rather than individually, the failure of some animals to respond is considered normal.

We agree that when groups of animals are treated, the failure of some individuals to respond to therapy can be considered normal. However, a perceived lack of effectiveness based on an unusual failure to respond to therapy is a valid reason to submit an adverse drug experience report. Failure of a drug to produce its expected pharmacological action (''lack of effectiveness'') may result in the underlying disease process progressing to a serious health problem. This health problem, therefore, is indirectly caused by the drug. The failure should be submitted in an adverse drug experience report. However, if the failure of some individuals to respond to therapy was expected (i.e., is listed in the labeling), this failure should be submitted in the periodic experience report. Thus, FDA has retained the phrase ''failure * * * to produce its expected pharmacological * * * effect'' in new § 514.3(a)(2).

The comments also asserted that clinical response rather than pharmacological action would more accurately describe the results being monitored.

We agree that clinical effect is another appropriate monitor in addition to lack of pharmacological action. Based on these comments, the language in new § 514.3(a)(2) has been revised to read ''Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness).''

C. Definition of Increased Frequency (New § 514.3(d))

(Comment 8) Some comments stated that monitoring and reporting an increased frequency in the rate of reported occurrences of any particular adverse drug experience is impractical in animal agriculture. One comment suggested that reporting of ''increased frequency'' should be limited to certain types of new animal drug products.

We believe that it is practical for applicants to monitor and report apparent increases in the number of reports concerning a specific type of adverse drug experience, after adjusting for any increase in drug use. Drug surveillance is important not just for identifying serious adverse drug reactions, but also for monitoring and accounting for any changes in the incidence of these same serious reactions. However, in response to concerns raised by the comments, we revised the definition of ''increased frequency'' in proposed § 514.80(b)(2) in new § 514.3(d) to limit required reporting to serious adverse drug events, expected or unexpected, after appropriate adjustment for drug exposure.

D. Definition of New Animal Drug Application (New § 514.3(b) and (e))

(Comment 9) One comment suggested that the definition of the term ''NADA'' be removed from the section concerning records and reports ''because it causes confusion by inclusion of abbreviated new animal drug applications (ANADAs) in its scope and this is the only subsection in § 514 where they are mentioned.'' The comment suggested that the regulations be revised to mention both NADAs and ANADAs when appropriate.

FDA agrees. We revised this interim final rule to mention both NADAs and ANADAs when appropriate. In addition, we moved the definitions of the terms ''NADA'' and ''ANADA'' to new § 514.3.

E. Definition of Serious (New § 514.3(h))

(Comment 10) Proposed § 514.80(b)(4) defined the term ''serious,'' as it relates to adverse drug experiences, to include ''an adverse drug experience that is fatal, life-threatening, permanently disabling, requires hospitalization, or involves systemic drug or other intervention.'' Several comments asserted that the phrase ''or involves systemic drug or other intervention'' as it appeared in this proposed section is too broad and the phrase ''requires hospitalization'' does not accurately reflect drug use in animal agriculture.

We agree with these comments. We have addressed these concerns by revising the definition of ''serious adverse drug experience,'' in new § 514.3(h). The definition is now more specific and reads ''an adverse event that is fatal or life-threatening, requires professional intervention, or causes an abortion, stillbirth, infertility, congenital anomaly, prolonged or permanent disability, or disfigurement.'' By including ''requires professional intervention'' (*e.g.,* under a veterinarian's care) as a criterion, we reasonably limit the number of reports that have to be submitted under this portion of the regulation. The reference to hospitalization has been deleted in this interim final rule.

F. Definition of Unexpected (New § 514.3(i))

(Comment 11) Comments stated that the agency did not provide an explanation in the preamble to the proposed rule as to why the agency proposed to change the definition of ''unexpected'' (in the context of adverse drug experiences). Comments also stated that the existing definition of ''unexpected'' should be retained or the proposed new definition should be simplified.

FDA disagrees that the definition should be retained or simplified. In the preamble to the proposed rule, we did not explain why we proposed to change the definition of ''unexpected.'' The explanation is that the NADA or ANADA file is not publicly available, but the labeling is. Thus, ''unexpected'' adverse drug experiences should be provided in the labeling, so that anyone (not just someone with access to the NADA or ANADA file) can determine whether an event is unexpected.

Thus, we are keeping the definition as proposed. That definition, which is now found in new § 514.3(i), specifies that labeling, rather than the NADA or ANADA file, is the standard for comparison when deciding whether a reported event is an unexpected adverse drug experience.

G. Definitions of Product Defect and Manufacturing Defect (New § 514.3(g))

(Comment 12) Many comments expressed concern that the proposed definitions for ''product defect'' and ''manufacturing defect'' were too broad because, under the definitions, FDA would require reporting of problems not associated with public health or animal safety.

We agree. We revised the two definitions to limit their scope to problems associated with public health or animal safety. For example, we have removed the following language, ''observable or measurable deviation * * * from the typical physical and chemical characteristics expected for the animal drug product and its container'' to prevent inclusion of factors that may affect physical appearance, but not public health or animal safety. For clarity, the two definitions have been combined in a single definition in new § 514.3(g). The revised definition also contains examples of product and manufacturing defects.

(Comment 13) One comment stated that the definition of ''product defect'' should be revised to specify only a situation when there is a confirmed deviation from standards in order to preclude submission of many reports that may prove to be unnecessary.

We disagree that the definition of suspected product defects should be revised to include only confirmed deviation from standards. We believe that if an applicant/nonapplicant had to confirm the deviation, it would be difficult for the applicant/nonapplicant to report such a defect within 3 working days of first becoming aware that a defect may exist, as required under new § 514.80(b)(1). However, we have revised the definitions of product defect and manufacturing defect to limit their scope (see comment 12 of this document). We have also narrowed the reporting requirement under § 514.80(b)(1) so that only those product and manufacturing defects that may result in serious adverse drug events must be reported.

During its consideration of this comment, we recognized a source of potential confusion in the proposed rule that is related to the issue raised by the comment. Specifically, ''manufacturing defect'' was defined in proposed § 514.80(b)(7) as ''the manufacturing process is the cause of a product defect *which is determined after investigation of a product defect complaint or a routine quality control procedure.*'' (Emphasis added). We did not intend for this definition to alter the requirement that manufacturing defects be reported to FDA within 3 working days of first becoming aware that such a defect may exist. To eliminate this potential confusion, we removed the phrase ''which is determined after investigation of a product defect complaint or a routine quality control procedure'' from the interim final rule's definition of ''product defect/ manufacturing defect'' in new § 514.3(g).

(Comment 14) Some comments suggested that the phrase ''or from the typical physical and chemical characteristics expected for the animal drug product and its container,'' which appears in the proposed rule's definition of ''product defect,'' should be modified or deleted because it makes the definition too broad.

We agree that the phrase makes the definition too broad. We removed the phrase in this interim final rule.

(Comment 15) One comment argued that the proposed definition of ''manufacturing defect'' should be changed to specify distributed products only because the proposed definition would include reporting of all quality control or procedure problems.

FDA agrees that only those manufacturing defects that pertain to distributed products need be reported. The revised definition in new § 514.3(g) makes this clear by referring to ''distributed'' products.

H. Records to be Maintained (New § 514.80(e))

(Comment 16) Some comments challenged the proposed 10-year retention period for records of all information concerning experience with approved new animal drugs. They argued that a 10-year retention period is unnecessary and burdensome. They suggested that the retention time be reduced to 1 or 2 years.

FDA agrees that 10 years may be an unnecessarily long time to retain these records of all information. Accordingly, the agency has amended the record retention period from 10 to 5 years. New § 514.80(e) requires retention of records of all information for 5 years after the date of submission. FDA believes that a 5-year retention period is adequate and necessary to ensure that records exist for a sufficient time to permit us to evaluate events that occur at limited frequency.

I. Reporting Requirements (New § 514.80(b))

(Comment 17) Some comments misrepresented our intent regarding reporting requirements, indicating that we had not clearly stated those requirements in the proposed rule. As a result of these comments, we reorganized and revised the reporting requirements to clarify reporting obligations. New § 514.80(b) does not add any significant new reporting requirements to those contained in the proposed rule. In fact, we removed or modified some of the proposed requirements to reduce the regulatory burden. A discussion of the specific changes that we made follows.

J. NADA-field Alert Report (New § 514.80(b)(1))

(Comment 18) One comment suggested that the requirement for reporting product and manufacturing defects should be limited to significant problems relevant to the drug's safety or efficacy.

FDA agrees and has revised the reporting requirements in new § 514.80(b)(1) so that only those product and manufacturing defects that may result in serious adverse drug events must be reported.

(Comment 19) Some comments expressed a concern that the proposed rule would require duplicate reporting of manufacturing defects to FDA's district offices and Center for Veterinary Medicine (CVM).

We did not intend to require duplicate reporting. The agency believes this was clear under proposed § 514.80(d)(1), which stated that reports should be submitted ''to the FDA district office that is responsible for the facility involved.'' Thus, we are largely retaining this language. However, because some areas of the United States are covered by a local FDA resident post rather than a district office, the agency is modifying the interim final rule to reflect this. New § 514.80(b)(1) states that ''[t]he applicant * * * must submit the report to the appropriate FDA district office or local FDA resident post within 3 working days of first becoming aware that a defect may exist.'' To further clarify where specific reports must be sent, we have added new § 514.80(g) *Mailing addresses* to this interim final rule.

(Comment 20) One comment suggested extending the time required for submitting the proposed NADA field alert report from 3 to 10 days.

We believe that 3 working days are sufficient time to investigate the existence of a reportable event and make an initial report. Thus, we have retained this timeframe for 3-day NADA/ANADA field alert reports in new § 514.80(b)(1). The agency notes that a complete written report is not required within the 3-day period. If, as specified in § 514.80(b)(1), the information is provided by telephone or other telecommunication means within 3 days, followed by prompt (within a timeframe agreed upon at the time of the initial telecommunication) written followup on Form FDA 1932 ''*Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report*,'' FDA will consider the 3-day requirement to have been met.

K. Fifteen-Day Alert Reports (New § 514.80(b)(2))

(Comment 21) Several comments interpreted proposed § 514.80(d)(2)(ii) as requiring repeated followup reports at 15-day intervals. These comments questioned the need for such followup and proposed a single followup once all the information was collected within 15 days or after collection of the information.

The intent of the regulation is not to require multiple followup reports. We believe that most adverse drug experiences can be documented with either a single initial report or an initial report and a followup report if significant new information is received. To clarify this intent, § 514.80(b)(2)(ii) of the interim final rule has been revised to read: ''* * *[if] this investigation reveals significant new information, a followup report must be submitted within 15 days of receiving such information.'' A 3-month period is designated as the reasonable time needed to obtain such information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(Comment 22) Proposed § 514.80(d)(2) required that the initial 15-day alert report be submitted using Form FDA 1932. One comment suggested that the Form FDA 1932 be submitted only at the conclusion of the investigation of the adverse drug experience. The comment suggested that the initial report could be less formal.

We disagree with these suggestions. A standardized reporting format is essential for the efficient collection and processing of useful data. Thus, FDA has retained the required use of the Form FDA 1932 for the 15-day NADA/ANADA alert report in this interim final rule.

(Comment 23) Several comments suggested that 15-day alert reports of adverse drug experiences be limited to events judged to be ''drug-related'' by the applicant.

We disagree with this concept. For FDA to determine drug-related effect, applicants must submit all reports of adverse drug experience so that the agency can evaluate the data in an unbiased manner. FDA maintains a computer data base of reported information. The data base is evaluated for trends or patterns of reports, and the trends are further investigated. Limiting reporting to ''drug-related'' events could hamper the discovery of uncommon or unexpected adverse drug experiences.

To alleviate concerns that reporting automatically implicates the drug, we added new § 514.80(i). This section provides that the adverse drug experience report ''will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event.''

L. Periodic Adverse Drug Experience Reports (New § 514.80(b)(4))

(Comment 24) Several comments criticized proposed § 514.80(d)(3), asserting that the proposed requirements for periodic drug experience reports are inappropriate, unnecessary, and burdensome in requiring quarterly reports for 3 years. Two comments recommended 6-month reports for 2 years.

We agree with many of the comments and revised the provisions regarding periodic drug experience reports. We have combined the periodic adverse drug experience report requirements with annual reporting requirements into new section, § 514.80(b)(4). The frequency of reporting for new approvals has been changed from the proposed schedule of ''quarterly intervals for 3 years from the date of approval and annually thereafter'' (as it appeared in proposed § 514.80(d)(3)) to ''every 6 months for the first 2 years after approval of an NADA or ANADA, and yearly thereafter.'' (*See* new § 514.80(b)(4).) In light of this change, we wish to clarify the reporting requirement for the periodic drug experience reports. We are requiring that these periodic drug experience reports contain data and information for the full reporting period. To facilitate this reporting requirement, we will allow sponsors to file 6-month periodic drug experience reports within 30 days after the end of the 6-month reporting period. With regard to the yearly periodic drug experience report, these must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA.

FDA added provisions in new § 514.80(b)(4) that allow applicants to petition FDA to change the date of submission of yearly periodic drug experience reports or the frequency of reporting to intervals greater than annually. This is intended to increase flexibility and to reduce the reporting burden for specific NADAs and ANADAs. FDA believes that any burden for the third semiannual report will be offset by the provision in new § 514.80(b)(4) that allows applicants to petition for decreased reporting frequency.

M. Proposed § 514.80(d)(4): Annual Report (Interim Final Included in § 514.80(b)(4))

(Comment 25) Two comments noted that the phrase ''quantities distributed for foreign use'' in proposed § 514.80(d)(4)(I) is unclear, and that the collection of the data would be unreliable and difficult to obtain.

The phrase, which is now in new § 514.80(b)(4)(i), has been revised to read ''quantities distributed domestically and quantities exported.'' We believe that the data are obtainable (currently, CVM receives such data from applicants) and, if properly collected, should be reliable. The data will be useful in CVM's postmarketing surveillance activities, such as the adverse drug experience program.

(Comment 26) Four comments objected to the requirement in proposed § 514.80(d)(4)(ii) that applicants provide a summary of any changes in the labeling. Comments argued that FDA already has this information on file.

We believe that this requirement does not impose a significant new reporting burden, yet provides us with very useful information. The requirement is necessary to ensure that all labeling changes, including those recently made or not previously reported, are documented. By providing a summary of any changes in the labeling, applicants will facilitate CVM's review of periodic drug experience reports. Therefore, we retained the requirement in new § 514.80(b)(4)(ii).

(Comment 27) Several comments questioned the need for providing the date of implementation of manufacturing and control changes, required under proposed § 514.80(d)(4)(iv). The comments described the requirement as an unnecessary paperwork burden on both industry and Government. One comment noted that the requirement was redundant because ''a chronological list of changes is available upon field inspection.''

We disagree with these comments. The date when a change is implemented is important to identify the production batches that may be affected by the change. This is important for various reasons, including allowing reviewers to compare data generated at different times to determine if there are any changes or trends in product quality. However, section 116 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (21 U.S.C. 356a) describes reporting procedures and requirements for making major and other manufacturing changes to an approved application. Under FDAMA, we proposed to revise § 514.8 (21 CFR 514.8), the provisions for supplemental applications for changes in the manufacturing of animal drugs, and specify the reporting requirements for manufacturing changes. (See 64 FR 53281, October 1, 1999.) Therefore, we removed the requirement described in proposed § 514.80(d)(4)(iv) from this interim final rule.

(Comment 28) Proposed § 514.80(d)(4)(v)(C) required applicants to submit descriptions of completed clinical trials conducted by or known to the applicant. Some comments questioned whether this requirement would result in possible duplicate reporting of clinical trial information or adverse drug experiences associated with an investigational new animal drug. Also, the difference between the terms ''completed'' and ''concluded'' was questioned in terms of when the study was to be reported to FDA. Proposed § 514.80(d)(4)(v)(C) stated: ''A study is considered completed no later than 1 year after it is concluded.''

We did not intend to require duplicate reporting. To make this explicit, we renamed the section ''*Nonclinical laboratory studies and clinical data not previously reported*,'' in new § 514.80(b)(4)(iii). We included the phrase ''not previously reported'' in the title to clarify that duplicate reporting is not required. To eliminate confusion over the difference between ''completed'' and ''concluded,'' new § 514.80(b)(4)(iii)(C) now states that ''a study must be submitted no later than 1 year after completion of research.''

N. Advertisements and Promotional Labeling (New § 514.80(b)(5)(ii))

(Comment 29) Several comments suggested that the requirements regarding submission of advertisements and promotional labeling in § 510.300 were adequate. These comments further suggested that FDA should retain these requirements rather than adopting the new requirement in proposed § 514.80(d)(5)(I). In addition, the comments challenged as unnecessary and burdensome the requirement that a copy of the product labeling be included in the submission.

The agency believes that the language in new § 514.80(b)(5)(ii) is an improvement over § 510.300 because it clarifies and delineates the requirements for advertisements and promotional labeling for both prescription and over-the-counter drugs. However, FDA agrees that samples of a product's current labeling need not accompany each submission of promotional material. Accordingly, we removed this requirement from the regulation.

O. Distributor Statements and Labeling (New § 514.80(b)(5)(iii))

(Comment 30) Comments asserted that the timing of submission of the distributor statement and labeling as established under proposed § 514.80(d)(5)(ii) was unclear because the preamble to the proposed rule suggested submission with the annual report, but the proposed rule required submission ''[a]t the time of initial distribution.''

We clarified the timing of submission in the interim final rule. In new § 514.80(b)(5)(iii), the distributor's statement and samples of labeling are to be submitted as a special drug experience report ''at the time of initial distribution of a new animal drug product by a distributor.''

(Comment 31) Comments also questioned the meaning of the term ''own-label (private label) distributor'' as it appeared in proposed § 514.80(d)(5)(ii).

We agree that the proposed language was unclear. We removed the phrase ''own-label (private label).'' The wording in new § 514.80(b)(5)(iii)(A) reads, ''distributor's current product labeling.''

(Comment 32) One comment asserted that the information required in distributor statements are business arrangements which should be kept on file by applicants and not be submitted to FDA.

We disagree with this comment. The distributor statements are kept on file at FDA to provide cross-reference information for the drug listing process. The statements may also be important to us during an establishment inspection.

P. Statements of NADA Approval Status

(Comment 33) Proposed § 514.80(d)(5)(iii) codified the reporting requirements that applicants needed to comply with before they could add a statement of NADA approval status to the product labeling. Before the enactment of FDAMA, the act expressly prohibited the use of approval status statements on the labeling of human drugs under section 301(l) of the act (21 U.S.C. 331(l)), but did not prohibit the use of such statements on new animal drug labeling. Section 421 of FDAMA struck section 301(l) from the act, thereby lifting the prohibition for adding such statements to human drug labeling. Because the agency has decided that it will implement this revision of the act by providing uniform guidance concerning product approval status statements for both human and animal products, we determined that it would be inappropriate to retain proposed § 514.80(d)(5)(iii) in this interim final rule.

Q. Special Reports (New § 514.80(b)(5)(i))

(Comment 34) Proposed § 514.80(d)(5)(iv) provided that ''[u]pon written request, FDA may require that the applicant submit the reports required under this section at different times than those stated.'' One comment suggested that FDA should have retained § 510.300(b)(5) rather than adopting proposed § 514.80(d)(5)(iv). This comment interpreted the language in § 510.300(b)(5) as ensuring that special reports are based on a ''mutually agreed upon need and not a mere increase in frequency in reporting.''

We do not interpret the language of § 510.300(b)(5) as having provided a means of ''mutually agreeing upon'' some kind of need for a report. Moreover, we believe it is neither necessary nor practical to ensure that special reports are based on a ''mutually agreed upon need.'' Proposed § 514.80(d)(5)(iv) was not intended to unnecessarily increase the frequency of reporting. Rather, this proposed section provides us with a means of obtaining reports in situations where we believe that it is in the interest of public health to require a different timeframe for the submission of reports required in this regulation. To further this goal, we are adopting the following language for the interim final rule (new § 514.80(b)(5)(i)): ''Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.''

R. General Requirements (New § 514.80(c))

(Comment 35) Several comments requested clarification of proposed § 514.80(e)(1) which states: ''If a report refers to more than one animal drug marketed by an applicant, the applicant shall submit the report to the application for each animal drug listed in the report. The report is required to identify all the applications to which the report applies.'' Comments questioned whether this was applicable to combination drug products and whether FDA intended the applicant to file these reports with all dosage forms of the drug or just with the dosage form involved in the adverse experience report.

This section was intended to refer to periodic reporting requirements when an applicant has more than one NADA or ANADA containing a particular active ingredient. FDA has replaced the language proposed in § 514.80(e)(1) with language almost identical to that contained in § 510.300(b)(4)(ii). FDA has redesignated the general requirements section as § 514.80(c) in the interim final rule, and has further clarified the requirements needed to implement this section. The clarification provided for in the interim final of § 514.80(c)(1) through (c)(4) reflects the current reporting practice. If applicable, the applicant must do the following: (1) State when a report applies to multiple applications and identify all related applications; (2) ensure that the primary application contains a list of all related applications; (3) submit a completed Form FDA 2301, ''*Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs*,'' to the primary application, and to each related application that references the primary application and corresponding submission date; and (4) if there is information that is unique to a particular application, the information must be submitted in the report for that particular NADA and/or ANADA.

S. General Requirements—[Reports of Adverse Drug Experiences in Published Literature] (New § 514.80(b)(4)(iv)(B))

(Comment 36) Several comments questioned the scope of the published literature that needed to be provided to FDA. The comments asserted that only publications from current scientific journals (excluding those listed in 21 CFR 510.95) and only substantive articles should be required. The comments stated that obscure foreign journals with translations may require extended time periods to obtain. Section 314.80(d)(1) and (d)(2) of the human drug regulations were mentioned as examples of appropriate limitations.

We believe that the scope of published literature on reports of adverse drug experiences should be kept broad. In recent years, extensive searches of literature data bases have become quicker, more practical, and more economical to perform. If the agency were to narrow the scope of these searches, potentially valuable information might not be submitted. However, in an effort to reduce the burden of this requirement upon applicants, the agency has revised the requirement. Under proposed § 514.80(e)(2), applicants would have been required to submit actual copies of all published articles. We revised this requirement (new § 514.80(b)(4)(iv)(B)) such that applicants generally need only include a bibliography of pertinent references in the report.

(Comment 37) Several comments suggested that the requirement to provide photocopies of published articles was impractical because of copyright restrictions of publishers.

We are now able to access abstracts and articles through electronic data bases via the Internet. This development has eliminated the need for applicants to include copies of abstracts or articles in each report. Thus, as stated above, proposed § 514.80(e)(2) has been revised. Under the new § 514.80(b)(4)(iv)(B), an applicant will be required to provide a full text copy of a publication only upon FDA's request.

T. General Requirements—Reports of Adverse Drug Experiences in Postapproval Studies (New § 514.80(b)(4)(iv)(C))

(Comment 38) Two comments suggested that reporting of adverse experiences in postapproval studies as required in proposed § 514.80(e)(3) was redundant and might result in duplicate reporting.

In response to these comments, the language in new § 514.80(b)(4)(iv)(C) has been changed to specify ''[r]eports of adverse drug experiences in studies or trials *not previously reported* either individually or as part of an NADA/ ANADA * * *'' (Emphasis added).

U. Reporting Forms (New § 514.80(d))

(Comment 39) One comment stated that Form FDA 1932 is poorly suited for reports of product defects or human exposure to animal drugs. The suggestion was made that FDA modify the form or allow alternative reporting formats.

We believe that Form FDA 1932 and Form FDA 2301 are appropriate vehicles for reporting. Thus, the agency is retaining the requirement that these forms be used where designated in the interim final rule.

V. Withdrawal of Approval (New § 514.80(h))

(Comment 40) A comment suggested that FDA should retain the provisions in § 510.300(d) rather than adopting proposed § 514.80(h), because previous § 514.300(d) included an opportunity for a hearing. Although the agency disagrees that language in proposed § 514.80(h) should be replaced with the language previously found in § 514.300(d), the agency has rewritten proposed § 514.80(h) for clarity. As part of this revision, the agency has added the following: ''If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.''

W. Records and Reports Concerning Experience With Animal Feeds Bearing or Containing New Animal Drugs for Which an Approved Application is in Effect

FDA received several comments on the proposed regulation concerning the portion of the regulation dealing with MFAs. However, the ADAA amended the statutory provisions in the act regarding medicated feeds. Type A medicated articles are new animal drugs that may be used to make medicated feeds. Feed mills use Type A medicated articles to make medicated feeds. Prior to the passage of the ADAA, sponsors were required to obtain approval of NADAs for Type A medicated articles, and feed mills that made medicated feeds were required to obtain approval of an MFA for each medicated feed manufactured at each site before they could legally manufacture the medicated feed. The ADAA eliminated this requirement regarding MFAs for feed mills, but not the requirement for sponsors to obtain approval of NADAs for Type A medicated articles.

Revisions to the MFA regulations to reflect the provisions of ADAA were the subject of a final rule that published in the **Federal Register** of November 19, 1999 (64 FR 63195). Because of these revisions, the agency has removed the requirements for MFAs from the final rule. Proposed § 514.81 described the records and reports requirements for holders of MFAs. There are no longer holders of MFAs. However, the agency still needs information regarding approved Type A medicated articles incorporated in animal feeds. Under the final rule, this information is provided by the holder of the NADA for the Type A medicated feed, and, as stated in new § 514.80(a)(4), the record and report requirements found in new § 514.80(b)(1), (b)(2), and (b)(4)(iv) are applied to any approved Type A medicated article incorporated in animal feeds. The agency will address any remaining issues regarding records and reports for medicated feeds at a later date in a new proposed rule, if necessary.

X. Records and Reports Concerning Experience With New Animal Drugs From Manufacturers, Packers, Labelers, and Distributors Other Than the Applicant (New § 514.80(b)(3))

(Comment 42) Proposed § 514.82 established requirements for records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant. Several comments stated that requiring a nonapplicant to report to FDA is neither efficient nor necessary, because it would result in duplicate reporting. One comment stated that an applicant may be a subsidiary of a parent firm.

We agree with these comments and have deleted the proposed section from the regulations. However, the agency has retained certain record and report requirements for nonapplicants (new § 514.3(f)) in new § 514.80(b). The interim final rule specifies under new § 514.80(b)(3) that the nonapplicant is required to provide necessary information to the applicant. The applicant is required to report to FDA. The nonapplicant must retain certain records concerning events as provided in new § 514.80(b)(3). The nonapplicant may choose to forward a copy of the report to FDA, but this action would be voluntary.

III. Conforming Amendments

With the amendment of the animal drug regulations, certain revisions to 21 CFR parts 211, 226, 510, and 514 are required to conform to the designations in the amendments. Certain other provisions of part 510 and § 514.8 are superseded by these regulations and are removed.

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on new information regarding this interim final rule by April 5, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. The agency believes it is in the public interest to have the regulations in place while, at the same time, it solicits public comments on new issues. The agency will not consider any comments that have been previously considered during this rulemaking.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and has determined that it does not constitute an economically significant rule, as defined in the Executive order. FDA also certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required. Further, since this rule will not impose any mandates on other governmental entities and will result in the expenditure of less than $100 million by the private sector, FDA does not need to prepare additional analyses under the Unfunded Mandates Reform Act.

The regulation is intended to clarify and simplify recordkeeping requirements while improving the protection of public and animal health. The revisions in the reporting requirements are expected to provide savings through lower recordkeeping costs in some areas while imposing small cost increases due to requirements for recordkeeping of more useful information.

In the rule, the term ''applicant'' is limited to the holder of an approved application (NADA or ANADA) and does not include every firm whose name appears on product labeling, as the regulations previously provided. A nonapplicant is required to send copies of necessary information to the applicant who would then combine all information received, whether from one or several sources, and submit a single report to FDA. This change would reduce paperwork requirements because firms would be required to submit fewer reports. Also, those reports should provide for a more comprehensive reporting of all required information.

The current requirement for adverse drug experience reports to be submitted by distributors under proposed § 514.82 is retained under the interim final rule in § 514.80(b)(3) in nonapplicant reporting. The requirement for any firm involved in the manufacturing, processing, packing, labeling, or distributing of a new animal drug product other than the applicant (the nonapplicant) to report adverse experiences either to FDA or to the applicant is a restatement of the previous provisions of § 510.300(f) that applies to a small number of firms that would not routinely be expected to receive such information. The restatement is intended to clearly state that any such information received is required to be reported to FDA, either directly or through the applicant. However, only one party would be required to file the report.

The revised regulations amend the language of the regulations to clarify current practices. The conformity of reporting requirements for animal drugs and human drugs may simplify the process for firms that manufacture both kinds of products. No added costs are expected for those firms who only manufacture new animal drug products.

In the past, FDA has required that records and reports be retained for an indefinite period. The proposed rule provided for a retention period of 10 years. FDA has changed this requirement to 5 years for all information, in response to industry comments. This would provide an additional opportunity for savings compared to the proposed rule. Since the current average length of time which records are kept is unknown, it is possible that there will be a small net cost due to this provision, even though the reporting requirements are clarified for easier compliance and administration.

The previously existing regulation required reports concerning newly approved NADAs and ANADAs every 6 months for the first year and annually thereafter. The proposed rule for records and reports would have required submission of such reports at quarterly intervals for 3 years following approval. FDA agrees with comments from industry that the proposed rule's requirement of reports at quarterly intervals for 3 years following approval was unnecessary, and the agency has decreased the reporting requirements in the interim final rule. The interim final rule requires reports of adverse drug experiences to be submitted every 6 months for 2 years and annually thereafter.

The net change from the previous regulation requires one additional report in the second year. FDA estimates that it approves 30 NADAs annually. FDA estimates that 13.6 hours are required to establish and maintain the drug experience data, as well as write the report. Total hours required for this provision are estimated at 408. At a middle manager's estimated total wage rate of $35 per hour, this provision would cost $14,280 annually. Moreover, applicants may petition for lengthier report intervals. FDA will provide for reporting at intervals longer than 1 year when justified based on current experience or manufacturing and marketing status. The expected number of petitions for reporting at intervals greater than 1 year is difficult to estimate because it depends on the extent to which each individual company wishes to qualify for this provision. The net result of these two provisions may be either a very small cost or savings to each firm.

The interim final rule requires applicants to periodically review the incidence of adverse drug experiences and report any significant increase in the frequency to FDA as soon as possible or within 15 working days of determining a significant increase in frequency exists. FDA expects to receive very few of these each year and estimates the annual number at 1 to 20. These reports would not be expected to take more than 1 to 2 hours of a manager's time, and the high-end estimated cost would be $1,400 annually. Periodic review of adverse drug experience reports, although on a less formal basis, is already understood to be normal business practice.

The net costs and benefits of this interim final rule, though indeterminate, are expected to be modest. FDA concludes that the impacts of the interim final rule do not qualify it as an economically significant rule as defined under Executive Order 12866.

The Regulatory Flexibility Act, as amended (5 U.S.C. 601–612), allows for a waiver of the regulatory flexibility analysis if an agency certifies there will not be a significant impact on a substantial number of small entities as a result of a rule, as well as provides the factual basis for such a certification. The Small Business Administration definition of a small business in this industry category is limited to those firms with less than 750 employees. It is expected that a substantial number of the firms which will be subject to the new recordkeeping and reporting requirements will meet the definition of small businesses. FDA estimates that from 1 to 13 of the approximately 30 NADA and ANADA approvals in 1999 may have been from small businesses. Using the upper end of this range, about 42 percent of the firms receiving approval annually would be subject to the new recordkeeping and reporting requirements. Although these firms constitute a substantial number of firms being granted an approval each year, this proposal is not expected to have a significant economic impact on these firms, because the interim final rule is intended to simplify and clarify current recordkeeping and reporting requirements. The net costs and benefits on each small firm are expected to be modest. Accordingly, FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

VIII. Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below. Included is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Records and Reports Concerning Experience With Approved New Animal Drugs

Description: This interim final rule amends the provisions of the animal drug regulations concerning requirements for recordkeeping and reports of adverse experiences and other information relating to approved new animal drugs. The information contained in the reports required by this rule enables FDA to monitor the use of new animal drugs after approval and to ensure their continued safety and efficacy. The reporting requirements include: A report that provides information on product and manufacturing defects that may result in serious adverse drug events (new § 514.80(b)(1)); a report that provides information on serious, unexpected adverse drug events and a followup report on such events (new § 514.80(b)(2)); a summary report of increased frequency of adverse drug experiences (new § 514.80(b)(2)(iii)); a report from nonapplicants, such as distributors, to applicants providing information on adverse drug experiences (new § 514.80(b)(3)); a periodic report with information on distribution, labeling, manufacturing or controls changes, new laboratory studies, and all adverse events in the reporting period (new § 514.80(b)(4)); and other reports that include special drug experience report; reports for advertising and promotional material, and reports for distributor statements (new § 514.80(b)(5)). These reports must be kept for 5 years (new § 514.80(e)).

The interim final rule strengthens the current reporting system by requiring periodic reports every 6 months for the first 2 years following initial approval of an application rather than just for the first year following initial approval. The increased burden on applicants amounts to one additional periodic report. While greater than the reporting burden in the previous rule, this burden is less than that of the proposed rule which would have required quarterly periodic reports for 3 years following initial approval.

The reporting burden of the proposed rule has been reduced further in other ways. In the interim final rule, the report pertaining to product and manufacturing defects must include only information on defects ''that may result in serious adverse drug events'' (new § 514.80(b)(1)) rather than information on all manufacturing defects, as in the proposed rule. Additionally, the proposed rule required a periodic adverse drug experience report and an annual report, whereas the interim final rule has combined these reports into a single periodic drug experience report (new § 514.80(b)(4)). The interim final rule also reduces the reporting requirements of the proposed rule by eliminating proposed § 514.82, which required records and reports from manufacturers, packers, labelers, and distributors other than the applicant. The recordkeeping requirements of the proposed rule have also been reduced in the interim final rule by changing the required period of time records must be kept from 10 to 5 years (new § 514.80(e)).

All periodic reports must be submitted with Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs'' (OMB Control No. 0910–0012). Adverse drug experience reports must be submitted on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report'' (OMB Control No. 0910–0012).

Description of Respondents: Applicant respondents are sponsors of approved NADAs and ANADAs. Nonapplicant respondents are those, other than the applicant, involved in manufacturing, processing, packing, labeling, or distributing new animal drugs.

Although the proposed rule of December 17, 1991 (56 FR 65581), provided a 60-day comment period under the PRA of 1980 and this interim final rule responds to the comments received; FDA is providing an additional opportunity for public comment under the PRA of 1995, which became effective after the publication of the proposed rule and applies to this interim final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB and provide an opportunity for public comment to OMB at that time. Prior to the effective date of this interim final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(2)(i)/Original 15-Day Alert Report/Form FDA 1932	190	55.26	12,283	1	12,283
514.80(b)(1)/3-Day Field Alert Report/ Form FDA 1932	190	0.32	95	1	95
514.80(b)(2)(ii)/Followup 15-Day Alert Report/Form FDA 1932	190	17.90	6,007	1	6,007
514.80(b)(2)(iii)/Increased Frequency 15-Day Alert Report	190	1.58	300	2	300
514.80(b)(3)/Nonapplicant Report/ Form FDA 1932	340	2.94	1,000	1	1,000
514.80(b)(4)/Periodic Drug Experience Report/Form FDA 2301, and 514.80(c) Multiple Applications[2]	190	7.11	1,226	11	13,486

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS—Continued

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(5)(i)/Special Drug Experience Report/ Form FDA 2301	190	0.13	25	2	50
514.80(b)(5)(ii)/Advertising and Promotional Materials Report/ Form FDA 2301	190	2.11	772	2	1,544
514.80(b)(5)(iii)/Distributor's Statement Report/ Form FDA 2301	530	0.14	56	2	112
Total					34,877

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting burden for § 514.80(b)(4)(iv)(A) is included in the reporting burden for § 514.80(b)(2)(i).

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
514.80(e)[2]	530	28.22	19,385	0.5	9,693
514.80(e)[3]	530	4.06	2,379	10.35	24,623
Total					34,316

[1] Burden estimates were separated between Form FDA 1932 and Form FDA 2301 to reflect the difference in estimates for ''Hours per Respondent'' required.
[2] Recordkeeping estimates for §§ 514.80(b)(1), 514.80(b)(2)(i), 514.80(b)(2)(ii), and 514.80(b)(3); Form FDA 1932.
[3] Recordkeeping estimates for §§ 514.80(b)(2)(iii), 514.80(b)(4), 514.80(c), and 514.80(b)(5); Form FDA 2301.

Forms FDA 1932 and FDA 2301 for this collection of information are currently approved under OMB Control No. 0910–0012 and will not change due to implementation of this regulation. The reporting and recordkeeping burden estimates in this document are based on the submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The total annual response numbers are based on the 2000 fiscal year submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The numbers in tables 2 and 3 are total burden associated with this regulation. Section 514.80(b)(2)(iii) and (b)(3) are new information collection requirements over the current requirements.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211, 226, 510, and 514 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374.

§ 211.198 [Amended]

2. Section 211.198 *Complaint files* is amended in paragraph (a) in the last sentence by removing ''in accordance with § 310.305 of this chapter'' and adding in its place ''as in §§ 310.305 and 514.80 of this chapter.''

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

3. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

§ 226.1 [Amended]

4. Section 226.1 is amended by redesignating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) In addition to maintaining records and reports required in this part, Type A medicated articles requiring approved NADAs are subject to the requirements of § 514.80 of this chapter.

PART 510—NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Removed]

6. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is removed.

§ 510.302 [Removed]

7. Section 510.302 *Reporting forms* is removed.

PART 514—NEW ANIMAL DRUG APPLICATIONS

8. The authority citation for 21 CFR part 514 is revised to read as follows:

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

9. Section 514.3 is added to subpart A to read as follows:

§ 514.3 Definitions.

The definition and interpretation of terms contained in this section apply to those terms as used throughout subchapter E.

(a) *Adverse drug experience* is any adverse event associated with the use of a new animal drug, whether or not considered to be drug related, and whether or not the new animal drug was used in accordance with the approved labeling (i.e., used according to label directions or used in an extralabel manner, including but not limited to different route of administration, different species, different indications, or other than labeled dosage). Adverse drug experience includes, but is not limited to:

(1) An adverse event occurring in animals in the course of the use of an animal drug product by a veterinarian or by a livestock producer or other animal owner or caretaker.

(2) Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness).

(3) An adverse event occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug.

(b) *ANADA* is an abbreviated new animal drug application including all amendments and supplements.

(c) *Applicant* is a person who owns a new animal drug application or ANADA.

(d) *Increased frequency of adverse drug experience* is an increased rate of occurrence of a particular serious adverse drug event, expected or unexpected, after appropriate adjustment for drug exposure.

(e) *NADA* is a new animal drug application including all amendments and supplements.

(f) *Nonapplicant* is any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product.

(g) *Product defect/manufacturing defect* is the deviation of a distributed product from the standards specified in the approved application, or any significant chemical, physical, or other change, or deterioration in the distributed drug product, including any microbial or chemical contamination. A manufacturing defect is a product defect caused or aggravated by a manufacturing or related process. A manufacturing defect may occur from a single event or from deficiencies inherent to the manufacturing process. These defects are generally associated with product contamination, product deterioration, manufacturing error, defective packaging, damage from disaster, or labeling error. For example, a labeling error may include any incident that causes a distributed product to be mistaken for, or its labeling applied to, another product.

(h) *Serious adverse drug experience* is an adverse event that is fatal or life-threatening, requires professional intervention, or causes an abortion, stillbirth, infertility, congenital anomaly, prolonged or permanent disability, or disfigurement.

(i) *Unexpected adverse drug experience* is an adverse event that is not listed in the current labeling for the new animal drug and includes any event that may be symptomatically and pathophysiologically related to an event listed on the labeling, but differs from the event because of greater severity or specificity. For example, under this definition hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

§ 514.8 [Amended]

10. Section 514.8 *Supplemental new animal drug applications* is amended in paragraph (a)(1) by removing ''§ 510.300(a) of this chapter'' and by adding in its place ''§ 514.80''; in paragraph (a)(5) by removing ''§ 510.300(b)(4) of this chapter'' and by adding in its place ''§ 514.80(b)(4)''; in paragraph (a)(5)(ix) by removing ''§ 510.300(b)(1) of this chapter'' and by adding in its place ''§ 514.80 (b)(1)''; and by revising paragraph (a)(6) to read as follows:

(a) * * *

(6) Approval of a supplemental new animal drug application will not be required to provide for an additional distributor to distribute a drug which is the subject of an approved new animal drug application if the conditions described in § 514.80(b)(5)(iii) are met before putting such a change into effect.

§ 514.11 [Amended]

11. Section 514.11 *Confidentiality of data and information in a new animal drug application file* is amended in paragraph (a) by removing ''510.300'' and adding in its place ''514.80''.

§ 514.15 [Amended]

12. Section 514.15 *Untrue statements in applications* is amended in paragraph (b) by removing ''§ 510.300'' and adding in its place ''§ 514.80''.

13. Section 514.80 is added to subpart B to read as follows:

§ 514.80 Records and reports concerning experience with approved new animal drugs.

The following table outlines the purpose for each paragraph of this section:

Purpose	Paragraph and Title
What information must be reported concerning approved NADAs or ANADAs?	514.80(a) Applicability
What authority does FDA have for requesting records and reports? Who is required to establish, maintain, and report required information relating to experiences with a new animal drug? Is information from foreign sources required?	514.80(a)(1)
What records must be established and maintained and what reports filed with FDA?	514.80(a)(2)
What is FDA's purpose for requiring reports?	514.80(a)(3)
Do applicants of Type A medicated articles have to establish, maintain and report information required under § 514.80?	514.80(a)(4)

Purpose	Paragraph and Title
How do the requirements under § 514.80 relate to current good manufacturing practices?	514.80(a)(5)
	514.80(b) Reporting Requirements
What are the requirements for reporting product/manufacturing defects?	514.80(b)(1) Three-day NADA/ANADA Field Alert Report
	514.80(b)(2) Fifteen-day NADA/ANADA Alert Report
What are the requirements for reporting serious, unexpected and adverse drug experiences?	514.80(b)(2)(i) Initial Report
What are the requirements for followup reporting of serious, unexpected adverse drug experiences?	514.80(b)(2)(ii) Followup Report
What are the requirements for reporting increases in the frequency of serious, expected and unexpected, and adverse drug experiences?	514.80(b)(2)(iii) Summary Report of Increased Frequency of Adverse Drug Experience
What are the requirements for nonapplicants for reporting adverse drug experiences?	514.80(b)(3) Nonapplicant Report
What are the general requirements for submission of periodic drug experience reports, e.g., forms to be submitted, submission date and frequency, when is it to be submitted, how many copies? How do I petition to change the date of submission or frequency of submissions?	514.80(b)(4) Periodic Drug Experience Reports
What must be submitted in the periodic drug experience reports?	514.80(b)(4)(i) through (b)(4)(iv)
What distribution data must be submitted? How should the distribution data be submitted?	514.80(b)(4)(i) Distribution Data
What labeling materials should be submitted? How do I report changes to the labeling materials since the last report?	514.80(b)(4)(ii) Labeling
	514.80(b)(4)(iii) Nonclinical Laboratory Studies and Clinical Data Not Previously Reported
What are the requirements for submission of nonclinical laboratory studies?	514.80(b)(4)(iii)(A)
What are the requirements for submission of clinical laboratory data?	514.80(b)(4)(iii)(B)
When must results of clinical trials conducted by or for the applicant be reported?	514.80(b)(4)(iii)(C)
	514.80(b)(4)(iv) Adverse Drug Experiences
How do I report product/manufacturing defects and adverse drug experiences not previously reported to FDA?	514.80(b)(4)(iv)(A)
What are the requirements for submitting adverse drug experiences cited in literature?	514.80(b)(4)(iv)(B)
What are the requirements for submitting adverse drug experiences in postapproval studies and clinical trials?	514.80(b)(4)(iv)(C)
	514.80(b)(5) Other Reporting
Can FDA request that an applicant submit information at different times than stated specifically in this regulation?	514.80(b)(5)(i) Special Drug Experience Report
What are the requirements for submission of advertisement and promotional labeling to FDA?	514.80(b)(5)(ii) Advertisements and Promotional Material
What are the requirements for adding a new distributor to the approved application?	514.80(b)(5)(iii) Distributor's Statement
What labels and how many labels need to be submitted for review?	514.80(b)(5)(iii)(A)
What changes are required and allowed to distributor labeling?	514.80(b)(5)(iii)(A)(I)
What are the requirements for making other changes to the distributor labeling?	514.80(b)(5)(iii)(A)(II)
What information should be included in each new distributor's signed statement?	514.80(b)(5)(iii)(B)(I) through (B)(V)

Purpose	Paragraph and Title
What are the conditions for submitting information that is common to more than one application? (i.e., can I submit common information to one application?)	514.80(c) Multiple Applications
What information has to be submitted to the common application and related application?	514.80(c)(1) through (c)(4)
What forms do I need? What are Forms FDA 1932 and 2301? How can I get them? Can I use computer-generated equivalents?	514.80(d) Reporting Forms
How long must I maintain Form FDA 1932 and records and reports of other required information, i.e., how long do I need to maintain this information?	514.80(e) Records to be Maintained
What are the requirements for allowing access to these records and reports, and copying by authorized FDA officer or employee?	514.80(f) Access to Records and Reports
How do I obtain Forms FDA 1932 and 2301? Where do I mail FDA's required forms, records, and reports?	514.80(g) Mailing Address
What happens if the applicant fails to establish, maintain, or make the required reports? What happens if the applicant refuses to allow FDA access to, and/or copying and/or verify records and reports?	514.80(h) Withdrawal of Approval
Does an adverse drug experience reflect a conclusion that the report or information constitutes an admission that the drug caused an adverse effect?	514.80(i) Disclaimer

(a) *Applicability*. (1) Each applicant and nonapplicant must establish and maintain indexed, separate, and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic, as well as foreign sources.

(2) Each applicant must submit reports of data, studies, and other information concerning experience with new animal drugs to the Food and Drug Administration (FDA) for each approved NADA and ANADA, as required in this section. A nonapplicant must submit data, studies, and other information concerning experience with new animal drugs to the appropriate applicant, as required in this section. The applicant, in turn, must report the nonapplicant's data, studies, and other information to FDA. Applicants and nonapplicants must submit data, studies, and other information described in this section from domestic, as well as foreign sources.

(3) FDA reviews the records and reports required in this section to facilitate a determination under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA.

(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), and (b)(4)(iv) apply to any approved Type A medicated article incorporated in animal feeds.

(5) The records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations in parts 211, 225, and 226 of this chapter.

(b) *Reporting requirements*—(1) *Three-day NADA/ANADA field alert report*. This report provides information pertaining to product and manufacturing defects that may result in serious adverse drug events. The applicant (or nonapplicant through the applicant) must submit the report to the appropriate FDA District Office or local FDA resident post within 3 working days of first becoming aware that a defect may exist. The information initially may be provided by telephone or other telecommunication means, with prompt written followup using Form FDA 1932 ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' The mailing cover for these reports must be plainly marked ''*3-Day NADA/ANADA Field Alert Report*.''

(2) *Fifteen-day NADA/ANADA alert report*—(i) *Initial report*. This report provides information on each serious, unexpected adverse drug event, regardless of the source of the information. The applicant (or nonapplicant through the applicant) must submit the report to FDA within 15 working days of first receiving the information. The report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked ''*15-Day NADA/ANADA Alert Report*.''

(ii) *Followup report*. The applicant must promptly investigate all adverse drug events that are the subject of 15-day NADA/ANADA alert reports. If this investigation reveals significant new information, a followup report must be submitted within 15 working days of receiving such information. A followup report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked ''*15-Day NADA/ANADA Alert Report Followup*.'' The followup report must state the date of the initial report and provide the additional information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(iii) *Summary report of increased frequency of adverse drug experience*. The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must report as soon as possible, but in any case within 15 working days of determining that there is an increased frequency of serious (expected and unexpected) adverse drug events. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted under separate cover and may not be included, except for reference purposes, in a periodic drug experience report. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports.

(3) *Nonapplicant report*. Nonapplicants must forward reports of adverse drug experiences to the applicant within 3 working days of first receiving the information. The applicant must then submit the report(s) to FDA as required in this section. The nonapplicant must maintain records of all nonapplicant reports, including the date the nonapplicant received the information concerning adverse drug experiences, the name and address of the applicant, and a copy of the adverse drug experience report including the date such report was submitted to the applicant. If the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information.

(4) *Periodic drug experience report*. This report must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs.'' It must be submitted every 6 months for the first 2 years following approval of an NADA or ANADA and yearly thereafter. Reports required by this section must contain data and information for the full reporting period. The 6-month periodic drug experience reports must be submitted within 30 days following the end of the 6-month reporting period. The yearly periodic drug experience reports must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA. Any previously submitted information contained in the report must be identified as such. For yearly (annual) periodic drug experience reports, the applicant may petition FDA to change the date of submission or frequency of reporting, and after approval of such petition, file such reports on the new filing date or at the new reporting frequency. Also, FDA may require a report at different times or more frequently. The periodic drug experience report must contain the following:

(i) *Distribution data*. Information about the distribution of each new animal drug product, including information on any distributor-labeled product. This information must include the total number of distributed units of each size, strength, or potency (e.g., 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5 percent solution). This information must be presented in two categories: quantities distributed domestically and quantities exported.

(ii) *Labeling*. Applicant and distributor current package labeling, including package inserts (if any). For large-size package labeling or large shipping cartons, a representative copy must be submitted (e.g., a photocopy of pertinent areas of large feed bags). A summary of any changes in labeling made since the last report (listed by date of implementation) must be included with the labeling or if there have been no changes, a statement of such fact must be included with the labeling.

(iii) *Nonclinical laboratory studies and clinical data not previously reported*.

(A) Copies of in vitro studies (e.g., mutagenicity) and other nonclinical laboratory studies conducted by or otherwise obtained by the applicant.

(B) Copies of published clinical trials of the new animal drug (or abstracts of them) including clinical trials on safety and effectiveness, clinical trials on new uses, and reports of clinical experience pertinent to safety conducted by or otherwise obtained by the applicant. Review articles, papers, and abstracts in which the drug is used as a research tool, promotional articles, press clippings, and papers that do not contain tabulations or summaries of original data are not required to be reported.

(C) Descriptions of, or if available, prepublication manuscripts relating to completed clinical trials conducted by or otherwise known to the applicant. Supporting information is not to be reported. A study must be submitted no later than 1 year after completion of research.

(iv) *Adverse drug experiences*. (A) Product/manufacturing defects and adverse drug experiences not previously reported under § 514.80(b)(1) and (b)(2) must be reported individually on Form FDA 1932.

(B) Reports of adverse drug experiences in the literature must be noted in the periodic drug experience report. A bibliography of pertinent references must be included with the report. Upon FDA's request, the applicant must provide a full text copy of these publications.

(C) Reports of previously not reported adverse drug experiences that occur in postapproval studies must be reported separately from other experiences in the periodic drug experience report and clearly marked or highlighted.

(5) *Other reporting*—(i) *Special drug experience report*. Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.

(ii) *Advertisements and promotional labeling*. The applicant must submit at the time of initial dissemination one set of specimens of mailing pieces and other labeling for prescription and over-the-counter new animal drugs. For prescription new animal drugs, the applicant must also submit one set of specimens of any advertisement at the time of initial publication or broadcast. Mailing pieces and labeling designed to contain product samples must be complete except that product samples may be omitted. Each submission of promotional material must be accompanied by a completed Form FDA 2301.

(iii) *Distributor's statement*. At the time of initial distribution of a new animal drug product by a distributor, the applicant must submit a special drug experience report accompanied by a completed Form FDA 2301 containing the following:

(A) The distributor's current product labeling.

(*1*) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase such as ''manufactured for'' or ''distributed by.''

(*2*) Other labeling changes must be the subject of a supplemental NADA or ANADA as described under § 514.8.

(B) A signed statement by the distributor stating:

(*1*) The category of the distributor's operations (e.g., wholesale or retail),

(*2*) That the distributor will distribute the new animal drug only under the approved labeling,

(*3*) That the distributor will advertise the product only for use under the conditions stated in the approved labeling,

(*4*) That the distributor will adhere to the records and reports requirements of this section, and

(*5*) That the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products if the product is a prescription new animal drug.

(c) *Multiple applications*. Whenever an applicant is required to submit a periodic drug experience report under the provisions of § 514.80(b)(4) with respect to more than one approved NADA or ANADA for preparations containing the same new animal drug so that the same information is required to be reported for more than one application, the applicant may elect to submit as a part of the report for one such application (the primary application) all the information common to such applications in lieu of reporting separately and repetitively on each. If the applicant elects to do this, the applicant must do the following:

(1) State when a report applies to multiple applications and identify all related applications for which the report is submitted by NADA or ANADA number.

(2) Ensure that the primary application contains a list of the NADA or ANADA numbers of all related applications.

(3) Submit a completed Form FDA 2301 to the primary application and each related application with reference to the primary application by NADA/ANADA number and submission date for the complete report of the common information.

(4) All other information specific to a particular NADA/ANADA must be included in the report for that particular NADA/ANADA.

(d) *Reporting forms*. Applicant must report adverse drug experiences and product/manufacturing defects on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Material for New Animal Drugs,'' in accordance with directions provided on the forms. Computer-generated equivalents of Form FDA 1932 or Form FDA 2301, approved by FDA prior to use, may be used. Form FDA 1932 and Form FDA 2301 may be obtained on the Internet at http://www.cvm.fda.gov/cvm, by telephoning the Division of Surveillance (HFV–210), or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance (HFV–210), 7500 Standish Pl., Rockville, MD 20855–2764.

(e) *Records to be maintained*. The applicants and nonapplicants must maintain records and reports of all information required by this section for a period of 5 years after the date of submission.

(f) *Access to records and reports*. The applicant and nonapplicant must, upon request from any authorized FDA officer or employee, at all reasonable times, permit such officer or employee to have access to copy and to verify all such required records and reports.

(g) *Mailing addresses*. Completed 15-day alert reports, periodic drug experience reports, and special drug experience reports must be submitted to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855–2764. Three-day alert reports must be submitted to the appropriate FDA district office or local FDA resident post. Addresses for district offices and resident posts may be obtained from the Internet at http://www.fda.gov.

(h) *Withdrawal of approval*. If FDA finds that the applicant has failed to establish the required records, or has failed to maintain those records, or failed to make the required reports, or has refused access to an authorized FDA officer or employee to copy or to verify such records or reports, FDA may withdraw approval of the application to which such records or reports relate. If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.

(i) *Disclaimer*. Any report or information submitted under this section and any release of that report or information by FDA will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event. A person need not admit, and may deny, that the report or information constitutes an admission that a drug caused or contributed to an adverse event.

Dated: January 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2549 Filed 2–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8971]

RIN 1545–BA49

New Markets Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that was published in the **Federal Register** on December 26, 2001 (66 FR 66307). This document contains temporary regulations that provide guidance for taxpayers claiming the new markets tax credit under section 45D.

DATES: This correction is effective December 26, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Handleman (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 45D of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8971) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8971), which is the subject of FR. Doc. 01–31528, is corrected as follows:

On page 66310, column 1, under the paragraph heading ''Part 1—Income Taxes'', following paragraph 1, please insert in the amendatory instruction ''Par. 1a. The undesignated center heading immediately preceding § 1.30–1 is revised to read as follows: Credits Allowable Under Sections 30 through 45D''.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–2621 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8976]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8976) that were published in the **Federal Register** on Wednesday, January 9, 2002 (67 FR 1075) providing guidance on methods of valuing dollar-value LIFO pools under section 472.

DATES: This correction is effective January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 472 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8976) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8976), which are the subject of FR Doc. 02–184, is corrected as follows:

1. On page 1075, columns 2 and 3, in the preamble under the paragraph heading ''*Paperwork Reduction Act*'', the existing language is removed and the following language is added in its place.

The collections of information in this final rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1767.

The collections of information in this regulation are in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv). To elect the IPIC method, a taxpayer must file Form 970, ''Application to Use LIFO Inventory Method.'' This information is required to inform the Commissioner regarding the taxpayer's elections under the IPIC method. This information will be used to determine whether the taxpayer is properly accounting for its dollar-value pools under the IPIC method. The collections of information are required if the taxpayer wants to obtain the tax benefits of the LIFO method. The likely respondents are business or other for-profit institutions, and/or small businesses or organizations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collections of information should be received by March 20, 2002. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting burden contained in § 1.472.–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv) is reflected in the burden of Form 970.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

§ 1.472–8 [Corrected]

2. On page 1088, column 3, § 1.472–8(e)(3)(iii)(E)(i), *Example 1.*, line 21, the language ''items in R's inventories fall within the 2-digit'' is corrected to read ''items in R's inventory fall within the 2-digit.''

3. On page 1094, column 2, § 1.472–8(e)(3)(v)(B), lines 23 and 24, the language ''year as required by paragraph (e)(3)(iv)(B)(1) of this section. Because a'' is corrected to read ''year. See paragraph (e)(3)(iv)(B)(1) of this section for an example of this computation. Because a.''

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–2626 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–002]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Crescent Railroad Drawbridge, Mile 481.4, Upper Mississippi River at Rock Island, Illinois. This deviation allows the drawbridge to remain closed to navigation for 31 days from 12:01 a.m. on January 21, 2002, until 12:01 a.m. on February 21, 2002. The drawbridge shall open on signal if at least six (6) hours advance notice is given.

DATES: This temporary deviation is effective from 12:01 a.m., January 21, 2002, until 12:01 a.m., February 21, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: On December 31, 2001 the Burlington Northern Santa Fe Railroad requested the bridge be maintained in the closed-to-navigation position to allow the bridge owner time for preventative maintenance in the winter when there is less impact on navigation instead of scheduling maintenance in the summer when river traffic increases. The drawbridge operation regulations require the drawbridge to open on signal.

The Crescent Railroad Drawbridge provides a vertical clearance of 25.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

This deviation allows the bridge to remain closed to navigation from 12:01

a.m. on January 21, 2002, until 12:01 a.m. on February 21, 2002. The drawbridge will open on signal if at least six (6) hours advance notice is given.

Dated: January 15, 2002.

Roy J. Casto,

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

[FR Doc. 02–2634 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–00–123]

RIN 2115–AE47

Drawbridge Operation Regulations; Siesta Drive Drawbridge, Gulf Intracoastal Waterway, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Siesta Drive drawbridge across the Gulf Intracoastal Waterway, mile 71.6 at Sarasota, Florida. This rule allows the drawbridge to open every 20 minutes between the hours of 7 a.m. and 6 p.m., Monday through Friday, except Federal holidays. This action is intended to improve movement of morning commuter traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: This rule is effective March 6, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD7–00–123] and are available for inspection or copying at Commander (obr) Seventh Coast Guard District, 909 SE 1st Ave, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 22, 2001 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Siesta Drive Drawbridge, Gulf Intracoastal Waterway, Florida in the **Federal Register** (66 FR 6513). We received 5 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Siesta Drive bascule bridge is a two lane narrow undivided urban arterial roadway which is severely congested due to insufficient capacity. This rule will extend the existing 20 minute weekday schedule to cover the morning commuter period. The existing regulation allows the bridge to open on signal, except from 11 a.m. until 6 p.m. daily, the draw need only open on the hour, 20 minutes past the hour, and 40 minutes past the hour. This rule extends the beginning of the twenty minute opening schedule from 11 a.m. to 7 a.m., Monday through Friday, except Federal holidays. On weekends and Federal holidays, the draw will open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, 20 minutes past the hour, and 40 minutes past the hour. Current data shows that the bridge opens less than once per hour between 7 a.m. and 6 p.m., Monday through Friday, except Federal holidays so the effect on vessels will not be unreasonable.

Discussion of Comments and Changes

We received five letters of comment concerning this proposed rule. Four letters supported the proposal. One letter writer was under the impression that the proposed regulation would allow the bridge to begin opening to vessel traffic at 7 a.m. No changes were made to the proposed rule as a result of the comments.

Regulatory Evaluation

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

The economic impact of this rule will be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule only slightly modifies the existing bridge schedule.

Small Entities

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

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Siesta Drive Bridge during the hours of 7 a.m. to 11 a.m., Monday through Friday, except Federal holidays. 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 not have a significant economic impact on a substantial number of small entities because this rule only slightly modifies the existing operation schedule and the maximum waiting time for vessels to pass will be 20 minutes.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.287(b–1) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) The draw of the Siesta Drive bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour.

* * * * *

Dated: January 16, 2002.

James S. Carmichael,

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

[FR Doc. 02–2635 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–225]

Drawbridge Operation Regulations: Cheesequake Creek, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit railroad bridge, mile 0.2, across the Cheesequake Creek in New Jersey. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. February 18, 2002 through 6 p.m. March 2, 2002. This temporary deviation is necessary to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from February 18, 2002 through March 2, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The New Jersey Transit railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The bridge owner, New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary electric drive and brake system maintenance at the bridge. The nature of these repairs will require the bridge to be closed to navigation during the implementation of this work.

The marine operators that normally use this waterway were contacted regarding this temporary deviation and no objections were received. This deviation to the operating regulations will allow the bridge to remain in the closed position from 7 a.m. on February 18, 2002 through 6 p.m. on March 2, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: January 17, 2002.

G.N. Naccara,

Rear Admiral, Coast Guard, Commander First Coast Guard District.

[FR Doc. 02–2637 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–01–004a; FRL–7133–1]

Approval and Promulgation of State Implementation Plans; State of Alaska; Fairbanks

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Alaska. This

revision provides for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Fairbanks Nonattainment Area. This action also approves the use of the ''CO Emissions Model'' for SIP development purposes in EPA Region 10.

DATES: This direct final rule will be effective on April 5, 2002, without further notice, unless EPA receives relevant adverse comment by March 6, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's requests, and other information relevant to this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information is organized as follows:

I. Background Information

A. What National Ambient Air Quality Standard (NAAQS) Is Considered in Today's Action?

CO is among the ambient air pollutants for which EPA has established a health-based standard and is the pollutant that is the subject of this action. CO is a colorless, odorless gas emitted in combustion processes. CO enters the bloodstream through the lungs and reduces oxygen delivery to the body's organs and tissues. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

Under section 109(a)(1)(A) of the CAA, we have established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Fairbanks has never exceeded the 1-hour NAAQS; therefore, the State Implementation Plan revision (Fairbanks CO plan), and this action address only the 8-hour CO NAAQS. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances).

B. What Is the History Behind This Action?

Upon enactment of the 1990 CAA Amendments, areas meeting the requirements of section 107(d) of the CAA were designated nonattainment for CO by operation of law. Under section 186(a) of the CAA, each CO nonattainment area was also classified by operation of law as either moderate or serious depending on the severity of the area's air quality problems. Fairbanks was classified as a moderate CO nonattainment area. Moderate CO nonattainment areas were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. If a moderate CO nonattainment area was unable to attain the CO NAAQS by December 31, 1995, the area was reclassified as a serious CO nonattainment area by operation of law. Fairbanks was unable to meet the CO NAAQS by December 31, 1995, and was reclassified as a serious nonattainment area effective March 30, 1998. As a result of the reclassification, the State had 18 months or until October 1, 1999, to submit a new Fairbanks CO plan demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for all serious CO areas.

The required Fairbanks CO plan was not submitted by October 1, 1999, and we made a finding of failure to submit the required plan (See 65 FR 17444, April 3, 2000) which triggered the 18-month time clock for mandatory application of sanctions and a year time clock for additional sanctions and the requirement for a Federal Implementation Plan under the CAA. A complete Fairbanks CO plan was due by October 3, 2001, to stop the clocks.

On August 30, 2001, the Alaska Department of Environmental Conservation (ADEC) submitted the Fairbanks CO plan as a revision to the Alaska SIP. We determined this submittal to be complete and stopped the sanctions' clocks effective September 24, 2001.

Fairbanks did not have the two years of clean data required to attain the standard by December 31, 2000, the required attainment date for CO serious areas, and under section 186(a)(4) of the CAA, Alaska requested and EPA granted a one year extension of the attainment date deadline to December 31, 2001 (66 FR 28836, May 25, 2001).

C. What Clean Air Act (CAA) Statutory, Regulatory, and Policy Requirements Must Be Met To Approve This Action?

Section 172 of the CAA contains general requirements applicable to SIP revisions for nonattainment areas. Sections 186 and 187 of the CAA set out additional air quality planning requirements for CO nonattainment areas.

EPA has issued a ''General Preamble'' describing the agency's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I requirements. In this direct final rulemaking action, we are applying these policies to the Fairbanks CO plan, taking into consideration specific factual issues presented.

II. EPA's Review of the Fairbanks CO Plan

A. Does the Fairbanks CO Plan Meet All the Procedural Requirements as Required by Section 110(a)(2) of the CAA?

The CAA requires States to observe certain procedural requirements in developing implementation plans and revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Public noticing for a public meeting held on July 17, 2001, occurred through advertisements in the Fairbanks Daily News Miner and the Internet. The SIP submittal includes a description of the public meeting where the public had the opportunity to comment on the issues addressed in the plan. Also included are the comments received from the public and the response developed by the ADEC staff. Following the required public participation, the State adopted the Fairbanks CO plan on July 27, 2001. The Fairbanks CO Plan demonstrates it has met the procedural requirements of section 110(a)(2) of the CAA.

B. Does the Fairbanks CO Plan Include a Comprehensive, Accurate, Current Base Year Inventory From All Sources as Required in Section 187(a)(1) and Periodic Revisions as Required in Section 187(a)(5) of the CAA?

Yes. Fairbanks submitted a base year inventory for 1995 based on EPA guidance that determined that an inventory for 1995 would satisfy the requirement for a base year inventory. A periodic inventory for 1998 was also submitted. The inventories contain point, area, on-road and non-road mobile source data, and documentation. The inventories were prepared for a typical winter day for each of the years. Emissions for these groupings are presented in the following table.

Emission category	Daily emissions (tons/day)	
	Base year 1995	Periodic year 1998
Point Sources ...	4.14	4.20
Area Sources	1.53	1.34
Non-road mobile sources	4.00	3.72
On-road mobile sources	21.69	17.74
Total	31.36	27.01

Total average daily, CO season emissions associated with the Fairbanks nonattainment area for the 1995 base year are 31.36 tons per day. The methodologies used to prepare the base year emissions inventory, as described in the Fairbanks CO plan, are acceptable.

The plan must also revise the inventory every three years until the area reaches attainment. The methodologies used to prepare the periodic year emissions inventory, as described in the Fairbanks CO plan, are acceptable. A discussion of how these inventories meet the requirements needed for approval is in the technical support document (TSD) for this action. Detailed inventory data is contained in the docket maintained by EPA.

C. Does the Fairbanks CO Plan Meet the Requirements of Section 187(a)(7) of the CAA Which Require That Serious CO Areas Submit an Attainment Demonstration Which Includes Annual Emissions Reductions Necessary for Reaching Attainment by the Deadline?

The Fairbanks CO Plan contains an attainment demonstration using rollback modeling to show that emission reductions resulting from implementation of control measures are sufficient to ''roll back'' the design value to a concentration at or below the NAAQS for CO of 9 ppm. Alaska showed that the 8-hour design value concentration of 9.0 predicted for 2001, the attainment year, documents attainment of the 8-hour CO NAAQS.

D. Has the State Adopted Transportation Control Measures (TCMs) for the Purpose of Reducing CO Emissions as Required by Section 182(d)(1) and Described in Section 108(f) (1)(A) of the CAA?

Section 187(b)(2) of the CAA requires States with serious CO nonattainment areas to submit a SIP revision that includes transportation control strategies and measures to offset any growth in emissions due to growth in vehicle miles traveled (VMT) or vehicle trips. In developing such strategies, a State must consider measures specified in section 108(f) of the CAA and choose and implement such measures as are necessary to demonstrate attainment with the NAAQS. TCMs are designed to reduce mobile pollutant emissions by either improving transportation efficiency or reducing single-occupant vehicle trips. The EPA has reviewed the TCMs in the Fairbanks CO plan and approves them. Our full review of the TCMs is included in the TSD for this action. Following is a brief description of the TCMs included in the plan.

Engine Preheater Control Measure

A control measure included in the plan to reduce motor vehicle cold start emissions was passed by the Fairbanks North Star Borough (the Borough) on April 12, 2001. The local ordinance requires employers with 275 or more parking spaces to provide power to electrical outlets at temperatures of +20° F or lower. In addition, provisions were included to require new or enlarged parking lots of 275 spaces or more to install electrical outlets for parking spaces intended to be used by motorists for more than two hours and to provide power. Provisions were also included for recordkeeping, maintaining existing plug-ins in an operable condition, and penalties for failure to comply. This mandatory component of the plug-in program will help insure that emission reductions are being achieved through plugging-in at temperatures of 20° F and colder when thermal inversions often occur.

Other Control Measures

Engine preheaters are used extensively throughout Fairbanks to ensure vehicles can be easily started under extremely cold conditions. Vehicle emission testing in Alaska has confirmed that preheating vehicles, a practice commonly referred to as ''plugging-in,'' provides a substantial reduction in motor vehicle idling time and cold start emissions as described in section 108(f)(1)(A)(xi)and (xii). Recognizing the many benefits of plugging-in, the Borough has a long-standing practice of expanding the number of parking spaces with electrical outlets. A recent survey showed that more than 90% of employee parking areas with more than 100 spaces are currently equipped with electrical outlets. The Borough also conducted public awareness campaigns to encourage the use of plug-ins at home and at parking spaces with electrical outlets.

Transit system improvements include expanded service and free wintertime service. The Borough also ran a public awareness campaign to boost transit ridership. These measures have resulted in a 72% increase in ridership during the CO season.

In addition, a total of 11 separate highway improvement projects focusing on intersection and signal improvements have been completed in the nonattainment area during the past 5 years. These projects have a small regional effect on emissions.

E. Does the Fairbanks CO Plan Include a Forecast of Vehicle Miles Traveled (VMT) for Each Year Before the Attainment Year of 2001 as Required by 187(a)(2)(A) of the CAA?

Yes. Estimates of average winter weekday VMT were supplied by Alaska Department of Transportation and Public Facilities (ADOT&PF). VMT was projected to grow at a rate of 1.2% per year from 1995 to 2001.

Fairbanks has committed to preparing annual VMT estimates and forecasts and to submitting these reports (''VMT tracking reports'') to EPA. Under section 187(a)(3) of the Act, annual VMT tracking reports provide a potential basis for triggering implementation of contingency measures in the event that estimates of actual VMT exceed the forecasts contained in the prior annual VMT tracking report.

F. Does the Fairbanks CO Plan Include Contingency Measures Required by Section 187(a)(3) of the CAA?

Section 187(a)(3) of the Act requires serious CO nonattainment areas, such as Fairbanks, to submit a plan revision that provides for contingency measures. The CAA specifies that such measures are to be implemented if any estimate of VMT submitted in an annual VMT tracking report exceeds the VMT predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment date. As a general rule, contingency measures must be structured to take effect without further action by the State or EPA upon the occurrence of certain triggering events.

The Fairbanks Plan includes contingency measures that meet the requirements of section 187(a)(3) of the CAA. In the event that Fairbanks exceeds the ambient CO standard, a number of contingency measures have been established to provide additional emission reductions. Measures are focused on expanded transit operations, increasing the number of parking spaces equipped with electrical plug-in units, and road system improvements. Fairbanks will be implementing these measures whether or not they have a violation which automatically triggers contingency measures.

G. What Levels of CO Are Estimated for the Base Year and Projected for Future Years and Does the Fairbanks CO Plan Provide for Reasonable Further Progress (RFP) as Required by Section 172(c)(2) and Section 171(1) of the CAA?

Under the CAA, states have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. Section 172(c)(1) of the CAA requires all nonattainment plans to contain provisions to provide for ''the implementation of all reasonably available control measures as expeditiously as practicable'' and to provide for the attainment of the applicable national ambient standard. Further, section 172(c)(2) states that such plan provisions shall require RFP.

Fairbanks has made considerable progress in reducing carbon monoxide emissions over the past three decades. CO concentrations have decreased from a second-high eight-hour average of 19.0 ppm and 45 violations in 1983, to a second-high eight-hour average of 8.9 ppm and zero violations in calendar year 2000. The implementation of local control programs contributed to those reductions. These programs in combination with state and federal programs such as the clean vehicles standard and activity changes have produced a 25.4% reduction in total emissions in the nonattainment area between 1995 and 2001. Based on these considerations, EPA finds that RFP has been demonstrated.

H. Is the Motor Vehicle Emission Budget Approvable as Required by Section 176(c)(2)(A) of the CAA and Outlined in Conformity Rules, 40 CFR 93.118(e)(4)?

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget contained in the applicable air quality plans for the Fairbanks area. The motor vehicle emissions budget that is established for the 2001 attainment year is approved for Fairbanks. It is as follows:

FNSB MOTOR VEHICLE EMISSIONS BUDGET

Source category	CO emissions for 2001 (tons/day)
On-Road Sources—Initial Idle	6.49
On-Road Sources—Traveling	7.91
Motor Vehicle Emissions Budget (total on-road source emissions)	14.40

The TSD summarizes how the CO motor vehicle emissions budget meets the criteria contained in the conformity rule (40 CFR 93.118(e)(4)) and is approved for conformity. The initial idle emissions are based on actual vehicle testing and the traveling emissions are based on an emissions model.

This action also approves the use of the ''CO Emissions Model'' for SIP development purposes. The CO Emissions Model is an on-road motor vehicle emission factor model that was specifically developed for cases like the Fairbanks CO attainment SIP. In August of 1999, EPA reviewed and preliminarily approved the use of the CO Emissions Model for CO SIP development purposes, due to the unique CO issues involved in Alaska and the absence of a more recent update to the MOBILE model at that time. Today's document formalizes that approval of the use of the CO Emissions Model for SIP development for a limited number of CO areas in EPA Region 10 in low altitude regions.

The CO Emissions Model is considered an interim update to MOBILE5b developed to take advantage of the best information currently available on CO emissions, particularly for cold climates, such as Alaska. As such, the CO Emissions Model is not required to be used for SIP development in any area, however, it was approved for use on a voluntary basis for SIP development prior to the official release of MOBILE6, EPA's next motor vehicle emission factor model. MOBILE6 was not available at the time that the Fairbanks attainment SIP was being developed to meet FNSB's regulatory time constraints. However, since EPA is expected to approve MOBILE6 early this year, MOBILE6 should be used for the next control strategy SIP for Fairbanks.

When EPA's approval for the current Fairbanks CO attainment SIP is effective, all future transportation conformity determinations for CO in

Fairbanks must be based on the CO Emissions Model until MOBILE6 is officially released. When MOBILE6 is released, Fairbanks must rely upon either the CO Emissions Model or MOBILE6 for new conformity analyses that begin prior to the end of the grace period for use of MOBILE6, which EPA intends to establish as two years after MOBILE6's official release. After the end of the MOBILE6 conformity grace period which EPA intends to establish under 40 CFR 93.111 when it officially releases the model, all new conformity analyses must be based on MOBILE6.

Fairbanks is currently the only area that has used the CO Emissions Model in its SIP which EPA has formally acted upon. Therefore, no other area should be using the CO Emissions Model for transportation conformity purposes at this time. However, the above Fairbanks policy would apply to any other areas that have completed significant SIP work with the CO Emissions Model prior to MOBILE6's release. At this time, EPA anticipates that Medford, Oregon, and Anchorage, Alaska, are the only other areas that have developed CO SIPs with the CO Emissions Model. EPA will expect future SIP submissions in these areas to be based on Mobile6. Areas that have questions about using the CO Emissions Model should consult the EPA Region 10 Office on whether this is appropriate.

I. Does Fairbanks Have an Inspection and Maintenance (I/M) Program in Place That Meets EPA Requirements in Section 182(a)(2)(B) of the CAA?

Yes. Fairbanks primary CO control measure is their I/M program initially implemented in 1985. Since then, Fairbanks has continued to improve its performance. Improved program elements include: test equipment and procedures, quality assurance and quality control procedures, vehicle repair requirements and enforcement. The Fairbanks I/M program, improvements and amendments, have been adopted through previous SIP revisions (51 FR 8203, September 15, 1986; 54 FR 31522, July 31, 1989; 60 FR 17232, April 5, 1995; 64 FR 72940, December 29, 1999) or are being acted on in other **Federal Register** documents (67 FR 822, January 8, 2002 and 67 FR 849, January 8, 2002).

J. Are There Controls on Stationary Sources of CO as Required by Section 172(c)(5) of the CAA?

Yes. Section 172(c)(5) of the CAA requires States with nonattainment areas to include in their SIPs a permit program for the construction and operation of new or modified major stationary sources in nonattainment areas. In a separate, prior action, we approved the new source review permit program for Alaska. (See 60 FR 8943, February 16, 1995.)

III. Summary of EPA's Actions

We are approving the following elements of the Fairbanks CO Attainment Plan, as submitted on August 30, 2001:

A. Procedural requirements, under section 110(a)(1) of the CAA;

B. Baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the CAA;

C. Attainment demonstration, under section 187(a)(7) of the CAA;

D. The TCM program under 182(d)(1) and 108(f)(A) of the CAA

E. VMT forecasts under section 187(a)(2)(A) of the CAA;

F. Contingency measures under section 187(a)(3) of the CAA.

G. RFP demonstration, under sections 171(1), 172(c)(2), and 187(a)(7) of the CAA;

H. The conformity budget under section 176(c)(2)(A) of the CAA and section 93.118 of the transportation conformity rule (40 CAR part 93, subpart A); and

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Parts 52

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

Dated: January 16, 2002.

Randall F. Smith,

Acting Regional Administrator, Region 10.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(32) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(32) On August 30, 2001 the Alaska Department of Environmental Conservation submitted revisions to the Carbon Monoxide State Implementation Plan for Fairbanks, Alaska.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50.030, as adopted 7/27/01, effective 9/21/01.

(B) Assembly Ordinance 2001–17 mandating a Fairbanks North Star Borough motor vehicle plug-in program, as adopted 4/12/2001, effective 4/13/01.

(ii) Additional Material.

Volume II, Section III.C of the State Air Quality Control Plan adopted 7/27/01, effective 9/21/01; Volume III.C3, III.C.5, C.11, and C.12 of the Appendices; adopted 7/27/01, effective 9/21/01.

[FR Doc. 02–2505 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 02–59; MM Docket No. 99–257; RM–9683]

Radio Broadcasting Services; Centerville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Radio Licensing, Inc. (''RLI''). In response to a petition filed by Wolverine Broadcasting, the *Notice* in this proceeding proposed the allotment of Channel 274A at Centerville, Texas. *See* 64 FR 59124, November 2, 1999. In response to comments filed in this proceeding, Channel 278A rather than Channel 274A was allotted to Centerville, Texas. Radio Licensing, Inc. filed a Petition for Reconsideration but on December 17, 2001, withdrew the Petition for Reconsideration in compliance with Section 1.420(j) of the Commission's Rules. As requested, we shall dismiss the Petition for Reconsideration. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 99–257, adopted January 2, 2002, and released January 11, 2002. The full text of this Commission decision is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2620 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–159; MM Docket No. 00–41; RM–9369]

Radio Broadcasting Services; Oakville, Raymond, and South Bend, Washington

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 65 FR 15886 (March 24, 2000), this document reallots Channel 249C1 from Raymond, Washington to Oakville, Washington, and provides Oakville with its first local aural transmission service. The coordinates for Channel 249C1 at Oakville are 46–57–14 North Latitude and 123–29–21 West Longitude. This document also reallots Channel 289C2 from South Bend, Washington, to Raymond, Washington. The coordinates for Channel 289C2 at Raymond are 46–55–53 North Latitude and 123–44–02 West Longitude. This document also allots Channel 300A to South Bend, Washington, as its first local aural transmission service. The coordinates for Channel 300A at South Bend are 46–38–19 North Latitude and 123–49–54 West Longitude. The foregoing new allotments have received the concurrence of the Canadian government.

DATES: Effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–41, adopted January 9, 2002, and released January 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Oakville, Channel 249C1, and removing Channel 249C3 and adding Channel 289C2 at Raymond, and removing Channel 289C2 and adding Channel 300A at South Bend.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2617 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–169, MM Docket No. 00–121, RM–9674]

Digital Television Broadcast Service; Kingston, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WRNN–TV Associates Limited Partnership, licensee of station WRNN–TV, substitutes DTV channel 48 for DTV channel 21. *See* 66 FR 39726, August 1, 2001. DTV channel 48 can be allotted to Kingston, New York, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–29–19 N. and 73–56–52 W.) with a power of 200 kW, HAAT of 388 meters and with a DTV service population of 8,326 thousand.

With this action, this proceeding is terminated.

DATES: Effective March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Aronowitz, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–121, adopted January 24, 2002, and released January 25, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, 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 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York, is amended by removing DTV channel 21 and adding DTV channel 48 at Kingston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–2618 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1502, 1515, 1517, 1536 and 1552

[FRL 7128–7]

Acquisition Regulation: Empower Procurement Officials and Miscellaneous Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate higher level reviews (in certain situations) which may delay timely service to customers and which are unnecessary given the fact that the qualified individuals most familiar with a contracting action should have the authority and responsibility for making decisions relating to that action. In addition, certain technical amendments are being made to add procedures for class deviations, to revise definitions, and to clarify regulations.

DATES: This rule is effective on May 6, 2002, without further notice, unless EPA receives adverse comments by March 6, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted to: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460. Telephone: (202) 564–4369.

SUPPLEMENTARY INFORMATION:

A. Background

EPA's Office of Acquisition Management conducted an internal assessment of its organization and determined that in some situations there were too many levels of review required prior to making contract awards and other contract-related decisions. Consequently, steps were taken to revise internal policies, including issuance of an EPAAR class deviation dated May 30, 2001, to eliminate certain higher level reviews and give authority and responsibility for making decisions relating to contract actions to the qualified individuals most familiar with the contracting action (i.e., empowerment.) This rule incorporates the EPAAR class deviation dated May 30, 2001, which made the necessary empowerment changes to the EPAAR on an interim basis. This rule is being issued as a direct final rule because the changes being made are not considered controversial and adverse comments are not expected.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule streamlines agency internal operating procedures and will, therefore, not have a significant economic impact on small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

G. 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'' are 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 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 rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, 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 government ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule 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 rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by 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), in its procurement activities when applicable. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 13211

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

K. Submission to Congress and the 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 rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1501, 1502, 1515, 1517, 1536 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1501, 1502, 1515, 1517, 1536 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Section 1501.404 is added to Subpart 1501.4 to read as follows:

1501.404 Class deviations.

Requests for class deviations to the FAR and the EPAAR shall be submitted to the HCA for processing in accordance with FAR 1.404 and this section. Requests shall include the same type of information prescribed in 1501.403 for individual deviations.

3. Section 1501.602–3 is amended by revising paragraph (b) to read as follows:

1501.602–3 Ratification of unauthorized commitments.

* * * * *

(b)(1) *Ratification Approval.* The Chief of the Contracting Office (CCO) is delegated authority to be the ratifying official. In order to act as the ratifying official, a CCO must have delegated contracting officer authority. A CCO cannot approve a ratification if he/she acted as a contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section.

(2) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

(i) Must possess a contracting officer's warrant and be in the 1102 job series;

(ii) Are prohibited from re-delegating their ratification authority;

(iii) Must submit copies of ratification actions to the cognizant Office of Acquisition Management Division Director at Headquarters; and

(iv) As with other ratifying officials, must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602–3(c) and the EPAAR.

* * * * *

4. Section 1502.100 is revised to read as follows:

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati. For purposes of ratification authority only, CCO is also defined as Regional Contracting Officer Supervisors and Office of Acquisition Management Service Center Managers. (See 1501.602–3(b)(2) for the criteria for this ratification authority).

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Senior Procurement Executive (SPE) means the Director, Office of Acquisition Management.

5. Section 1515.303 is revised to read as follows:

1515.303 Responsibilities.

The Source Selection Authority (SSA) is established as follows:

(a) Acquisitions having a potential value of $25,000,000 or more: Service Center Manager (SCM). This authority is not redelegable.

(b) Acquisitions having a potential value of less than $25,000,000, but more than $10,000,000: SCM, who has the authority to redelegate SSA authority to a warranted 1102. If redelegated, review by another warranted 1102 designated by the SCM is also required. A Regional Contracting Officer Supervisor may act as the SSA, as determined on a case-by-case basis, by the Director, Superfund/RCRA Regional Procurement Operations Division (SRRPOD).

(c) Acquisitions having a potential value of $10,000,000 or less: The contracting officer.

§ 1515.404 [Amended]

6. Section 1515.404–474 is amended by removing the term ''CCO'' and adding in its place ''SCM''.

§ 1517.204 [Amended]

7. Section 1517.204 is amended by removing the term ''CCO'' and adding in its place ''SCM''.

§ 1536.602 [Amended]

8. Section 1536.602–2 is amended in paragraph (b) by removing the term ''Chief of the Contracting Office (CCO)'' and adding in its place ''Service Center Manager (SCM)''.

9. Section 1552.211–79 is amended by revising paragraph (b)(3) to read as follows:

1552.211–79 Compliance with EPA Policies for Information Resources Management.

* * * * *

(b) * * *

(3) EPA Computing and Telecommunications Services. *The Enterprise Technology Services Division (ETSD) Operational Directives Manual* contains procedural information about the operation of the Agency's computing and telecommunications services. Contractors performing work for the Agency's National Computer Center or those who are developing systems which will be operating on the Agency's national platforms must comply with procedures established in the Manual. (This document may be found at: *<http://basin.rtpnc.epa.gov/etsd/directives.nsf>).*

* * * * *

10. Section 1552.219–73 is amended by revising the chart in paragraph (a) to read as follows:

1552.219–73 Small Disadvantaged Business Targets.

* * * * *

(a) * * *

Contractor targets	NAICS industry subsector(s)	Dollars	Percentage of total contract value
Total Prime Contractor Targets (including joint venture partners and team members) Total Subcontractor Targets			

* * * * *

11. Section 1552.232–73 is amended by revising paragraph (b)(2) as follows:

1552.232–73 Payments—fixed rate services contract.

* * * * *

(b) * * *

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(l) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (b)(3) of this clause. Reimbursable costs in connection with subcontracts shall be payable to subcontractors consistent with FAR 32.504 in the same manner as for services purchased directly for the contract under paragraph (a)(1) of this clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(l) of this clause.

* * * * *

Dated: January 25, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 02–2509 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

Rules and Regulations

Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–058–2]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations by adding Throckmorton and Young Counties in Texas to the list of regulated areas. The interim rule, which followed the detection of bunted kernels in grain grown in this area, was necessary to prevent the spread of Karnal bunt to noninfected areas of the United States.

EFFECTIVE DATE: The interim rule became effective June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 2001, and published in the **Federal Register** on June 14, 2001 (66 FR 32209–32210, Docket No. 01–058–1), we amended the Karnal bunt regulations in 7 CFR 301.89–3 by adding Throckmorton and Young Counties, in their entirety, to the list of regulated areas in Texas. This action was necessary due to the detection of bunted kernels in grain grown in this area.

Comments on the interim rule were required to be received on or before August 13, 2001.

We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding Throckmorton and Young Counties, TX, to the list of regulated areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. The entities most likely to have been affected by the interim rule are wheat producers. The size of these entities is unknown. It is reasonable to assume, however, that most have gross annual receipts of less than $750,000 and are, therefore, small in size according to the U.S. Small Business Administration's criteria. This assumption is based on composite data from the 1997 Census of Agriculture, which reports that wheat was harvested for grain from 1,042 acres on 141 farms in Throckmorton County in 1997; that grain had a market value of $4.785 million. In Young County, wheat was harvested for grain from 50,872 acres on 194 farms in 1997; that grain had a market value of $4,063 million.

Producers in regulated areas may grow Karnal bunt host crops, but the wheat, durum wheat, or triticale must be tested for Karnal bunt before the harvested crop is moved from the field in which it was grown. This required testing is provided to producers free of charge. Negative-testing grain may be moved out of the regulated area without restriction. Grain found to contain bunted kernels may be moved outside a regulated area only under a limited permit and only to a specified destination for specified handling, utilization, or processing that will mitigate the Karnal bunt risk associated with the grain.

Compensation has been made available to producers in regulated areas to address the loss in value of positive-testing grain. As the 2000–2001 crop season was the first regulated crop season for Throckmorton and Young Counties, producers there were eligible for compensation payments of up to $1.80 per bushel. Those payments have, in many cases, already been made to producers affected by the detection of Karnal bunt in Throckmorton and Young Counties, thus limiting the negative effects of Karnal bunt infection and the subsequent regulatory restrictions intended to prevent the further spread of the disease.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 66 FR 32209–32210 on June 14, 2001.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC this 29th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–2603 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–381–AD; Amendment 39–12630; AD 2002–02–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that requires installation of a new support structure for the trailing edge beam and main landing gear uplock mechanism. This action is necessary to prevent cracking in the frame and adjacent structure near the attach bolt of the main landing gear uplock mechanism, which could lead to compromised structural integrity. This action is intended to address the identified unsafe condition.

DATES: Effective March 11, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on July 25, 2001 (66 FR 38583). That action proposed to require installation of a new support structure for the trailing edge beam and main landing gear uplock mechanism.

Comments

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

Conclusion

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

Cost Impact

There are approximately 84 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,000 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $198,000, or $19,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–02–02 Boeing: Amendment 39–12630. Docket 2000–NM–381–AD.

Applicability: Model 707 and 720 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968.

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 cracking in the frame and adjacent structure near the attach bolt of the main landing gear (MLG) uplock mechanism, which could lead to compromised structural integrity of the MLG, accomplish the following:

Modification

(a) Prior to the accumulation of 20,000 flight cycles, or within 24 months from the effective date of this AD, whichever occurs later, install a new support structure for the MLG uplock mechanism in accordance with Part III—Modification Data of the Accomplishment Instructions of Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968.

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 2411, Revision 2, dated April 29, 1968. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 11, 2002.

Issued in Renton, Washington, on January 25, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2319 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–03–AD; Amendment 39–12629; AD 2002–02–01]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft Pty. Ltd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Eagle Aircraft Pty. Ltd. (Eagle) Model 150B airplanes. This AD requires you to modify the attachment of the port and starboard throttle arms, and the starboard bushing of the throttle torque tube. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified by this AD are intended to prevent failure of the throttle control assembly caused by rivets of the wrong size. Such failure could lead to reduced control of the airplane.

DATES: This AD becomes effective on March 21, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 21, 2002.

ADDRESSES: You may get the service information referenced in this AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE–03-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: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports that Eagle manufactured certain Model 150B airplanes with rivets of the wrong size on the throttle control assembly. Installed rivets that are not the right size have resulted in reduced structural integrity of the throttle control assembly.

What Is the Potential Impact if FAA Took no Action?

If this condition is not corrected, failure of the throttle control assembly could result. Such failure could lead to reduced 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 Eagle Model 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 2001 (66 FR 55894). The NPRM proposed to require you to replace existing 3/32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1/8-inch solid-head rivets; and replace the 1/8-inch rivet in the starboard bushing of the throttle torque tube with a 5/32-inch screw.

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 5 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 modification:

Labor cost	Parts cost	Total cost per airplane	Total Cost on U.S. operators
2 workhours × $60 = $120	$50	$170	$170 × 5 = $850.

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:

2002–02–01 Eagle Aircraft PTY. Ltd.: Amendment 39–12629; Docket No. 2001–CE–03–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 through 021, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the throttle control assembly. Such failure could lead to reduced 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
Replace the existing 3⁄32-inch rivets, which attach the throttle torque tubes to the port and starboard throttle arms, with 1⁄8-inch solid-head rivets, and replace the 1⁄8-inch rivet in the starboard bushing of the throttle torque tube with a 5⁄32-inch screw.	Within the next 100 hours time-in service (TIS) after March 21, 2002 (the effective date of this AD).	In accordance with Eagle Service Bulletin 1067, Revision 1, dated October 21, 1999.

(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, Los Angeles Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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 Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(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 Eagle Service Bulletin 1067, Revision 1, dated October 21, 1999. 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 Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia. 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.

Note 2: The subject of this AD is addressed in Australian AD Number X-TS/4, effective July 6, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on March 21, 2002.

Issued in Kansas City, Missouri, on January 24, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2318 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–22]

Revision to Class E Surface Area at Marysville Yuba County Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends the hours of operation for Class E Surface Area airspace at Marysville Yuba County Airport, CA to reflect the fact the airport now provides full-time weather reporting service.

DATES: *Effective Date:* 0901 UTC April 18, 2002. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before March 6, 2002.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–22, Air Traffic Division, P.O. Box 92007, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: This action amends the hours of operation for Class E Surface Area airspace at Marysville Yuba County Airport, CA to reflect the fact the airport now provides full-time weather reporting service. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace revision listed in this document will be published subsequently in that Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 01–AWP–22.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as a Surface Area for an airport.

* * * * *

AWP CA E2 Marysville Yuba County Airport, CA [Revised]

Marysville Yuba County Airport, CA
(Lat. 39°05′53″ N, long. 121°34′11″ W)
Marysville VOR/DME
(Lat. 39°05′56″ N, long. 121°34′23″ W)
Marysville Beale AFB, CA
(Lat. 39°08′10″ N, long. 121°26′12″ W)

Within a 4.1-mile radius of Yuba County Airport and within 1.8 miles each side of the Marysville VOR 152° radial, extending from the 4.1-mile radius to 7 miles southeast of the VOR and within 1.8 miles each side of the Marysville VOR 342° radial, extending from the 4.1-mile radius to 7 miles northwest of the VOR, excluding that portion within the Marysville Beale AFB, CA, Class C airspace area.

* * * * *

Issued in Los Angeles, California, on January 8, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–2538 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AA02

Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is amending its requirements for records and reports of adverse experiences and other information for approved new animal drugs. This interim final rule more clearly defines the kinds of information to be maintained and submitted by new animal drug applicants for a new animal drug application (NADA) or an abbreviated new animal drug application (ANADA). In addition, the interim final rule revises the timing and content of certain reports to enhance their usefulness. The regulation will provide for protection of public and animal health and reduce unnecessary recordkeeping and reporting requirements.

DATES: This interim rule is effective August 5, 2002. Submit written or electronic comments on new information on the interim final rule and the information collection requirements by April 5, 2002. Please note the agency will not consider any comments that have been previously considered during this rulemaking.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the Internet at http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6641, or wkeller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of December 17, 1991 (56 FR 65581), FDA (we) published a proposed rule (the proposed rule for records and reports) to revise § 510.300 (21 CFR 510.300) and to redesignate it as § 514.80 (21 CFR 514.80). This regulation implements section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(l)) which provides that, following approval of an NADA or ANADA, applicants must establish and maintain records and make reports to the agency as prescribed by regulation or order. We proposed the revision in order to more clearly define the kinds of information to be maintained and submitted by the applicant and to revise the timing and content of certain reports to enhance the usefulness of the information.

After considering comments submitted in response to the proposed rule for records and reports, FDA is adopting the rule in modified form. The scope and coverage of this interim final rule differs in some respects from the proposed rule for records and reports. The proposed rule for records and reports covered NADAs, ANADAs, and medicated feed applications (MFAs). In contrast, the interim final rule covers only NADAs and ANADAs. The Animal Drug Availability Act of 1996 (ADAA) (21 U.S.C. 360b(a) and 360b(m)) amended the statutory provisions in the act regarding medicated feeds and eliminated MFAs. Therefore, the interim final rule does not address MFAs. However, the interim final rule retains reporting requirements for serious adverse drug experiences with feeds incorporating approved Type A medicated articles.

While the proposed rule for records and reports proposed to remove 21 CFR 510.310, which addressed records and reports for new animal drugs approved before June 20, 1963, we issued a final rule that revoked this provision in response to the Administration's ''Reinventing Government Initiative'' (61 FR 37680, July 19, 1996).

The proposed rule for records and reports followed a style and format similar to the human drug records and reports regulations in part 314 (21 CFR part 314). The interim final rule maintains a similar style and format, but removes many of the proposed records and reports requirements that are not necessary to monitor animal drugs.

In response to concerns over duplicate reporting, FDA has removed proposed § 514.82, which concerned records and reports from manufacturers, packers, labelers, and distributors other than the applicant. However, the agency has retained certain record and report requirements for nonapplicants (defined in new § 514.3(f)) in § 514.80(b) of this interim final rule.

For purposes of clarity, the agency has made some changes to the text and organization of the interim final rule. The following list provides examples of changes not intended to affect the substantive requirements of the rule:

- All definitions in the proposed rule for records and reports have been consolidated in new § 514.3 *Definitions*. Specifically, definitions for the terms ''applicant'' and ''nonapplicant'' that appeared in text of the proposed rule for records and reports have now been moved to § 514.3.
- Proposed § 514.80(a) discussed the requirements for ''establish[ing] and maintain[ing] records and mak[ing] reports'' in one paragraph. For easier reading, FDA has broken the paragraph down in this interim final rule to discuss the recordkeeping and reporting requirements separately.
- New § 514.80(a)(2) discusses the reporting requirements in slightly greater detail than had been done in the proposed rule. This is intended to provide a road map of the requirements contained in other parts of the interim rule.
- Final § 514.80(a)(5) was added to clarify that the records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations.
- The interim final rule combines the proposed periodic adverse drug experience reports with the proposed annual reports (designated as § 514.80(d)(3) and (d)(4), respectively, in the proposed rule), because both reports require the same information. The combined report, which is now found at § 514.80(b)(4), is entitled ''Periodic drug experience report'' in the interim final rule.
- Reporting requirements for reports of adverse drug experiences in the

published literature were found in the proposed rule in the ''General requirements'' section (proposed § 514.80(e)). Similarly, reporting requirements for adverse drug experiences that occur during postapproval studies were also found in this section in the proposed rule. Because both of these requirements are part of the ''Periodic drug experience report,'' these sections have been moved in the interim final rule to § 514.80(b)(4) *Periodic drug experience report*. Specifically, the requirements for reports of adverse drug experiences in the published literature are now found in final § 514.80(b)(4)(iv)(B), and requirements for adverse drug experiences that occur during postapproval studies are now found in final § 514.80(b)(4)(iv)(C).

II. Response to Comments

The agency received 12 comments on the proposed rule for records and reports, 8 NADA applicants, 3 industry associations, and 1 association of regulatory professionals. A discussion of the comments and our response follows. Because sections of the proposed rule have been rearranged in the interim final rule, we are providing the following conversion tables to aid readers in comparing the proposed and interim final rules:

CONVERSION TABLE 1.

Proposed Rule Section	Interim Final Rule Section
514.80(a) Applicability	514.80(a)
514.80(b) Definitions	514.3
514.80(c) Records to be maintained	514.80(e)
514.80(d) Reporting requirements	514.80(b)
514.80(d)(5)(iii) Statements of NADA approval status	Not included in interim final rule
514.80(e) General requirements	514.80(c)
514.80(f) Reporting forms	514.80(d) and 514.80(g)
514.80(g) Access to records and reports	514.80(f)
514.80(h) Withdrawal of approval	514.80(h)
514.81 Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect	Not included in interim final rule
514.82 Records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant	514.80(b)(3)

A. General Comments

(Comment 1) A number of comments questioned the need to change the existing regulation. These comments characterized the proposed changes as an unnecessary effort to make the animal drug regulations mimic the parallel regulations for human drugs. The comments emphasized the differences between human and veterinary medicine in treatment goals, dosing protocols, and evaluation of treatment responses. In light of these differences, the comments suggested that the record and reporting regulation for animal drugs should differ from the regulation for human drugs.

We agree that the regulations for human and animal drugs should differ in some areas. We changed the interim final rule in response to specific comments. Thus, the changes make the human and animal drug regulations similar but not identical.

(Comment 2) Some comments criticized our estimates of the annual reporting and recordkeeping burden. We estimated the proposed rule would require an additional 400 responses above the number required under the previous regulation from 200 businesses. The estimated increased total annual workload from the proposed rule was 200 hours, or approximately 1 hour per business. Representatives of the animal drug industry suggested that the added reporting burden would be 930 hours per respondent, with a total burden of 186,000 hours per year. This comment suggested that 500 hours per year were attributable to the proposed NADA-field alert report (proposed § 514.80(d)(1)), 90 hours per year to the proposed 15-day alert report followups (proposed § 514.80(d)(2)(ii)), 60 hours per year to the proposed periodic adverse drug experience reports (proposed § 514.80(d)(3)), and 280 hours per year to the proposed annual report (proposed § 514.80(d)(4)). The comments stated that the added burden was unjustified in the absence of any significant threat to the public health.

Our estimates of the annual reporting and recordkeeping burden in the proposed rule addressed only the increased burden resulting from the new provisions of the proposed regulation. The estimate did not include the workload resulting from previously existing provisions of the regulation. We have amended the estimated reporting and recordkeeping burden charts to reflect the total burden of the rule. Furthermore, our estimates are for the number of hours required to complete each response, not the number of hours per year per NADA holder as suggested in the comment. Thus, FDA's estimates are not directly comparable to those in the comment.

Additionally, the agency has made revisions in this interim final rule to provide for reduced reporting requirements under appropriate circumstances, thereby substantially reducing the reporting burden compared to the proposed rule. We have changed the reporting requirement for the 3-day NADA/ANADA field alert reports in the interim final rule (§ 514.80(b)(1)) so that applicants or nonapplicants must include only information pertaining to ''product and manufacturing defects that may result in serious adverse drug events'' instead of ''any manufacturing defect'' as was required in the proposed rule for records and reports (proposed § 514.80(d)(1)). This change will reduce the recordkeeping burden for this provision to a total of 60 hours.

Further, the periodic adverse drug experience report and annual report proposed in § 514.80(d)(3) and (d)(4) were combined into a single periodic drug experience report under § 514.80(b)(4). Finally, we agreed with comments that the requirement in § 514.80(d)(3) of the proposed rule for quarterly submissions of periodic drug experience reports for 3 years was excessive. Thus, the agency reduced this reporting requirement in § 514.80(b)(4) of the interim final rule to every 6 months for the first 2 years. The interim final rule requires 5 periodic drug experience reports within 3 years of approval; the proposed rule required 12 periodic drug experience reports within 3 years of approval.

We added provisions in interim final § 514.80(b)(4) that allow applicants to petition us to change the date of submission of yearly periodic drug experience reports or the frequency of reporting to intervals greater than annually. This provision will substantially reduce the number of periodic drug experience reports.

B. Definition of an Adverse Drug Experience (New § 514.3(a))

(Comment 3) Several comments characterized the phrase ''whether or not considered drug-related'' found in the proposed definition of ''adverse drug experience'' as being too broad in scope.

We agree that the definition is broad. However, we believe that such a broad definition is necessary in light of the agency's goal to encourage reporting that captures all possible adverse drug experiences. For example, it is often difficult to determine drug-relatedness in an individual case, but FDA, by seeing many reports, may see drug-relatedness that is not clear in individual instances. To prevent under-reporting and the possibility that rare or unexpected adverse drug reactions may be missed, the agency has decided to adopt the definition as proposed. However, in response to concerns over the implications of a broad definition, the agency has added a disclaimer in new § 514.80(i) which states that submission of a report or information does not necessarily constitute a conclusion or admission that a drug caused or contributed to an adverse effect.

(Comment 4) One comment suggested that reporting of adverse drug experiences be limited to ''significant or meaningful events.''

We believe that limiting reporting as suggested could hinder postapproval surveillance because the significance of an event may not be apparent at the time of its occurrence. We desire to maintain and increase the availability and diversity of new animal drugs without compromising their safety and effectiveness. Postapproval reporting provides a source of vital information about the continued safety and effectiveness of a drug product over an extended period of time under field conditions. Therefore, we are maintaining the scope of the record and reporting requirements in this interim final rule.

(Comment 5) One comment questioned the rationale for defining ''adverse drug experience'' to include adverse events occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug. Several comments suggested that monitoring human health problems associated with exposure to new animal drugs is a responsibility of the Occupational Safety and Health Administration (OSHA) rather than FDA.

Under the act, we are required to consider the human health factor when approving new animal drugs. For example, FDA requires that appropriate warnings regarding potential adverse effects to human health be included in the labeling of new animal drugs. FDA's role in worker safety is complementary to OSHA's role. Furthermore, not all human exposure to new animal drugs would be through occupational exposure. We believe continued reporting of human adverse drug experiences as related to animal drugs is appropriate and important. This reporting provides the agency with the information it needs to fulfill its mandate to consider human health effects. Thus, the agency is retaining this element of the definition in the interim final rule.

(Comment 6) Comments asserted that the language used in proposed § 514.80(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) is inappropriate for new animal drugs. In particular, the comments questioned defining ''adverse drug experience'' in these sections to include an ''adverse event occurring from animal drug overdose,'' an ''adverse drug event occurring from animal drug abuse,'' and an ''adverse event occurring from animal drug withdrawal.''

We agree that the phrases are not appropriate for animal drugs. These sections have been removed from the definition of ''adverse drug experience'' in new § 514.3(a) to more accurately reflect the practices of veterinary medicine and animal agriculture.

(Comment 7) Some comments questioned the phrase ''failure of an animal drug product to produce its expected pharmacological action'' in the definition of ''adverse drug experience'' in proposed § 514.80(b)(1)(v). Some of these comments suggested that the phrase be changed to say ''unusual failure of an animal drug product * * * '' and noted that when animals are treated as a group rather than individually, the failure of some animals to respond is considered normal.

We agree that when groups of animals are treated, the failure of some individuals to respond to therapy can be considered normal. However, a perceived lack of effectiveness based on an unusual failure to respond to therapy is a valid reason to submit an adverse drug experience report. Failure of a drug to produce its expected pharmacological action (''lack of effectiveness'') may result in the underlying disease process progressing to a serious health problem. This health problem, therefore, is indirectly caused by the drug. The failure should be submitted in an adverse drug experience report. However, if the failure of some individuals to respond to therapy was expected (i.e., is listed in the labeling), this failure should be submitted in the periodic experience report. Thus, FDA has retained the phrase ''failure * * * to produce its expected pharmacological * * * effect'' in new § 514.3(a)(2).

The comments also asserted that clinical response rather than pharmacological action would more accurately describe the results being monitored.

We agree that clinical effect is another appropriate monitor in addition to lack of pharmacological action. Based on these comments, the language in new § 514.3(a)(2) has been revised to read ''Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness).''

C. Definition of Increased Frequency (New § 514.3(d))

(Comment 8) Some comments stated that monitoring and reporting an increased frequency in the rate of reported occurrences of any particular adverse drug experience is impractical in animal agriculture. One comment suggested that reporting of ''increased frequency'' should be limited to certain types of new animal drug products.

We believe that it is practical for applicants to monitor and report apparent increases in the number of reports concerning a specific type of adverse drug experience, after adjusting for any increase in drug use. Drug surveillance is important not just for identifying serious adverse drug reactions, but also for monitoring and accounting for any changes in the incidence of these same serious reactions. However, in response to concerns raised by the comments, we revised the definition of ''increased frequency'' in proposed § 514.80(b)(2) in new § 514.3(d) to limit required reporting to serious adverse drug events, expected or unexpected, after appropriate adjustment for drug exposure.

D. Definition of New Animal Drug Application (New § 514.3(b) and (e))

(Comment 9) One comment suggested that the definition of the term ''NADA'' be removed from the section concerning records and reports ''because it causes confusion by inclusion of abbreviated new animal drug applications (ANADAs) in its scope and this is the only subsection in § 514 where they are mentioned.'' The comment suggested that the regulations be revised to mention both NADAs and ANADAs when appropriate.

FDA agrees. We revised this interim final rule to mention both NADAs and ANADAs when appropriate. In addition, we moved the definitions of the terms ''NADA'' and ''ANADA'' to new § 514.3.

E. Definition of Serious (New § 514.3(h))

(Comment 10) Proposed § 514.80(b)(4) defined the term ''serious,'' as it relates to adverse drug experiences, to include ''an adverse drug experience that is fatal, life-threatening, permanently disabling, requires hospitalization, or involves systemic drug or other intervention.'' Several comments asserted that the phrase ''or involves systemic drug or other intervention'' as it appeared in this proposed section is too broad and the phrase ''requires hospitalization'' does not accurately reflect drug use in animal agriculture.

We agree with these comments. We have addressed these concerns by revising the definition of ''serious adverse drug experience,'' in new § 514.3(h). The definition is now more specific and reads ''an adverse event that is fatal or life-threatening, requires professional intervention, or causes an abortion, stillbirth, infertility, congenital anomaly, prolonged or permanent disability, or disfigurement.'' By including ''requires professional intervention'' (*e.g.,* under a veterinarian's care) as a criterion, we reasonably limit the number of reports that have to be submitted under this portion of the regulation. The reference to hospitalization has been deleted in this interim final rule.

F. Definition of Unexpected (New § 514.3(i))

(Comment 11) Comments stated that the agency did not provide an explanation in the preamble to the proposed rule as to why the agency proposed to change the definition of ''unexpected'' (in the context of adverse drug experiences). Comments also stated that the existing definition of ''unexpected'' should be retained or the proposed new definition should be simplified.

FDA disagrees that the definition should be retained or simplified. In the preamble to the proposed rule, we did not explain why we proposed to change the definition of ''unexpected.'' The explanation is that the NADA or ANADA file is not publicly available, but the labeling is. Thus, ''unexpected'' adverse drug experiences should be provided in the labeling, so that anyone (not just someone with access to the NADA or ANADA file) can determine whether an event is unexpected.

Thus, we are keeping the definition as proposed. That definition, which is now found in new § 514.3(i), specifies that labeling, rather than the NADA or ANADA file, is the standard for comparison when deciding whether a reported event is an unexpected adverse drug experience.

G. Definitions of Product Defect and Manufacturing Defect (New § 514.3(g))

(Comment 12) Many comments expressed concern that the proposed definitions for ''product defect'' and ''manufacturing defect'' were too broad because, under the definitions, FDA would require reporting of problems not associated with public health or animal safety.

We agree. We revised the two definitions to limit their scope to problems associated with public health or animal safety. For example, we have removed the following language, ''observable or measurable deviation * * * from the typical physical and chemical characteristics expected for the animal drug product and its container'' to prevent inclusion of factors that may affect physical appearance, but not public health or animal safety. For clarity, the two definitions have been combined in a single definition in new § 514.3(g). The revised definition also contains examples of product and manufacturing defects.

(Comment 13) One comment stated that the definition of ''product defect'' should be revised to specify only a situation when there is a confirmed deviation from standards in order to preclude submission of many reports that may prove to be unnecessary.

We disagree that the definition of suspected product defects should be revised to include only confirmed deviation from standards. We believe that if an applicant/nonapplicant had to confirm the deviation, it would be difficult for the applicant/nonapplicant to report such a defect within 3 working days of first becoming aware that a defect may exist, as required under new § 514.80(b)(1). However, we have revised the definitions of product defect and manufacturing defect to limit their scope (see comment 12 of this document). We have also narrowed the reporting requirement under § 514.80(b)(1) so that only those product and manufacturing defects that may result in serious adverse drug events must be reported.

During its consideration of this comment, we recognized a source of potential confusion in the proposed rule that is related to the issue raised by the comment. Specifically, ''manufacturing defect'' was defined in proposed § 514.80(b)(7) as ''the manufacturing process is the cause of a product defect *which is determined after investigation of a product defect complaint or a routine quality control procedure.*'' (Emphasis added). We did not intend for this definition to alter the requirement that manufacturing defects be reported to FDA within 3 working days of first becoming aware that such a defect may exist. To eliminate this potential confusion, we removed the phrase ''which is determined after investigation of a product defect complaint or a routine quality control procedure'' from the interim final rule's definition of ''product defect/manufacturing defect'' in new § 514.3(g).

(Comment 14) Some comments suggested that the phrase ''or from the typical physical and chemical characteristics expected for the animal drug product and its container,'' which appears in the proposed rule's definition of ''product defect,'' should be modified or deleted because it makes the definition too broad.

We agree that the phrase makes the definition too broad. We removed the phrase in this interim final rule.

(Comment 15) One comment argued that the proposed definition of ''manufacturing defect'' should be changed to specify distributed products only because the proposed definition would include reporting of all quality control or procedure problems.

FDA agrees that only those manufacturing defects that pertain to distributed products need be reported. The revised definition in new § 514.3(g) makes this clear by referring to ''distributed'' products.

H. Records to be Maintained (New § 514.80(e))

(Comment 16) Some comments challenged the proposed 10-year retention period for records of all information concerning experience with approved new animal drugs. They argued that a 10-year retention period is unnecessary and burdensome. They suggested that the retention time be reduced to 1 or 2 years.

FDA agrees that 10 years may be an unnecessarily long time to retain these records of all information. Accordingly, the agency has amended the record retention period from 10 to 5 years. New § 514.80(e) requires retention of records of all information for 5 years after the date of submission. FDA believes that a 5-year retention period is adequate and necessary to ensure that records exist for a sufficient time to permit us to evaluate events that occur at limited frequency.

I. Reporting Requirements (New § 514.80(b))

(Comment 17) Some comments misrepresented our intent regarding reporting requirements, indicating that we had not clearly stated those requirements in the proposed rule. As a result of these comments, we reorganized and revised the reporting requirements to clarify reporting obligations. New § 514.80(b) does not add any significant new reporting requirements to those contained in the proposed rule. In fact, we removed or modified some of the proposed requirements to reduce the regulatory burden. A discussion of the specific changes that we made follows.

J. NADA-field Alert Report (New § 514.80(b)(1))

(Comment 18) One comment suggested that the requirement for reporting product and manufacturing defects should be limited to significant problems relevant to the drug's safety or efficacy.

FDA agrees and has revised the reporting requirements in new § 514.80(b)(1) so that only those product and manufacturing defects that may result in serious adverse drug events must be reported.

(Comment 19) Some comments expressed a concern that the proposed rule would require duplicate reporting of manufacturing defects to FDA's district offices and Center for Veterinary Medicine (CVM).

We did not intend to require duplicate reporting. The agency believes this was clear under proposed § 514.80(d)(1), which stated that reports should be submitted ''to the FDA district office that is responsible for the facility involved.'' Thus, we are largely retaining this language. However, because some areas of the United States are covered by a local FDA resident post rather than a district office, the agency is modifying the interim final rule to reflect this. New § 514.80(b)(1) states that ''[t]he applicant * * * must submit the report to the appropriate FDA district office or local FDA resident post within 3 working days of first becoming aware that a defect may exist.'' To further clarify where specific reports must be sent, we have added new § 514.80(g) *Mailing addresses* to this interim final rule.

(Comment 20) One comment suggested extending the time required for submitting the proposed NADA field alert report from 3 to 10 days.

We believe that 3 working days are sufficient time to investigate the existence of a reportable event and make an initial report. Thus, we have retained this timeframe for 3-day NADA/ANADA field alert reports in new § 514.80(b)(1). The agency notes that a complete written report is not required within the 3-day period. If, as specified in § 514.80(b)(1), the information is provided by telephone or other telecommunication means within 3 days, followed by prompt (within a timeframe agreed upon at the time of the initial telecommunication) written followup on Form FDA 1932 ''*Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report*,'' FDA will consider the 3-day requirement to have been met.

K. Fifteen-Day Alert Reports (New § 514.80(b)(2))

(Comment 21) Several comments interpreted proposed § 514.80(d)(2)(ii) as requiring repeated followup reports at 15-day intervals. These comments questioned the need for such followup and proposed a single followup once all the information was collected within 15 days or after collection of the information.

The intent of the regulation is not to require multiple followup reports. We believe that most adverse drug experiences can be documented with either a single initial report or an initial report and a followup report if significant new information is received. To clarify this intent, § 514.80(b)(2)(ii) of the interim final rule has been revised to read: ''* * *[if] this investigation reveals significant new information, a followup report must be submitted within 15 days of receiving such information.'' A 3-month period is designated as the reasonable time needed to obtain such information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(Comment 22) Proposed § 514.80(d)(2) required that the initial 15-day alert report be submitted using Form FDA 1932. One comment suggested that the Form FDA 1932 be submitted only at the conclusion of the investigation of the adverse drug experience. The comment suggested that the initial report could be less formal.

We disagree with these suggestions. A standardized reporting format is essential for the efficient collection and processing of useful data. Thus, FDA has retained the required use of the Form FDA 1932 for the 15-day NADA/ANADA alert report in this interim final rule.

(Comment 23) Several comments suggested that 15-day alert reports of adverse drug experiences be limited to events judged to be ''drug-related'' by the applicant.

We disagree with this concept. For FDA to determine drug-related effect, applicants must submit all reports of adverse drug experience so that the agency can evaluate the data in an unbiased manner. FDA maintains a computer data base of reported information. The data base is evaluated for trends or patterns of reports, and the trends are further investigated. Limiting reporting to ''drug-related'' events could hamper the discovery of uncommon or unexpected adverse drug experiences.

To alleviate concerns that reporting automatically implicates the drug, we added new § 514.80(i). This section provides that the adverse drug experience report ''will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event.''

L. Periodic Adverse Drug Experience Reports (New § 514.80(b)(4))

(Comment 24) Several comments criticized proposed § 514.80(d)(3), asserting that the proposed requirements for periodic drug experience reports are inappropriate, unnecessary, and burdensome in requiring quarterly reports for 3 years. Two comments recommended 6-month reports for 2 years.

We agree with many of the comments and revised the provisions regarding periodic drug experience reports. We have combined the periodic adverse drug experience report requirements with annual reporting requirements into new section, § 514.80(b)(4). The frequency of reporting for new approvals has been changed from the proposed schedule of ''quarterly intervals for 3 years from the date of approval and annually thereafter'' (as it appeared in proposed § 514.80(d)(3)) to ''every 6 months for the first 2 years after approval of an NADA or ANADA, and yearly thereafter.'' (*See* new § 514.80(b)(4).) In light of this change, we wish to clarify the reporting requirement for the periodic drug experience reports. We are requiring that these periodic drug experience reports contain data and information for the full reporting period. To facilitate this reporting requirement, we will allow sponsors to file 6-month periodic drug experience reports within 30 days after the end of the 6-month reporting period. With regard to the yearly periodic drug experience report, these must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA.

FDA added provisions in new § 514.80(b)(4) that allow applicants to petition FDA to change the date of submission of yearly periodic drug experience reports or the frequency of reporting to intervals greater than annually. This is intended to increase flexibility and to reduce the reporting burden for specific NADAs and ANADAs. FDA believes that any burden for the third semiannual report will be offset by the provision in new § 514.80(b)(4) that allows applicants to petition for decreased reporting frequency.

M. Proposed § 514.80(d)(4): Annual Report (Interim Final Included in § 514.80(b)(4))

(Comment 25) Two comments noted that the phrase ''quantities distributed for foreign use'' in proposed § 514.80(d)(4)(I) is unclear, and that the collection of the data would be unreliable and difficult to obtain.

The phrase, which is now in new § 514.80(b)(4)(i), has been revised to read ''quantities distributed domestically and quantities exported.'' We believe that the data are obtainable (currently, CVM receives such data from applicants) and, if properly collected, should be reliable. The data will be useful in CVM's postmarketing surveillance activities, such as the adverse drug experience program.

(Comment 26) Four comments objected to the requirement in proposed § 514.80(d)(4)(ii) that applicants provide a summary of any changes in the labeling. Comments argued that FDA already has this information on file.

We believe that this requirement does not impose a significant new reporting burden, yet provides us with very useful information. The requirement is necessary to ensure that all labeling changes, including those recently made or not previously reported, are documented. By providing a summary of any changes in the labeling, applicants will facilitate CVM's review of periodic drug experience reports. Therefore, we retained the requirement in new § 514.80(b)(4)(ii).

(Comment 27) Several comments questioned the need for providing the date of implementation of manufacturing and control changes, required under proposed § 514.80(d)(4)(iv). The comments described the requirement as an unnecessary paperwork burden on both industry and Government. One comment noted that the requirement was redundant because ''a chronological list of changes is available upon field inspection.''

We disagree with these comments. The date when a change is implemented is important to identify the production batches that may be affected by the change. This is important for various reasons, including allowing reviewers to compare data generated at different times to determine if there are any changes or trends in product quality. However, section 116 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (21 U.S.C. 356a) describes reporting procedures and requirements for making major and other manufacturing changes to an approved application. Under FDAMA, we proposed to revise § 514.8 (21 CFR 514.8), the provisions for supplemental applications for changes in the manufacturing of animal drugs, and specify the reporting requirements for manufacturing changes. (See 64 FR 53281, October 1, 1999.) Therefore, we removed the requirement described in proposed § 514.80(d)(4)(iv) from this interim final rule.

(Comment 28) Proposed § 514.80(d)(4)(v)(C) required applicants to submit descriptions of completed clinical trials conducted by or known to the applicant. Some comments questioned whether this requirement would result in possible duplicate reporting of clinical trial information or adverse drug experiences associated with an investigational new animal drug. Also, the difference between the terms ''completed'' and ''concluded'' was questioned in terms of when the study was to be reported to FDA. Proposed § 514.80(d)(4)(v)(C) stated: ''A study is considered completed no later than 1 year after it is concluded.''

We did not intend to require duplicate reporting. To make this explicit, we renamed the section ''*Nonclinical laboratory studies and clinical data not previously reported*,'' in new § 514.80(b)(4)(iii). We included the phrase ''not previously reported'' in the title to clarify that duplicate reporting is not required. To eliminate confusion over the difference between ''completed'' and ''concluded,'' new § 514.80(b)(4)(iii)(C) now states that ''a study must be submitted no later than 1 year after completion of research.''

N. Advertisements and Promotional Labeling (New § 514.80(b)(5)(ii))

(Comment 29) Several comments suggested that the requirements regarding submission of advertisements and promotional labeling in § 510.300 were adequate. These comments further suggested that FDA should retain these requirements rather than adopting the new requirement in proposed § 514.80(d)(5)(I). In addition, the comments challenged as unnecessary and burdensome the requirement that a copy of the product labeling be included in the submission.

The agency believes that the language in new § 514.80(b)(5)(ii) is an improvement over § 510.300 because it clarifies and delineates the requirements for advertisements and promotional labeling for both prescription and over-the-counter drugs. However, FDA agrees that samples of a product's current labeling need not accompany each submission of promotional material. Accordingly, we removed this requirement from the regulation.

O. Distributor Statements and Labeling (New § 514.80(b)(5)(iii))

(Comment 30) Comments asserted that the timing of submission of the distributor statement and labeling as established under proposed § 514.80(d)(5)(ii) was unclear because the preamble to the proposed rule suggested submission with the annual report, but the proposed rule required submission ''[a]t the time of initial distribution.''

We clarified the timing of submission in the interim final rule. In new § 514.80(b)(5)(iii), the distributor's statement and samples of labeling are to be submitted as a special drug experience report ''at the time of initial distribution of a new animal drug product by a distributor.''

(Comment 31) Comments also questioned the meaning of the term ''own-label (private label) distributor'' as it appeared in proposed § 514.80(d)(5)(ii).

We agree that the proposed language was unclear. We removed the phrase ''own-label (private label).'' The wording in new § 514.80(b)(5)(iii)(A) reads, ''distributor's current product labeling.''

(Comment 32) One comment asserted that the information required in distributor statements are business arrangements which should be kept on file by applicants and not be submitted to FDA.

We disagree with this comment. The distributor statements are kept on file at FDA to provide cross-reference information for the drug listing process. The statements may also be important to us during an establishment inspection.

P. Statements of NADA Approval Status

(Comment 33) Proposed § 514.80(d)(5)(iii) codified the reporting requirements that applicants needed to comply with before they could add a statement of NADA approval status to the product labeling. Before the enactment of FDAMA, the act expressly prohibited the use of approval status statements on the labeling of human drugs under section 301(l) of the act (21 U.S.C. 331(l)), but did not prohibit the use of such statements on new animal drug labeling. Section 421 of FDAMA struck section 301(l) from the act, thereby lifting the prohibition for adding such statements to human drug labeling. Because the agency has decided that it will implement this revision of the act by providing uniform guidance concerning product approval status statements for both human and animal products, we determined that it would be inappropriate to retain proposed § 514.80(d)(5)(iii) in this interim final rule.

Q. Special Reports (New § 514.80(b)(5)(i))

(Comment 34) Proposed § 514.80(d)(5)(iv) provided that ''[u]pon written request, FDA may require that the applicant submit the reports required under this section at different times than those stated.'' One comment suggested that FDA should have retained § 510.300(b)(5) rather than adopting proposed § 514.80(d)(5)(iv). This comment interpreted the language in § 510.300(b)(5) as ensuring that special reports are based on a ''mutually agreed upon need and not a mere increase in frequency in reporting.''

We do not interpret the language of § 510.300(b)(5) as having provided a means of ''mutually agreeing upon'' some kind of need for a report. Moreover, we believe it is neither necessary nor practical to ensure that special reports are based on a ''mutually agreed upon need.'' Proposed § 514.80(d)(5)(iv) was not intended to unnecessarily increase the frequency of reporting. Rather, this proposed section provides us with a means of obtaining reports in situations where we believe that it is in the interest of public health to require a different timeframe for the submission of reports required in this regulation. To further this goal, we are adopting the following language for the interim final rule (new § 514.80(b)(5)(i)): ''Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.''

R. General Requirements (New § 514.80(c))

(Comment 35) Several comments requested clarification of proposed § 514.80(e)(1) which states: ''If a report refers to more than one animal drug marketed by an applicant, the applicant shall submit the report to the application for each animal drug listed in the report. The report is required to identify all the applications to which the report applies.'' Comments questioned whether this was applicable to combination drug products and whether FDA intended the applicant to file these reports with all dosage forms of the drug or just with the dosage form involved in the adverse experience report.

This section was intended to refer to periodic reporting requirements when an applicant has more than one NADA or ANADA containing a particular active ingredient. FDA has replaced the language proposed in § 514.80(e)(1) with language almost identical to that contained in § 510.300(b)(4)(ii). FDA has redesignated the general requirements section as § 514.80(c) in the interim final rule, and has further clarified the requirements needed to implement this section. The clarification provided for in the interim final of § 514.80(c)(1) through (c)(4) reflects the current reporting practice. If applicable, the applicant must do the following: (1) State when a report applies to multiple applications and identify all related applications; (2) ensure that the primary application contains a list of all related applications; (3) submit a completed Form FDA 2301, ''*Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs*,'' to the primary application, and to each related application that references the primary application and corresponding submission date; and (4) if there is information that is unique to a particular application, the information must be submitted in the report for that particular NADA and/or ANADA.

S. General Requirements—[Reports of Adverse Drug Experiences in Published Literature] (New § 514.80(b)(4)(iv)(B))

(Comment 36) Several comments questioned the scope of the published literature that needed to be provided to FDA. The comments asserted that only publications from current scientific journals (excluding those listed in 21 CFR 510.95) and only substantive articles should be required. The comments stated that obscure foreign journals with translations may require extended time periods to obtain. Section 314.80(d)(1) and (d)(2) of the human drug regulations were mentioned as examples of appropriate limitations.

We believe that the scope of published literature on reports of adverse drug experiences should be kept broad. In recent years, extensive searches of literature data bases have become quicker, more practical, and more economical to perform. If the agency were to narrow the scope of these searches, potentially valuable information might not be submitted. However, in an effort to reduce the burden of this requirement upon applicants, the agency has revised the requirement. Under proposed § 514.80(e)(2), applicants would have been required to submit actual copies of all published articles. We revised this requirement (new § 514.80(b)(4)(iv)(B)) such that applicants generally need only include a bibliography of pertinent references in the report.

(Comment 37) Several comments suggested that the requirement to provide photocopies of published articles was impractical because of copyright restrictions of publishers.

We are now able to access abstracts and articles through electronic data bases via the Internet. This development has eliminated the need for applicants to include copies of abstracts or articles in each report. Thus, as stated above, proposed § 514.80(e)(2) has been revised. Under the new § 514.80(b)(4)(iv)(B), an applicant will be required to provide a full text copy of a publication only upon FDA's request.

T. General Requirements—Reports of Adverse Drug Experiences in Postapproval Studies (New § 514.80(b)(4)(iv)(C))

(Comment 38) Two comments suggested that reporting of adverse experiences in postapproval studies as required in proposed § 514.80(e)(3) was redundant and might result in duplicate reporting.

In response to these comments, the language in new § 514.80(b)(4)(iv)(C) has been changed to specify ''[r]eports of adverse drug experiences in studies or trials *not previously reported* either individually or as part of an NADA/ANADA * * *'' (Emphasis added).

U. Reporting Forms (New § 514.80(d))

(Comment 39) One comment stated that Form FDA 1932 is poorly suited for reports of product defects or human exposure to animal drugs. The suggestion was made that FDA modify the form or allow alternative reporting formats.

We believe that Form FDA 1932 and Form FDA 2301 are appropriate vehicles for reporting. Thus, the agency is retaining the requirement that these forms be used where designated in the interim final rule.

V. Withdrawal of Approval (New § 514.80(h))

(Comment 40) A comment suggested that FDA should retain the provisions in § 510.300(d) rather than adopting proposed § 514.80(h), because previous § 514.300(d) included an opportunity for a hearing. Although the agency disagrees that language in proposed § 514.80(h) should be replaced with the language previously found in § 514.300(d), the agency has rewritten proposed § 514.80(h) for clarity. As part of this revision, the agency has added the following: ''If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.''

W. Records and Reports Concerning Experience With Animal Feeds Bearing or Containing New Animal Drugs for Which an Approved Application is in Effect

FDA received several comments on the proposed regulation concerning the portion of the regulation dealing with MFAs. However, the ADAA amended the statutory provisions in the act regarding medicated feeds. Type A medicated articles are new animal drugs that may be used to make medicated feeds. Feed mills use Type A medicated articles to make medicated feeds. Prior to the passage of the ADAA, sponsors were required to obtain approval of NADAs for Type A medicated articles, and feed mills that made medicated feeds were required to obtain approval of an MFA for each medicated feed manufactured at each site before they could legally manufacture the medicated feed. The ADAA eliminated this requirement regarding MFAs for feed mills, but not the requirement for sponsors to obtain approval of NADAs for Type A medicated articles.

Revisions to the MFA regulations to reflect the provisions of ADAA were the subject of a final rule that published in the **Federal Register** of November 19, 1999 (64 FR 63195). Because of these revisions, the agency has removed the requirements for MFAs from the final rule. Proposed § 514.81 described the records and reports requirements for holders of MFAs. There are no longer holders of MFAs. However, the agency still needs information regarding approved Type A medicated articles incorporated in animal feeds. Under the final rule, this information is provided by the holder of the NADA for the Type A medicated feed, and, as stated in new § 514.80(a)(4), the record and report requirements found in new § 514.80(b)(1), (b)(2), and (b)(4)(iv) are applied to any approved Type A medicated article incorporated in animal feeds. The agency will address any remaining issues regarding records and reports for medicated feeds at a later date in a new proposed rule, if necessary.

X. Records and Reports Concerning Experience With New Animal Drugs From Manufacturers, Packers, Labelers, and Distributors Other Than the Applicant (New § 514.80(b)(3))

(Comment 42) Proposed § 514.82 established requirements for records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant. Several comments stated that requiring a nonapplicant to report to FDA is neither efficient nor necessary, because it would result in duplicate reporting. One comment stated that an applicant may be a subsidiary of a parent firm.

We agree with these comments and have deleted the proposed section from the regulations. However, the agency has retained certain record and report requirements for nonapplicants (new § 514.3(f)) in new § 514.80(b). The interim final rule specifies under new § 514.80(b)(3) that the nonapplicant is required to provide necessary information to the applicant. The applicant is required to report to FDA. The nonapplicant must retain certain records concerning events as provided in new § 514.80(b)(3). The nonapplicant may choose to forward a copy of the report to FDA, but this action would be voluntary.

III. Conforming Amendments

With the amendment of the animal drug regulations, certain revisions to 21 CFR parts 211, 226, 510, and 514 are required to conform to the designations in the amendments. Certain other provisions of part 510 and § 514.8 are superseded by these regulations and are removed.

IV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on new information regarding this interim final rule by April 5, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. The agency believes it is in the public interest to have the regulations in place while, at the same time, it solicits public comments on new issues. The agency will not consider any comments that have been previously considered during this rulemaking.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and has determined that it does not constitute an economically significant rule, as defined in the Executive order. FDA also certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required. Further, since this rule will not impose any mandates on other governmental entities and will result in the expenditure of less than $100 million by the private sector, FDA does not need to prepare additional analyses under the Unfunded Mandates Reform Act.

The regulation is intended to clarify and simplify recordkeeping requirements while improving the protection of public and animal health. The revisions in the reporting requirements are expected to provide savings through lower recordkeeping costs in some areas while imposing small cost increases due to requirements for recordkeeping of more useful information.

In the rule, the term ''applicant'' is limited to the holder of an approved application (NADA or ANADA) and does not include every firm whose name appears on product labeling, as the regulations previously provided. A nonapplicant is required to send copies of necessary information to the applicant who would then combine all information received, whether from one or several sources, and submit a single report to FDA. This change would reduce paperwork requirements because firms would be required to submit fewer reports. Also, those reports should provide for a more comprehensive reporting of all required information.

The current requirement for adverse drug experience reports to be submitted by distributors under proposed § 514.82 is retained under the interim final rule in § 514.80(b)(3) in nonapplicant reporting. The requirement for any firm involved in the manufacturing, processing, packing, labeling, or distributing of a new animal drug product other than the applicant (the nonapplicant) to report adverse experiences either to FDA or to the applicant is a restatement of the previous provisions of § 510.300(f) that applies to a small number of firms that would not routinely be expected to receive such information. The restatement is intended to clearly state that any such information received is required to be reported to FDA, either directly or through the applicant. However, only one party would be required to file the report.

The revised regulations amend the language of the regulations to clarify current practices. The conformity of reporting requirements for animal drugs and human drugs may simplify the process for firms that manufacture both kinds of products. No added costs are expected for those firms who only manufacture new animal drug products.

In the past, FDA has required that records and reports be retained for an indefinite period. The proposed rule provided for a retention period of 10 years. FDA has changed this requirement to 5 years for all information, in response to industry comments. This would provide an additional opportunity for savings compared to the proposed rule. Since the current average length of time which records are kept is unknown, it is possible that there will be a small net cost due to this provision, even though the reporting requirements are clarified for easier compliance and administration.

The previously existing regulation required reports concerning newly approved NADAs and ANADAs every 6 months for the first year and annually thereafter. The proposed rule for records and reports would have required submission of such reports at quarterly intervals for 3 years following approval. FDA agrees with comments from industry that the proposed rule's requirement of reports at quarterly intervals for 3 years following approval was unnecessary, and the agency has decreased the reporting requirements in the interim final rule. The interim final rule requires reports of adverse drug experiences to be submitted every 6 months for 2 years and annually thereafter.

The net change from the previous regulation requires one additional report in the second year. FDA estimates that it approves 30 NADAs annually. FDA estimates that 13.6 hours are required to establish and maintain the drug experience data, as well as write the report. Total hours required for this provision are estimated at 408. At a middle manager's estimated total wage rate of $35 per hour, this provision would cost $14,280 annually. Moreover, applicants may petition for lengthier report intervals. FDA will provide for reporting at intervals longer than 1 year when justified based on current experience or manufacturing and marketing status. The expected number of petitions for reporting at intervals greater than 1 year is difficult to estimate because it depends on the extent to which each individual company wishes to qualify for this provision. The net result of these two provisions may be either a very small cost or savings to each firm.

The interim final rule requires applicants to periodically review the incidence of adverse drug experiences and report any significant increase in the frequency to FDA as soon as possible or within 15 working days of determining a significant increase in frequency exists. FDA expects to receive very few of these each year and estimates the annual number at 1 to 20. These reports would not be expected to take more than 1 to 2 hours of a manager's time, and the high-end estimated cost would be $1,400 annually. Periodic review of adverse drug experience reports, although on a less formal basis, is already understood to be normal business practice.

The net costs and benefits of this interim final rule, though indeterminate, are expected to be modest. FDA concludes that the impacts of the interim final rule do not qualify it as an economically significant rule as defined under Executive Order 12866.

The Regulatory Flexibility Act, as amended (5 U.S.C. 601–612), allows for a waiver of the regulatory flexibility analysis if an agency certifies there will not be a significant impact on a substantial number of small entities as a result of a rule, as well as provides the factual basis for such a certification. The Small Business Administration definition of a small business in this industry category is limited to those firms with less than 750 employees. It is expected that a substantial number of the firms which will be subject to the new recordkeeping and reporting requirements will meet the definition of small businesses. FDA estimates that from 1 to 13 of the approximately 30 NADA and ANADA approvals in 1999 may have been from small businesses. Using the upper end of this range, about 42 percent of the firms receiving approval annually would be subject to the new recordkeeping and reporting requirements. Although these firms constitute a substantial number of firms being granted an approval each year, this proposal is not expected to have a significant economic impact on these firms, because the interim final rule is intended to simplify and clarify current recordkeeping and reporting requirements. The net costs and benefits on each small firm are expected to be modest. Accordingly, FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

VIII. Paperwork Reduction Act of 1995

This interim final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below. Included is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Records and Reports Concerning Experience With Approved New Animal Drugs

Description: This interim final rule amends the provisions of the animal drug regulations concerning requirements for recordkeeping and reports of adverse experiences and other information relating to approved new animal drugs. The information contained in the reports required by this rule enables FDA to monitor the use of new animal drugs after approval and to ensure their continued safety and efficacy. The reporting requirements include: A report that provides information on product and manufacturing defects that may result in serious adverse drug events (new § 514.80(b)(1)); a report that provides information on serious, unexpected adverse drug events and a followup report on such events (new § 514.80(b)(2)); a summary report of increased frequency of adverse drug experiences (new § 514.80(b)(2)(iii)); a report from nonapplicants, such as distributors, to applicants providing information on adverse drug experiences (new § 514.80(b)(3)); a periodic report with information on distribution, labeling, manufacturing or controls changes, new laboratory studies, and all adverse events in the reporting period (new § 514.80(b)(4)); and other reports that include special drug experience report; reports for advertising and promotional material, and reports for distributor statements (new § 514.80(b)(5)). These reports must be kept for 5 years (new § 514.80(e)).

The interim final rule strengthens the current reporting system by requiring periodic reports every 6 months for the first 2 years following initial approval of an application rather than just for the first year following initial approval. The increased burden on applicants amounts to one additional periodic report. While greater than the reporting burden in the previous rule, this burden is less than that of the proposed rule which would have required quarterly periodic reports for 3 years following initial approval.

The reporting burden of the proposed rule has been reduced further in other ways. In the interim final rule, the report pertaining to product and manufacturing defects must include only information on defects ''that may result in serious adverse drug events'' (new § 514.80(b)(1)) rather than information on all manufacturing defects, as in the proposed rule. Additionally, the proposed rule required a periodic adverse drug experience report and an annual report, whereas the interim final rule has combined these reports into a single periodic drug experience report (new § 514.80(b)(4)). The interim final rule also reduces the reporting requirements of the proposed rule by eliminating proposed § 514.82, which required records and reports from manufacturers, packers, labelers, and distributors other than the applicant. The recordkeeping requirements of the proposed rule have also been reduced in the interim final rule by changing the required period of time records must be kept from 10 to 5 years (new § 514.80(e)).

All periodic reports must be submitted with Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs'' (OMB Control No. 0910–0012). Adverse drug experience reports must be submitted on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report'' (OMB Control No. 0910–0012).

Description of Respondents: Applicant respondents are sponsors of approved NADAs and ANADAs. Nonapplicant respondents are those, other than the applicant, involved in manufacturing, processing, packing, labeling, or distributing new animal drugs.

Although the proposed rule of December 17, 1991 (56 FR 65581), provided a 60-day comment period under the PRA of 1980 and this interim final rule responds to the comments received; FDA is providing an additional opportunity for public comment under the PRA of 1995, which became effective after the publication of the proposed rule and applies to this interim final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB and provide an opportunity for public comment to OMB at that time. Prior to the effective date of this interim final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(2)(i)/Original 15-Day Alert Report/Form FDA 1932	190	55.26	12,283	1	12,283
514.80(b)(1)/3-Day Field Alert Report/ Form FDA 1932	190	0.32	95	1	95
514.80(b)(2)(ii)/Followup 15-Day Alert Report/Form FDA 1932	190	17.90	6,007	1	6,007
514.80(b)(2)(iii)/Increased Frequency 15-Day Alert Report	190	1.58	300	2	300
514.80(b)(3)/Nonapplicant Report/ Form FDA 1932	340	2.94	1,000	1	1,000
514.80(b)(4)/Periodic Drug Experience Report/Form FDA 2301, and 514.80(c) Multiple Applications[2]	190	7.11	1,226	11	13,486

RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS—Continued

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Title/FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.80(b)(5)(i)/Special Drug Experience Report/ Form FDA 2301	190	0.13	25	2	50
514.80(b)(5)(ii)/Advertising and Promotional Materials Report/ Form FDA 2301	190	2.11	772	2	1,544
514.80(b)(5)(iii)/Distributor's Statement Report/ Form FDA 2301	530	0.14	56	2	112
Total					34,877

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting burden for § 514.80(b)(4)(iv)(A) is included in the reporting burden for § 514.80(b)(2)(i).

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
514.80(e)[2]	530	28.22	19,385	0.5	9,693
514.80(e)[3]	530	4.06	2,379	10.35	24,623
Total					34,316

[1] Burden estimates were separated between Form FDA 1932 and Form FDA 2301 to reflect the difference in estimates for "Hours per Respondent" required.
[2] Recordkeeping estimates for §§ 514.80(b)(1), 514.80(b)(2)(i), 514.80(b)(2)(ii), and 514.80(b)(3); Form FDA 1932.
[3] Recordkeeping estimates for §§ 514.80(b)(2)(iii), 514.80(b)(4), 514.80(c), and 514.80(b)(5); Form FDA 2301.

Forms FDA 1932 and FDA 2301 for this collection of information are currently approved under OMB Control No. 0910–0012 and will not change due to implementation of this regulation. The reporting and recordkeeping burden estimates in this document are based on the submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The total annual response numbers are based on the 2000 fiscal year submission of reports to the Division of Surveillance, Center for Veterinary Medicine. The numbers in tables 2 and 3 are total burden associated with this regulation. Section 514.80(b)(2)(iii) and (b)(3) are new information collection requirements over the current requirements.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211, 226, 510, and 514 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374.

§ 211.198 [Amended]

2. Section 211.198 *Complaint files* is amended in paragraph (a) in the last sentence by removing "in accordance with § 310.305 of this chapter" and adding in its place "as in §§ 310.305 and 514.80 of this chapter."

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

3. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

§ 226.1 [Amended]

4. Section 226.1 is amended by redesignating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) In addition to maintaining records and reports required in this part, Type A medicated articles requiring approved NADAs are subject to the requirements of § 514.80 of this chapter.

PART 510—NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Removed]

6. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is removed.

§ 510.302 [Removed]

7. Section 510.302 *Reporting forms* is removed.

PART 514—NEW ANIMAL DRUG APPLICATIONS

8. The authority citation for 21 CFR part 514 is revised to read as follows:

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

9. Section 514.3 is added to subpart A to read as follows:

§ 514.3 Definitions.

The definition and interpretation of terms contained in this section apply to those terms as used throughout subchapter E.

(a) *Adverse drug experience* is any adverse event associated with the use of a new animal drug, whether or not considered to be drug related, and whether or not the new animal drug was used in accordance with the approved labeling (i.e., used according to label directions or used in an extralabel manner, including but not limited to different route of administration, different species, different indications, or other than labeled dosage). Adverse drug experience includes, but is not limited to:

(1) An adverse event occurring in animals in the course of the use of an animal drug product by a veterinarian or by a livestock producer or other animal owner or caretaker.

(2) Failure of a new animal drug to produce its expected pharmacological or clinical effect (lack of effectiveness).

(3) An adverse event occurring in humans from exposure during manufacture, testing, handling, or use of a new animal drug.

(b) *ANADA* is an abbreviated new animal drug application including all amendments and supplements.

(c) *Applicant* is a person who owns a new animal drug application or ANADA.

(d) *Increased frequency of adverse drug experience* is an increased rate of occurrence of a particular serious adverse drug event, expected or unexpected, after appropriate adjustment for drug exposure.

(e) *NADA* is a new animal drug application including all amendments and supplements.

(f) *Nonapplicant* is any person other than the applicant whose name appears on the label and who is engaged in manufacturing, packing, distribution, or labeling of the product.

(g) *Product defect/manufacturing defect* is the deviation of a distributed product from the standards specified in the approved application, or any significant chemical, physical, or other change, or deterioration in the distributed drug product, including any microbial or chemical contamination. A manufacturing defect is a product defect caused or aggravated by a manufacturing or related process. A manufacturing defect may occur from a single event or from deficiencies inherent to the manufacturing process. These defects are generally associated with product contamination, product deterioration, manufacturing error, defective packaging, damage from disaster, or labeling error. For example, a labeling error may include any incident that causes a distributed product to be mistaken for, or its labeling applied to, another product.

(h) *Serious adverse drug experience* is an adverse event that is fatal or life-threatening, requires professional intervention, or causes an abortion, stillbirth, infertility, congenital anomaly, prolonged or permanent disability, or disfigurement.

(i) *Unexpected adverse drug experience* is an adverse event that is not listed in the current labeling for the new animal drug and includes any event that may be symptomatically and pathophysiologically related to an event listed on the labeling, but differs from the event because of greater severity or specificity. For example, under this definition hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

§ 514.8 [Amended]

10. Section 514.8 *Supplemental new animal drug applications* is amended in paragraph (a)(1) by removing ''§ 510.300(a) of this chapter'' and by adding in its place ''§ 514.80''; in paragraph (a)(5) by removing ''§ 510.300(b)(4) of this chapter'' and by adding in its place ''§ 514.80(b)(4)''; in paragraph (a)(5)(ix) by removing ''§ 510.300(b)(1) of this chapter'' and by adding in its place ''§ 514.80 (b)(1)''; and by revising paragraph (a)(6) to read as follows:

(a) * * *

(6) Approval of a supplemental new animal drug application will not be required to provide for an additional distributor to distribute a drug which is the subject of an approved new animal drug application if the conditions described in § 514.80(b)(5)(iii) are met before putting such a change into effect.

§ 514.11 [Amended]

11. Section 514.11 *Confidentiality of data and information in a new animal drug application file* is amended in paragraph (a) by removing ''510.300'' and adding in its place ''514.80''.

§ 514.15 [Amended]

12. Section 514.15 *Untrue statements in applications* is amended in paragraph (b) by removing ''§ 510.300'' and adding in its place ''§ 514.80''.

13. Section 514.80 is added to subpart B to read as follows:

§ 514.80 Records and reports concerning experience with approved new animal drugs.

The following table outlines the purpose for each paragraph of this section:

Purpose	Paragraph and Title
What information must be reported concerning approved NADAs or ANADAs?	514.80(a) Applicability
What authority does FDA have for requesting records and reports? Who is required to establish, maintain, and report required information relating to experiences with a new animal drug? Is information from foreign sources required?	514.80(a)(1)
What records must be established and maintained and what reports filed with FDA?	514.80(a)(2)
What is FDA's purpose for requiring reports?	514.80(a)(3)
Do applicants of Type A medicated articles have to establish, maintain and report information required under § 514.80?	514.80(a)(4)

Purpose	Paragraph and Title
How do the requirements under § 514.80 relate to current good manufacturing practices?	514.80(a)(5)
	514.80(b) Reporting Requirements
What are the requirements for reporting product/manufacturing defects?	514.80(b)(1) Three-day NADA/ANADA Field Alert Report
	514.80(b)(2) Fifteen-day NADA/ANADA Alert Report
What are the requirements for reporting serious, unexpected and adverse drug experiences?	514.80(b)(2)(i) Initial Report
What are the requirements for followup reporting of serious, unexpected adverse drug experiences?	514.80(b)(2)(ii) Followup Report
What are the requirements for reporting increases in the frequency of serious, expected and unexpected, and adverse drug experiences?	514.80(b)(2)(iii) Summary Report of Increased Frequency of Adverse Drug Experience
What are the requirements for nonapplicants for reporting adverse drug experiences?	514.80(b)(3) Nonapplicant Report
What are the general requirements for submission of periodic drug experience reports, e.g., forms to be submitted, submission date and frequency, when is it to be submitted, how many copies? How do I petition to change the date of submission or frequency of submissions?	514.80(b)(4) Periodic Drug Experience Reports
What must be submitted in the periodic drug experience reports?	514.80(b)(4)(i) through (b)(4)(iv)
What distribution data must be submitted? How should the distribution data be submitted?	514.80(b)(4)(i) Distribution Data
What labeling materials should be submitted? How do I report changes to the labeling materials since the last report?	514.80(b)(4)(ii) Labeling
	514.80(b)(4)(iii) Nonclinical Laboratory Studies and Clinical Data Not Previously Reported
What are the requirements for submission of nonclinical laboratory studies?	514.80(b)(4)(iii)(A)
What are the requirements for submission of clinical laboratory data?	514.80(b)(4)(iii)(B)
When must results of clinical trials conducted by or for the applicant be reported?	514.80(b)(4)(iii)(C)
	514.80(b)(4)(iv) Adverse Drug Experiences
How do I report product/manufacturing defects and adverse drug experiences not previously reported to FDA?	514.80(b)(4)(iv)(A)
What are the requirements for submitting adverse drug experiences cited in literature?	514.80(b)(4)(iv)(B)
What are the requirements for submitting adverse drug experiences in postapproval studies and clinical trials?	514.80(b)(4)(iv)(C)
	514.80(b)(5) Other Reporting
Can FDA request that an applicant submit information at different times than stated specifically in this regulation?	514.80(b)(5)(i) Special Drug Experience Report
What are the requirements for submission of advertisement and promotional labeling to FDA?	514.80(b)(5)(ii) Advertisements and Promotional Material
What are the requirements for adding a new distributor to the approved application?	514.80(b)(5)(iii) Distributor's Statement
What labels and how many labels need to be submitted for review?	514.80(b)(5)(iii)(A)
What changes are required and allowed to distributor labeling?	514.80(b)(5)(iii)(A)(I)
What are the requirements for making other changes to the distributor labeling?	514.80(b)(5)(iii)(A)(II)
What information should be included in each new distributor's signed statement?	514.80(b)(5)(iii)(B)(I) through (B)(V)

Purpose	Paragraph and Title
What are the conditions for submitting information that is common to more than one application? (i.e., can I submit common information to one application?)	514.80(c) Multiple Applications
What information has to be submitted to the common application and related application?	514.80(c)(1) through (c)(4)
What forms do I need? What are Forms FDA 1932 and 2301? How can I get them? Can I use computer-generated equivalents?	514.80(d) Reporting Forms
How long must I maintain Form FDA 1932 and records and reports of other required information, i.e., how long do I need to maintain this information?	514.80(e) Records to be Maintained
What are the requirements for allowing access to these records and reports, and copying by authorized FDA officer or employee?	514.80(f) Access to Records and Reports
How do I obtain Forms FDA 1932 and 2301? Where do I mail FDA's required forms, records, and reports?	514.80(g) Mailing Address
What happens if the applicant fails to establish, maintain, or make the required reports? What happens if the applicant refuses to allow FDA access to, and/or copying and/or verify records and reports?	514.80(h) Withdrawal of Approval
Does an adverse drug experience reflect a conclusion that the report or information constitutes an admission that the drug caused an adverse effect?	514.80(i) Disclaimer

(a) *Applicability*. (1) Each applicant and nonapplicant must establish and maintain indexed, separate, and complete files containing full records of all information pertinent to safety or effectiveness of a new animal drug that has not been previously submitted as part of the NADA or ANADA. Such records must include information from domestic, as well as foreign sources.

(2) Each applicant must submit reports of data, studies, and other information concerning experience with new animal drugs to the Food and Drug Administration (FDA) for each approved NADA and ANADA, as required in this section. A nonapplicant must submit data, studies, and other information concerning experience with new animal drugs to the appropriate applicant, as required in this section. The applicant, in turn, must report the nonapplicant's data, studies, and other information to FDA. Applicants and nonapplicants must submit data, studies, and other information described in this section from domestic, as well as foreign sources.

(3) FDA reviews the records and reports required in this section to facilitate a determination under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA.

(4) The requirements of this section also apply to any approved Type A medicated article. In addition, the requirements contained in § 514.80(b)(1), (b)(2), and (b)(4)(iv) apply to any approved Type A medicated article incorporated in animal feeds.

(5) The records and reports referred to in this section are in addition to those required by the current good manufacturing practice regulations in parts 211, 225, and 226 of this chapter.

(b) *Reporting requirements*—(1) *Three-day NADA/ANADA field alert report*. This report provides information pertaining to product and manufacturing defects that may result in serious adverse drug events. The applicant (or nonapplicant through the applicant) must submit the report to the appropriate FDA District Office or local FDA resident post within 3 working days of first becoming aware that a defect may exist. The information initially may be provided by telephone or other telecommunication means, with prompt written followup using Form FDA 1932 "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report." The mailing cover for these reports must be plainly marked "*3-Day NADA/ANADA Field Alert Report*."

(2) *Fifteen-day NADA/ANADA alert report*—(i) *Initial report*. This report provides information on each serious, unexpected adverse drug event, regardless of the source of the information. The applicant (or nonapplicant through the applicant) must submit the report to FDA within 15 working days of first receiving the information. The report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked "*15-Day NADA/ANADA Alert Report*."

(ii) *Followup report*. The applicant must promptly investigate all adverse drug events that are the subject of 15-day NADA/ANADA alert reports. If this investigation reveals significant new information, a followup report must be submitted within 15 working days of receiving such information. A followup report must be submitted on Form FDA 1932, and its mailing cover must be plainly marked "*15-Day NADA/ANADA Alert Report Followup*." The followup report must state the date of the initial report and provide the additional information. If additional information is sought but not obtained within 3 months of the initial report, a followup report is required describing the steps taken and why additional information was not obtained.

(iii) *Summary report of increased frequency of adverse drug experience*. The applicant must periodically review the incidence of reports of adverse drug experiences to determine if there has been an increased frequency of serious (expected and unexpected) adverse drug events. The applicant must report as soon as possible, but in any case within 15 working days of determining that there is an increased frequency of serious (expected and unexpected) adverse drug events. Summaries of reports of increased frequency of adverse drug events must be submitted in narrative form. The summaries must state the time period on which the increased frequency is based, time period comparisons in determining increased frequency, references to any previously submitted Form FDA 1932, the method of analysis, and the interpretation of the results. The summaries must be submitted under separate cover and may not be included, except for reference purposes, in a periodic drug experience report. The applicant must evaluate the increased frequency of serious (expected or unexpected) adverse drug events at least as often as reporting of periodic drug experience reports.

(3) *Nonapplicant report*. Nonapplicants must forward reports of adverse drug experiences to the applicant within 3 working days of first receiving the information. The applicant must then submit the report(s) to FDA as required in this section. The nonapplicant must maintain records of all nonapplicant reports, including the date the nonapplicant received the information concerning adverse drug experiences, the name and address of the applicant, and a copy of the adverse drug experience report including the date such report was submitted to the applicant. If the nonapplicant elects to also report directly to FDA, the nonapplicant should submit the report on Form FDA 1932 within 15 working days of first receiving the information.

(4) *Periodic drug experience report*. This report must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Materials for New Animal Drugs.'' It must be submitted every 6 months for the first 2 years following approval of an NADA or ANADA and yearly thereafter. Reports required by this section must contain data and information for the full reporting period. The 6-month periodic drug experience reports must be submitted within 30 days following the end of the 6-month reporting period. The yearly periodic drug experience reports must be submitted within 60 days of the anniversary date of the approval of the NADA or ANADA. Any previously submitted information contained in the report must be identified as such. For yearly (annual) periodic drug experience reports, the applicant may petition FDA to change the date of submission or frequency of reporting, and after approval of such petition, file such reports on the new filing date or at the new reporting frequency. Also, FDA may require a report at different times or more frequently. The periodic drug experience report must contain the following:

(i) *Distribution data*. Information about the distribution of each new animal drug product, including information on any distributor-labeled product. This information must include the total number of distributed units of each size, strength, or potency (e.g., 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5 percent solution). This information must be presented in two categories: quantities distributed domestically and quantities exported.

(ii) *Labeling*. Applicant and distributor current package labeling, including package inserts (if any). For large-size package labeling or large shipping cartons, a representative copy must be submitted (e.g., a photocopy of pertinent areas of large feed bags). A summary of any changes in labeling made since the last report (listed by date of implementation) must be included with the labeling or if there have been no changes, a statement of such fact must be included with the labeling.

(iii) *Nonclinical laboratory studies and clinical data not previously reported*.

(A) Copies of in vitro studies (e.g., mutagenicity) and other nonclinical laboratory studies conducted by or otherwise obtained by the applicant.

(B) Copies of published clinical trials of the new animal drug (or abstracts of them) including clinical trials on safety and effectiveness, clinical trials on new uses, and reports of clinical experience pertinent to safety conducted by or otherwise obtained by the applicant. Review articles, papers, and abstracts in which the drug is used as a research tool, promotional articles, press clippings, and papers that do not contain tabulations or summaries of original data are not required to be reported.

(C) Descriptions of, or if available, prepublication manuscripts relating to completed clinical trials conducted by or otherwise known to the applicant. Supporting information is not to be reported. A study must be submitted no later than 1 year after completion of research.

(iv) *Adverse drug experiences*. (A) Product/manufacturing defects and adverse drug experiences not previously reported under § 514.80(b)(1) and (b)(2) must be reported individually on Form FDA 1932.

(B) Reports of adverse drug experiences in the literature must be noted in the periodic drug experience report. A bibliography of pertinent references must be included with the report. Upon FDA's request, the applicant must provide a full text copy of these publications.

(C) Reports of previously not reported adverse drug experiences that occur in postapproval studies must be reported separately from other experiences in the periodic drug experience report and clearly marked or highlighted.

(5) *Other reporting*—(i) *Special drug experience report*. Upon written request, FDA may require that the applicant submit a report required under § 514.80 at different times or more frequently than the timeframes stated in § 514.80.

(ii) *Advertisements and promotional labeling*. The applicant must submit at the time of initial dissemination one set of specimens of mailing pieces and other labeling for prescription and over-the-counter new animal drugs. For prescription new animal drugs, the applicant must also submit one set of specimens of any advertisement at the time of initial publication or broadcast. Mailing pieces and labeling designed to contain product samples must be complete except that product samples may be omitted. Each submission of promotional material must be accompanied by a completed Form FDA 2301.

(iii) *Distributor's statement*. At the time of initial distribution of a new animal drug product by a distributor, the applicant must submit a special drug experience report accompanied by a completed Form FDA 2301 containing the following:

(A) The distributor's current product labeling.

(*1*) The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase such as ''manufactured for'' or ''distributed by.''

(*2*) Other labeling changes must be the subject of a supplemental NADA or ANADA as described under § 514.8.

(B) A signed statement by the distributor stating:

(*1*) The category of the distributor's operations (e.g., wholesale or retail),

(*2*) That the distributor will distribute the new animal drug only under the approved labeling,

(*3*) That the distributor will advertise the product only for use under the conditions stated in the approved labeling,

(*4*) That the distributor will adhere to the records and reports requirements of this section, and

(*5*) That the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products if the product is a prescription new animal drug.

(c) *Multiple applications*. Whenever an applicant is required to submit a periodic drug experience report under the provisions of § 514.80(b)(4) with respect to more than one approved NADA or ANADA for preparations containing the same new animal drug so that the same information is required to be reported for more than one application, the applicant may elect to submit as a part of the report for one such application (the primary application) all the information common to such applications in lieu of reporting separately and repetitively on each. If the applicant elects to do this, the applicant must do the following:

(1) State when a report applies to multiple applications and identify all related applications for which the report is submitted by NADA or ANADA number.

(2) Ensure that the primary application contains a list of the NADA or ANADA numbers of all related applications.

(3) Submit a completed Form FDA 2301 to the primary application and each related application with reference to the primary application by NADA/ ANADA number and submission date for the complete report of the common information.

(4) All other information specific to a particular NADA/ANADA must be included in the report for that particular NADA/ANADA.

(d) *Reporting forms*. Applicant must report adverse drug experiences and product/manufacturing defects on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301 ''Transmittal of Periodic Reports and Promotional Material for New Animal Drugs,'' in accordance with directions provided on the forms. Computer-generated equivalents of Form FDA 1932 or Form FDA 2301, approved by FDA prior to use, may be used. Form FDA 1932 and Form FDA 2301 may be obtained on the Internet at http://www.cvm.fda.gov/cvm, by telephoning the Division of Surveillance (HFV–210), or by submitting a written request to the following address: Food and Drug Administration, Center for Veterinary Medicine, Division of Surveillance (HFV–210), 7500 Standish Pl., Rockville, MD 20855–2764.

(e) *Records to be maintained*. The applicants and nonapplicants must maintain records and reports of all information required by this section for a period of 5 years after the date of submission.

(f) *Access to records and reports*. The applicant and nonapplicant must, upon request from any authorized FDA officer or employee, at all reasonable times, permit such officer or employee to have access to copy and to verify all such required records and reports.

(g) *Mailing addresses*. Completed 15-day alert reports, periodic drug experience reports, and special drug experience reports must be submitted to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855–2764. Three-day alert reports must be submitted to the appropriate FDA district office or local FDA resident post. Addresses for district offices and resident posts may be obtained from the Internet at http://www.fda.gov.

(h) *Withdrawal of approval*. If FDA finds that the applicant has failed to establish the required records, or has failed to maintain those records, or failed to make the required reports, or has refused access to an authorized FDA officer or employee to copy or to verify such records or reports, FDA may withdraw approval of the application to which such records or reports relate. If FDA determines that withdrawal of the approval is necessary, the agency shall give the applicant notice and opportunity for hearing, as provided in § 514.200, on the question of whether to withdraw approval of the application.

(i) *Disclaimer*. Any report or information submitted under this section and any release of that report or information by FDA will be without prejudice and does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse event. A person need not admit, and may deny, that the report or information constitutes an admission that a drug caused or contributed to an adverse event.

Dated: January 21, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2549 Filed 2–1–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8971]

RIN 1545–BA49

New Markets Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that was published in the **Federal Register** on December 26, 2001 (66 FR 66307). This document contains temporary regulations that provide guidance for taxpayers claiming the new markets tax credit under section 45D.

DATES: This correction is effective December 26, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Handleman (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 45D of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8971) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8971), which is the subject of FR. Doc. 01–31528, is corrected as follows:

On page 66310, column 1, under the paragraph heading ''Part 1—Income Taxes'', following paragraph 1, please insert in the amendatory instruction ''Par. 1a. The undesignated center heading immediately preceding § 1.30–1 is revised to read as follows: Credits Allowable Under Sections 30 through 45D''.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–2621 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8976]

RIN 1545–AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8976) that were published in the **Federal Register** on Wednesday, January 9, 2002 (67 FR 1075) providing guidance on methods of valuing dollar-value LIFO pools under section 472.

DATES: This correction is effective January 9, 2002.

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 472 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8976) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8976), which are the subject of FR Doc. 02–184, is corrected as follows:

1. On page 1075, columns 2 and 3, in the preamble under the paragraph heading ''*Paperwork Reduction Act*'', the existing language is removed and the following language is added in its place.

The collections of information in this final rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1767.

The collections of information in this regulation are in § 1.472–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv). To elect the IPIC method, a taxpayer must file Form 970, ''Application to Use LIFO Inventory Method.'' This information is required to inform the Commissioner regarding the taxpayer's elections under the IPIC method. This information will be used to determine whether the taxpayer is properly accounting for its dollar-value pools under the IPIC method. The collections of information are required if the taxpayer wants to obtain the tax benefits of the LIFO method. The likely respondents are business or other for-profit institutions, and/or small businesses or organizations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collections of information should be received by March 20, 2002. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting burden contained in § 1.472.–8(e)(3)(iii)(B)(*3*) and (e)(3)(iv) is reflected in the burden of Form 970.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

§ 1.472–8 [Corrected]

2. On page 1088, column 3, § 1.472–8(e)(3)(iii)(E)(i), *Example 1.*, line 21, the language ''items in R's inventories fall within the 2-digit'' is corrected to read ''items in R's inventory fall within the 2-digit.''

3. On page 1094, column 2, § 1.472–8(e)(3)(v)(B), lines 23 and 24, the language ''year as required by paragraph (e)(3)(iv)(B)(1) of this section. Because a'' is corrected to read ''year. See paragraph (e)(3)(iv)(B)(1) of this section for an example of this computation. Because a.''

LaNita VanDyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–2626 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–002]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Crescent Railroad Drawbridge, Mile 481.4, Upper Mississippi River at Rock Island, Illinois. This deviation allows the drawbridge to remain closed to navigation for 31 days from 12:01 a.m. on January 21, 2002, until 12:01 a.m. on February 21, 2002. The drawbridge shall open on signal if at least six (6) hours advance notice is given.

DATES: This temporary deviation is effective from 12:01 a.m., January 21, 2002, until 12:01 a.m., February 21, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. The Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: On December 31, 2001 the Burlington Northern Santa Fe Railroad requested the bridge be maintained in the closed-to-navigation position to allow the bridge owner time for preventative maintenance in the winter when there is less impact on navigation instead of scheduling maintenance in the summer when river traffic increases. The drawbridge operation regulations require the drawbridge to open on signal.

The Crescent Railroad Drawbridge provides a vertical clearance of 25.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

This deviation allows the bridge to remain closed to navigation from 12:01

a.m. on January 21, 2002, until 12:01 a.m. on February 21, 2002. The drawbridge will open on signal if at least six (6) hours advance notice is given.

Dated: January 15, 2002.

Roy J. Casto,

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

[FR Doc. 02–2634 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–00–123]

RIN 2115–AE47

Drawbridge Operation Regulations; Siesta Drive Drawbridge, Gulf Intracoastal Waterway, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Siesta Drive drawbridge across the Gulf Intracoastal Waterway, mile 71.6 at Sarasota, Florida. This rule allows the drawbridge to open every 20 minutes between the hours of 7 a.m. and 6 p.m., Monday through Friday, except Federal holidays. This action is intended to improve movement of morning commuter traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: This rule is effective March 6, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD7–00–123] and are available for inspection or copying at Commander (obr) Seventh Coast Guard District, 909 SE 1st Ave, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 22, 2001 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Siesta Drive Drawbridge, Gulf Intracoastal Waterway, Florida in the **Federal Register** (66 FR 6513). We received 5 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Siesta Drive bascule bridge is a two lane narrow undivided urban arterial roadway which is severely congested due to insufficient capacity. This rule will extend the existing 20 minute weekday schedule to cover the morning commuter period. The existing regulation allows the bridge to open on signal, except from 11 a.m. until 6 p.m. daily, the draw need only open on the hour, 20 minutes past the hour, and 40 minutes past the hour. This rule extends the beginning of the twenty minute opening schedule from 11 a.m. to 7 a.m., Monday through Friday, except Federal holidays. On weekends and Federal holidays, the draw will open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, 20 minutes past the hour, and 40 minutes past the hour. Current data shows that the bridge opens less than once per hour between 7 a.m. and 6 p.m., Monday through Friday, except Federal holidays so the effect on vessels will not be unreasonable.

Discussion of Comments and Changes

We received five letters of comment concerning this proposed rule. Four letters supported the proposal. One letter writer was under the impression that the proposed regulation would allow the bridge to begin opening to vessel traffic at 7 a.m. No changes were made to the proposed rule as a result of the comments.

Regulatory Evaluation

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

The economic impact of this rule will be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule only slightly modifies the existing bridge schedule.

Small Entities

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

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Siesta Drive Bridge during the hours of 7 a.m. to 11 a.m., Monday through Friday, except Federal holidays. 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 not have a significant economic impact on a substantial number of small entities because this rule only slightly modifies the existing operation schedule and the maximum waiting time for vessels to pass will be 20 minutes.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.287(b–1) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) The draw of the Siesta Drive bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour.

* * * * *

Dated: January 16, 2002.

James S. Carmichael,

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

[FR Doc. 02–2635 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–225]

Drawbridge Operation Regulations: Cheesequake Creek, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit railroad bridge, mile 0.2, across the Cheesequake Creek in New Jersey. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. February 18, 2002 through 6 p.m. March 2, 2002. This temporary deviation is necessary to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from February 18, 2002 through March 2, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The New Jersey Transit railroad bridge has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The bridge owner, New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary electric drive and brake system maintenance at the bridge. The nature of these repairs will require the bridge to be closed to navigation during the implementation of this work.

The marine operators that normally use this waterway were contacted regarding this temporary deviation and no objections were received. This deviation to the operating regulations will allow the bridge to remain in the closed position from 7 a.m. on February 18, 2002 through 6 p.m. on March 2, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: January 17, 2002.

G.N. Naccara,

Rear Admiral, Coast Guard, Commander First Coast Guard District.

[FR Doc. 02–2637 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–01–004a; FRL–7133–1]

Approval and Promulgation of State Implementation Plans; State of Alaska; Fairbanks

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Alaska. This

revision provides for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Fairbanks Nonattainment Area. This action also approves the use of the ''CO Emissions Model'' for SIP development purposes in EPA Region 10.

DATES: This direct final rule will be effective on April 5, 2002, without further notice, unless EPA receives relevant adverse comment by March 6, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's requests, and other information relevant to this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information is organized as follows:

I. Background Information.
 A. What National Ambient Air Quality Standard (NAAQS) is considered in today's action?
 B. What is the history behind this action?
 C. What Clean Air Act (CAA) statutory, regulatory, and policy requirements must be met to approve this action?
II. EPA's Review of the Fairbanks CO Plan.
 A. Does the Fairbanks CO Plan meet all the procedural requirements as required by Section 110(a)(2) of the CAA?
 B. Does the Fairbanks CO plan include a comprehensive, accurate, current base year inventory from all sources as required in section 187(a)(1) and periodic revisions as required in section 187(a)(5) of the CAA?
 C. Does the Fairbanks CO plan meet the requirements of section 187(a)(7) of the CAA which require that serious CO areas submit an Attainment Demonstration which includes annual emissions reductions necessary for reaching attainment by the deadline?
 D. Has the State adopted transportation control measures (TCMs) for the purpose of reducing CO emissions as required by section 182(d)(1) and described in section 108(f) (1)(A) of the CAA?
 E. Does the Fairbanks CO plan include a forecast of vehicle miles traveled (VMT) for each year before the attainment year of 2001 as required by 187(a) (2) (A) of the CAA?
 F. Does the Fairbanks CO plan include contingency measures required by Section 187(a)(3) of the CAA?
 G. What levels of CO are estimated for the base year and projected for future years and does the Fairbanks CO plan provide for reasonable further progress (RFP) as required by Section 172(c)(2) and Section 171(1) of the CAA?
 H. Is the motor vehicle emission budget approvable as required by Section 176(c)(2)(A) of the CAA and outlined in conformity rules, 40 CFR 93.118(e)(4)?
 I. Does Fairbanks have an Inspection and Maintenance (I/M) program in place that meets EPA requirements in section 182(a)(2)(B)of the CAA?
 J. Are there controls on stationary sources of CO as required by Section 172(c)(5) of the CAA?
III. Summary of EPA's Action.
IV. Administrative Requirements.

I. Background Information

A. What National Ambient Air Quality Standard (NAAQS) Is Considered in Today's Action?

CO is among the ambient air pollutants for which EPA has established a health-based standard and is the pollutant that is the subject of this action. CO is a colorless, odorless gas emitted in combustion processes. CO enters the bloodstream through the lungs and reduces oxygen delivery to the body's organs and tissues. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, and learning ability, and with illness and death for those who already suffer from cardiovascular disease, particularly angina or peripheral vascular disease.

Under section 109(a)(1)(A) of the CAA, we have established primary, health-related NAAQS for CO: 9 parts per million (ppm) averaged over an 8-hour period, and 35 ppm averaged over 1 hour. Fairbanks has never exceeded the 1-hour NAAQS; therefore, the State Implementation Plan revision (Fairbanks CO plan), and this action address only the 8-hour CO NAAQS. Attainment of the 8-hour CO NAAQS is achieved if not more than one non-overlapping 8-hour average in any consecutive 2-year period per monitoring site exceeds 9 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances).

B. What Is the History Behind This Action?

Upon enactment of the 1990 CAA Amendments, areas meeting the requirements of section 107(d) of the CAA were designated nonattainment for CO by operation of law. Under section 186(a) of the CAA, each CO nonattainment area was also classified by operation of law as either moderate or serious depending on the severity of the area's air quality problems. Fairbanks was classified as a moderate CO nonattainment area. Moderate CO nonattainment areas were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. If a moderate CO nonattainment area was unable to attain the CO NAAQS by December 31, 1995, the area was reclassified as a serious CO nonattainment area by operation of law. Fairbanks was unable to meet the CO NAAQS by December 31, 1995, and was reclassified as a serious nonattainment area effective March 30, 1998. As a result of the reclassification, the State had 18 months or until October 1, 1999, to submit a new Fairbanks CO plan demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for all serious CO areas.

The required Fairbanks CO plan was not submitted by October 1, 1999, and we made a finding of failure to submit the required plan (See 65 FR 17444, April 3, 2000) which triggered the 18-month time clock for mandatory application of sanctions and a year time clock for additional sanctions and the requirement for a Federal Implementation Plan under the CAA. A complete Fairbanks CO plan was due by October 3, 2001, to stop the clocks.

On August 30, 2001, the Alaska Department of Environmental Conservation (ADEC) submitted the Fairbanks CO plan as a revision to the Alaska SIP. We determined this submittal to be complete and stopped the sanctions' clocks effective September 24, 2001.

Fairbanks did not have the two years of clean data required to attain the standard by December 31, 2000, the required attainment date for CO serious areas, and under section 186(a)(4) of the CAA, Alaska requested and EPA granted a one year extension of the attainment date deadline to December 31, 2001 (66 FR 28836, May 25, 2001).

C. What Clean Air Act (CAA) Statutory, Regulatory, and Policy Requirements Must Be Met To Approve This Action?

Section 172 of the CAA contains general requirements applicable to SIP revisions for nonattainment areas. Sections 186 and 187 of the CAA set out additional air quality planning requirements for CO nonattainment areas.

EPA has issued a ''General Preamble'' describing the agency's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I requirements. In this direct final rulemaking action, we are applying these policies to the Fairbanks CO plan, taking into consideration specific factual issues presented.

II. EPA's Review of the Fairbanks CO Plan

A. Does the Fairbanks CO Plan Meet All the Procedural Requirements as Required by Section 110(a)(2) of the CAA?

The CAA requires States to observe certain procedural requirements in developing implementation plans and revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Public noticing for a public meeting held on July 17, 2001, occurred through advertisements in the Fairbanks Daily News Miner and the Internet. The SIP submittal includes a description of the public meeting where the public had the opportunity to comment on the issues addressed in the plan. Also included are the comments received from the public and the response developed by the ADEC staff. Following the required public participation, the State adopted the Fairbanks CO plan on July 27, 2001. The Fairbanks CO Plan demonstrates it has met the procedural requirements of section 110(a)(2) of the CAA.

B. Does the Fairbanks CO Plan Include a Comprehensive, Accurate, Current Base Year Inventory From All Sources as Required in Section 187(a)(1) and Periodic Revisions as Required in Section 187(a)(5) of the CAA?

Yes. Fairbanks submitted a base year inventory for 1995 based on EPA guidance that determined that an inventory for 1995 would satisfy the requirement for a base year inventory. A periodic inventory for 1998 was also submitted. The inventories contain point, area, on-road and non-road mobile source data, and documentation. The inventories were prepared for a typical winter day for each of the years. Emissions for these groupings are presented in the following table.

Emission category	Daily emissions (tons/day)	
	Base year 1995	Periodic year 1998
Point Sources ...	4.14	4.20
Area Sources	1.53	1.34
Non-road mobile sources	4.00	3.72
On-road mobile sources	21.69	17.74
Total	31.36	27.01

Total average daily, CO season emissions associated with the Fairbanks nonattainment area for the 1995 base year are 31.36 tons per day. The methodologies used to prepare the base year emissions inventory, as described in the Fairbanks CO plan, are acceptable.

The plan must also revise the inventory every three years until the area reaches attainment. The methodologies used to prepare the periodic year emissions inventory, as described in the Fairbanks CO plan, are acceptable. A discussion of how these inventories meet the requirements needed for approval is in the technical support document (TSD) for this action. Detailed inventory data is contained in the docket maintained by EPA.

C. Does the Fairbanks CO Plan Meet the Requirements of Section 187(a)(7) of the CAA Which Require That Serious CO Areas Submit an Attainment Demonstration Which Includes Annual Emissions Reductions Necessary for Reaching Attainment by the Deadline?

The Fairbanks CO Plan contains an attainment demonstration using rollback modeling to show that emission reductions resulting from implementation of control measures are sufficient to ''roll back'' the design value to a concentration at or below the NAAQS for CO of 9 ppm. Alaska showed that the 8-hour design value concentration of 9.0 predicted for 2001, the attainment year, documents attainment of the 8-hour CO NAAQS.

D. Has the State Adopted Transportation Control Measures (TCMs) for the Purpose of Reducing CO Emissions as Required by Section 182(d)(1) and Described in Section 108(f) (1)(A) of the CAA?

Section 187(b)(2) of the CAA requires States with serious CO nonattainment areas to submit a SIP revision that includes transportation control strategies and measures to offset any growth in emissions due to growth in vehicle miles traveled (VMT) or vehicle trips. In developing such strategies, a State must consider measures specified in section 108(f) of the CAA and choose and implement such measures as are necessary to demonstrate attainment with the NAAQS. TCMs are designed to reduce mobile pollutant emissions by either improving transportation efficiency or reducing single-occupant vehicle trips. The EPA has reviewed the TCMs in the Fairbanks CO plan and approves them. Our full review of the TCMs is included in the TSD for this action. Following is a brief description of the TCMs included in the plan.

Engine Preheater Control Measure

A control measure included in the plan to reduce motor vehicle cold start emissions was passed by the Fairbanks North Star Borough (the Borough) on April 12, 2001. The local ordinance requires employers with 275 or more parking spaces to provide power to electrical outlets at temperatures of +20° F or lower. In addition, provisions were included to require new or enlarged parking lots of 275 spaces or more to install electrical outlets for parking spaces intended to be used by motorists for more than two hours and to provide power. Provisions were also included for recordkeeping, maintaining existing plug-ins in an operable condition, and penalties for failure to comply. This mandatory component of the plug-in program will help insure that emission reductions are being achieved through plugging-in at temperatures of 20° F and colder when thermal inversions often occur.

Other Control Measures

Engine preheaters are used extensively throughout Fairbanks to ensure vehicles can be easily started under extremely cold conditions. Vehicle emission testing in Alaska has confirmed that preheating vehicles, a practice commonly referred to as ''plugging-in,'' provides a substantial reduction in motor vehicle idling time and cold start emissions as described in section 108(f)(1)(A)(xi)and (xii). Recognizing the many benefits of plugging-in, the Borough has a long-standing practice of expanding the number of parking spaces with electrical outlets. A recent survey showed that more than 90% of employee parking areas with more than 100 spaces are currently equipped with electrical outlets. The Borough also conducted public awareness campaigns to encourage the use of plug-ins at home and at parking spaces with electrical outlets.

Transit system improvements include expanded service and free wintertime service. The Borough also ran a public awareness campaign to boost transit ridership. These measures have resulted in a 72% increase in ridership during the CO season.

In addition, a total of 11 separate highway improvement projects focusing on intersection and signal improvements have been completed in the nonattainment area during the past 5 years. These projects have a small regional effect on emissions.

E. Does the Fairbanks CO Plan Include a Forecast of Vehicle Miles Traveled (VMT) for Each Year Before the Attainment Year of 2001 as Required by 187(a)(2)(A) of the CAA?

Yes. Estimates of average winter weekday VMT were supplied by Alaska Department of Transportation and Public Facilities (ADOT&PF). VMT was projected to grow at a rate of 1.2% per year from 1995 to 2001.

Fairbanks has committed to preparing annual VMT estimates and forecasts and to submitting these reports (''VMT tracking reports'') to EPA. Under section 187(a)(3) of the Act, annual VMT tracking reports provide a potential basis for triggering implementation of contingency measures in the event that estimates of actual VMT exceed the forecasts contained in the prior annual VMT tracking report.

F. Does the Fairbanks CO Plan Include Contingency Measures Required by Section 187(a)(3) of the CAA?

Section 187(a)(3) of the Act requires serious CO nonattainment areas, such as Fairbanks, to submit a plan revision that provides for contingency measures. The CAA specifies that such measures are to be implemented if any estimate of VMT submitted in an annual VMT tracking report exceeds the VMT predicted in the most recent prior forecast or if the area fails to attain the NAAQS by the attainment date. As a general rule, contingency measures must be structured to take effect without further action by the State or EPA upon the occurrence of certain triggering events.

The Fairbanks Plan includes contingency measures that meet the requirements of section 187(a)(3) of the CAA. In the event that Fairbanks exceeds the ambient CO standard, a number of contingency measures have been established to provide additional emission reductions. Measures are focused on expanded transit operations, increasing the number of parking spaces equipped with electrical plug-in units, and road system improvements. Fairbanks will be implementing these measures whether or not they have a violation which automatically triggers contingency measures.

G. What Levels of CO Are Estimated for the Base Year and Projected for Future Years and Does the Fairbanks CO Plan Provide for Reasonable Further Progress (RFP) as Required by Section 172(c)(2) and Section 171(1) of the CAA?

Under the CAA, states have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. Section 172(c)(1) of the CAA requires all nonattainment plans to contain provisions to provide for ''the implementation of all reasonably available control measures as expeditiously as practicable'' and to provide for the attainment of the applicable national ambient standard. Further, section 172(c)(2) states that such plan provisions shall require RFP.

Fairbanks has made considerable progress in reducing carbon monoxide emissions over the past three decades. CO concentrations have decreased from a second-high eight-hour average of 19.0 ppm and 45 violations in 1983, to a second-high eight-hour average of 8.9 ppm and zero violations in calendar year 2000. The implementation of local control programs contributed to those reductions. These programs in combination with state and federal programs such as the clean vehicles standard and activity changes have produced a 25.4% reduction in total emissions in the nonattainment area between 1995 and 2001. Based on these considerations, EPA finds that RFP has been demonstrated.

H. Is the Motor Vehicle Emission Budget Approvable as Required by Section 176(c)(2)(A) of the CAA and Outlined in Conformity Rules, 40 CFR 93.118(e)(4)?

Section 176(c)(2)(A) of the CAA requires regional transportation plans to be consistent with the motor vehicle emissions budget contained in the applicable air quality plans for the Fairbanks area. The motor vehicle emissions budget that is established for the 2001 attainment year is approved for Fairbanks. It is as follows:

FNSB MOTOR VEHICLE EMISSIONS BUDGET

Source category	CO emissions for 2001 (tons/day)
On-Road Sources—Initial Idle	6.49
On-Road Sources—Traveling	7.91
Motor Vehicle Emissions Budget (total on-road source emissions)	14.40

The TSD summarizes how the CO motor vehicle emissions budget meets the criteria contained in the conformity rule (40 CFR 93.118(e)(4)) and is approved for conformity. The initial idle emissions are based on actual vehicle testing and the traveling emissions are based on an emissions model.

This action also approves the use of the ''CO Emissions Model'' for SIP development purposes. The CO Emissions Model is an on-road motor vehicle emission factor model that was specifically developed for cases like the Fairbanks CO attainment SIP. In August of 1999, EPA reviewed and preliminarily approved the use of the CO Emissions Model for CO SIP development purposes, due to the unique CO issues involved in Alaska and the absence of a more recent update to the MOBILE model at that time. Today's document formalizes that approval of the use of the CO Emissions Model for SIP development for a limited number of CO areas in EPA Region 10 in low altitude regions.

The CO Emissions Model is considered an interim update to MOBILE5b developed to take advantage of the best information currently available on CO emissions, particularly for cold climates, such as Alaska. As such, the CO Emissions Model is not required to be used for SIP development in any area, however, it was approved for use on a voluntary basis for SIP development prior to the official release of MOBILE6, EPA's next motor vehicle emission factor model. MOBILE6 was not available at the time that the Fairbanks attainment SIP was being developed to meet FNSB's regulatory time constraints. However, since EPA is expected to approve MOBILE6 early this year, MOBILE6 should be used for the next control strategy SIP for Fairbanks.

When EPA's approval for the current Fairbanks CO attainment SIP is effective, all future transportation conformity determinations for CO in

Fairbanks must be based on the CO Emissions Model until MOBILE6 is officially released. When MOBILE6 is released, Fairbanks must rely upon either the CO Emissions Model or MOBILE6 for new conformity analyses that begin prior to the end of the grace period for use of MOBILE6, which EPA intends to establish as two years after MOBILE6's official release. After the end of the MOBILE6 conformity grace period which EPA intends to establish under 40 CFR 93.111 when it officially releases the model, all new conformity analyses must be based on MOBILE6.

Fairbanks is currently the only area that has used the CO Emissions Model in its SIP which EPA has formally acted upon. Therefore, no other area should be using the CO Emissions Model for transportation conformity purposes at this time. However, the above Fairbanks policy would apply to any other areas that have completed significant SIP work with the CO Emissions Model prior to MOBILE6's release. At this time, EPA anticipates that Medford, Oregon, and Anchorage, Alaska, are the only other areas that have developed CO SIPs with the CO Emissions Model. EPA will expect future SIP submissions in these areas to be based on Mobile6. Areas that have questions about using the CO Emissions Model should consult the EPA Region 10 Office on whether this is appropriate.

I. Does Fairbanks Have an Inspection and Maintenance (I/M) Program in Place That Meets EPA Requirements in Section 182(a)(2)(B) of the CAA?

Yes. Fairbanks primary CO control measure is their I/M program initially implemented in 1985. Since then, Fairbanks has continued to improve its performance. Improved program elements include: test equipment and procedures, quality assurance and quality control procedures, vehicle repair requirements and enforcement. The Fairbanks I/M program, improvements and amendments, have been adopted through previous SIP revisions (51 FR 8203, September 15, 1986; 54 FR 31522, July 31, 1989; 60 FR 17232, April 5, 1995; 64 FR 72940, December 29, 1999) or are being acted on in other **Federal Register** documents (67 FR 822, January 8, 2002 and 67 FR 849, January 8, 2002).

J. Are There Controls on Stationary Sources of CO as Required by Section 172(c)(5) of the CAA?

Yes. Section 172(c)(5) of the CAA requires States with nonattainment areas to include in their SIPs a permit program for the construction and operation of new or modified major stationary sources in nonattainment areas. In a separate, prior action, we approved the new source review permit program for Alaska. (See 60 FR 8943, February 16, 1995.)

III. Summary of EPA's Actions

We are approving the following elements of the Fairbanks CO Attainment Plan, as submitted on August 30, 2001:

A. Procedural requirements, under section 110(a)(1) of the CAA;

B. Baseline and projected emission inventories, under sections 172(c)(3) and 187(a)(1) of the CAA;

C. Attainment demonstration, under section 187(a)(7) of the CAA;

D. The TCM program under 182(d)(1) and 108(f)(A) of the CAA

E. VMT forecasts under section 187(a)(2)(A) of the CAA;

F. Contingency measures under section 187(a)(3) of the CAA.

G. RFP demonstration, under sections 171(1), 172(c)(2), and 187(a)(7) of the CAA;

H. The conformity budget under section 176(c)(2)(A) of the CAA and section 93.118 of the transportation conformity rule (40 CAR part 93, subpart A); and

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Parts 52

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

Dated: January 16, 2002.

Randall F. Smith,

Acting Regional Administrator, Region 10.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(32) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(32) On August 30, 2001 the Alaska Department of Environmental Conservation submitted revisions to the Carbon Monoxide State Implementation Plan for Fairbanks, Alaska.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50.030, as adopted 7/27/01, effective 9/21/01.

(B) Assembly Ordinance 2001–17 mandating a Fairbanks North Star Borough motor vehicle plug-in program, as adopted 4/12/2001, effective 4/13/01.

(ii) Additional Material.

Volume II, Section III.C of the State Air Quality Control Plan adopted 7/27/01, effective 9/21/01; Volume III.C3, III.C.5, C.11, and C.12 of the Appendices; adopted 7/27/01, effective 9/21/01.

[FR Doc. 02–2505 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 02–59; MM Docket No. 99–257; RM–9683]

Radio Broadcasting Services; Centerville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Radio Licensing, Inc. (''RLI''). In response to a petition filed by Wolverine Broadcasting, the *Notice* in this proceeding proposed the allotment of Channel 274A at Centerville, Texas. *See* 64 FR 59124, November 2, 1999. In response to comments filed in this proceeding, Channel 278A rather than Channel 274A was allotted to Centerville, Texas. Radio Licensing, Inc. filed a Petition for Reconsideration but on December 17, 2001, withdrew the Petition for Reconsideration in compliance with Section 1.420(j) of the Commission's Rules. As requested, we shall dismiss the Petition for Reconsideration. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 99–257, adopted January 2, 2002, and released January 11, 2002. The full text of this Commission decision is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2620 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–159; MM Docket No. 00–41; RM–9369]

Radio Broadcasting Services; Oakville, Raymond, and South Bend, Washington

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 65 FR 15886 (March 24, 2000), this document reallots Channel 249C1 from Raymond, Washington to Oakville, Washington, and provides Oakville with its first local aural transmission service. The coordinates for Channel 249C1 at Oakville are 46–57–14 North Latitude and 123–29–21 West Longitude. This document also reallots Channel 289C2 from South Bend, Washington, to Raymond, Washington. The coordinates for Channel 289C2 at Raymond are 46–55–53 North Latitude and 123–44–02 West Longitude. This document also allots Channel 300A to South Bend, Washington, as its first local aural transmission service. The coordinates for Channel 300A at South Bend are 46–38–19 North Latitude and 123–49–54 West Longitude. The foregoing new allotments have received the concurrence of the Canadian government.

DATES: Effective March 4, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–41, adopted January 9, 2002, and released January 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Oakville, Channel 249C1, and removing Channel 249C3 and adding Channel 289C2 at Raymond, and removing Channel 289C2 and adding Channel 300A at South Bend.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2617 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–169, MM Docket No. 00–121, RM–9674]

Digital Television Broadcast Service; Kingston, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WRNN–TV Associates Limited Partnership, licensee of station WRNN–TV, substitutes DTV channel 48 for DTV channel 21. *See* 66 FR 39726, August 1, 2001. DTV channel 48 can be allotted to Kingston, New York, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–29–19 N. and 73–56–52 W.) with a power of 200 kW, HAAT of 388 meters and with a DTV service population of 8,326 thousand.

With this action, this proceeding is terminated.

DATES: Effective March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Aronowitz, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–121, adopted January 24, 2002, and released January 25, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, 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 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York, is amended by removing DTV channel 21 and adding DTV channel 48 at Kingston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–2618 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1502, 1515, 1517, 1536 and 1552

[FRL 7128–7]

Acquisition Regulation: Empower Procurement Officials and Miscellaneous Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to eliminate higher level reviews (in certain situations) which may delay timely service to customers and which are unnecessary given the fact that the qualified individuals most familiar with a contracting action should have the authority and responsibility for making decisions relating to that action. In addition, certain technical amendments are being made to add procedures for class deviations, to revise definitions, and to clarify regulations.

DATES: This rule is effective on May 6, 2002, without further notice, unless EPA receives adverse comments by March 6, 2002. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted to: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460. Telephone: (202) 564–4369.

SUPPLEMENTARY INFORMATION:

A. Background

EPA's Office of Acquisition Management conducted an internal assessment of its organization and determined that in some situations there were too many levels of review required prior to making contract awards and other contract-related decisions. Consequently, steps were taken to revise internal policies, including issuance of an EPAAR class deviation dated May 30, 2001, to eliminate certain higher level reviews and give authority and responsibility for making decisions relating to contract actions to the qualified individuals most familiar with the contracting action (i.e., empowerment.) This rule incorporates the EPAAR class deviation dated May 30, 2001, which made the necessary empowerment changes to the EPAAR on an interim basis. This rule is being issued as a direct final rule because the changes being made are not considered controversial and adverse comments are not expected.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule streamlines agency internal operating procedures and will, therefore, not have a significant economic impact on small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risk.

G. 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'' are 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 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 rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, 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 government ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule 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 rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by 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), in its procurement activities when applicable. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 13211

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

K. Submission to Congress and the 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 rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1501, 1502, 1515, 1517, 1536 and 1552

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for parts 1501, 1502, 1515, 1517, 1536 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Section 1501.404 is added to Subpart 1501.4 to read as follows:

1501.404 Class deviations.

Requests for class deviations to the FAR and the EPAAR shall be submitted to the HCA for processing in accordance with FAR 1.404 and this section. Requests shall include the same type of information prescribed in 1501.403 for individual deviations.

3. Section 1501.602–3 is amended by revising paragraph (b) to read as follows:

1501.602–3 Ratification of unauthorized commitments.

* * * * *

(b)(1) *Ratification Approval.* The Chief of the Contracting Office (CCO) is delegated authority to be the ratifying official. In order to act as the ratifying official, a CCO must have delegated contracting officer authority. A CCO cannot approve a ratification if he/she acted as a contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section.

(2) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

(i) Must possess a contracting officer's warrant and be in the 1102 job series;

(ii) Are prohibited from re-delegating their ratification authority;

(iii) Must submit copies of ratification actions to the cognizant Office of Acquisition Management Division Director at Headquarters; and

(iv) As with other ratifying officials, must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602–3(c) and the EPAAR.

* * * * *

4. Section 1502.100 is revised to read as follows:

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati. For purposes of ratification authority only, CCO is also defined as Regional Contracting Officer Supervisors and Office of Acquisition Management Service Center Managers. (See 1501.602–3(b)(2) for the criteria for this ratification authority).

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Senior Procurement Executive (SPE) means the Director, Office of Acquisition Management.

5. Section 1515.303 is revised to read as follows:

1515.303 Responsibilities.

The Source Selection Authority (SSA) is established as follows:

(a) Acquisitions having a potential value of $25,000,000 or more: Service Center Manager (SCM). This authority is not redelegable.

(b) Acquisitions having a potential value of less than $25,000,000, but more than $10,000,000: SCM, who has the authority to redelegate SSA authority to a warranted 1102. If redelegated, review by another warranted 1102 designated by the SCM is also required. A Regional Contracting Officer Supervisor may act as the SSA, as determined on a case-by-case basis, by the Director, Superfund/RCRA Regional Procurement Operations Division (SRRPOD).

(c) Acquisitions having a potential value of $10,000,000 or less: The contracting officer.

§ 1515.404 [Amended]

6. Section 1515.404–474 is amended by removing the term ''CCO'' and adding in its place ''SCM''.

§ 1517.204 [Amended]

7. Section 1517.204 is amended by removing the term ''CCO'' and adding in its place ''SCM''.

§ 1536.602 [Amended]

8. Section 1536.602–2 is amended in paragraph (b) by removing the term ''Chief of the Contracting Office (CCO)'' and adding in its place ''Service Center Manager (SCM)''.

9. Section 1552.211–79 is amended by revising paragraph (b)(3) to read as follows:

1552.211–79 Compliance with EPA Policies for Information Resources Management.

* * * * *

(b) * * *

(3) EPA Computing and Telecommunications Services. *The Enterprise Technology Services Division (ETSD) Operational Directives Manual* contains procedural information about the operation of the Agency's computing and telecommunications services. Contractors performing work for the Agency's National Computer Center or those who are developing systems which will be operating on the Agency's national platforms must comply with procedures established in the Manual. (This document may be found at: <*http://basin.rtpnc.epa.gov/etsd/directives.nsf*>).

* * * * *

10. Section 1552.219–73 is amended by revising the chart in paragraph (a) to read as follows:

1552.219–73 Small Disadvantaged Business Targets.

* * * * *

(a) * * *

Contractor targets	NAICS industry subsector(s)	Dollars	Percentage of total contract value
Total Prime Contractor Targets (including joint venture partners and team members)			
Total Subcontractor Targets			

* * * * *

11. Section 1552.232–73 is amended by revising paragraph (b)(2) as follows:

1552.232–73 Payments—fixed rate services contract.

* * * * *

(b) * * *

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(l) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (b)(3) of this clause. Reimbursable costs in connection with subcontracts shall be payable to subcontractors consistent with FAR 32.504 in the same manner as for services purchased directly for the contract under paragraph (a)(1) of this clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(l) of this clause.

* * * * *

Dated: January 25, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

[FR Doc. 02–2509 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125626–01]

RIN 1545–BA25

Unit Livestock Price Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the use of the *unit-livestock-price method* of accounting. The proposed regulations affect livestock raisers and other farmers that elect to use the unit-livestock-price method. These proposed regulations provide rules relating to the annual reevaluation of unit prices and the depreciation of livestock raised for draft, breeding, or dairy purposes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 6, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 12, 2002, at 10 a.m. must be received by May 22, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–125626–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–125626–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html*. The public hearing will be held in room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, A. Katharine Jacob Kiss at (202) 622–4920; concerning submissions and the hearing, Sonya M. Cruse at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 471 of the Internal Revenue Code (Code). The unit-livestock-price method, contained in § 1.471–6, provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer that elects to use the unit-livestock-price method must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. Once established, unit prices and classifications selected by the taxpayer must be consistently applied in all subsequent years. Prior to 1997, § 1.471–6 did not allow a taxpayer to make any changes in the unit prices without first obtaining the consent of the Commissioner.

Following the enactment of section 263A, the IRS and Treasury Department published Notice 88–24 (1988–1 C.B. 491), which provided guidance to taxpayers regarding the application of the uniform capitalization rules to property produced in the trade or business of farming. Notice 88–24 indicated that forthcoming regulations would modify the rule contained in § 1.471–6 and require that taxpayers adjust their unit prices upward, from time to time as specified by those regulations, to reflect increases in costs taxpayers experience in raising livestock. Notice 88–24 also provided safe-harbor unit prices for the unit-livestock-price method with respect to female cattle raised or purchased by a taxpayer for purposes of breeding (beef cattle) or milk production (dairy cattle).

Contemporaneous with the publication of the section 263A temporary and proposed regulations on August 22, 1997, (TD 8729, 1997–2 C.B. 35), the IRS and Treasury Department modified the final regulations under § 1.471–6 to provide, for taxable years beginning after August 22, 1997, a taxpayer using the unit-livestock-price method must annually reevaluate its unit prices and must adjust the prices upward to reflect increases in the costs of raising livestock. The consent of the Commissioner is not required to make such upward adjustments, but no other changes in the classification of animals or unit prices may be made without the consent of the Commissioner.

On September 5, 2000, the IRS and Treasury Department published final regulations under section 263A (TD 8897, 2000–36 I.R.B. 234) in the **Federal Register** (65 FR 50638), which obsoleted Notice 88–24, relating to rules for property produced in a farming business. The preamble to these final regulations discussed comments received regarding the modification made to the unit-livestock-price method and indicated the IRS and Treasury Department's intent to study this method. These proposed regulations are promulgated in response to those comments.

Explanation of Provisions

Commentators expressed concern that if taxpayers are required to annually reevaluate their unit prices, they should be able to both increase and decrease the unit prices to reflect all changes in the costs of raising livestock. The IRS and Treasury Department agree that to the extent the unit-livestock-price method requires an annual reevaluation of the unit prices, a taxpayer should be able to increase and decrease its unit prices without securing the consent of the Commissioner. Such a change is not a change in method of accounting, but an application of the unit-livestock-price method, similar to the application of a standard cost method. Consequently, the proposed regulations allow a taxpayer to both increase and decrease its unit prices without obtaining the consent of the Commissioner.

However, the IRS and Treasury Department also recognize a broader concern that the requirement to annually reevaluate unit prices may have eliminated much of the simplicity of the unit-livestock-price method. In this respect, the IRS and Treasury Department welcome comments on how the rules could be made simpler to apply. For example, the IRS and Treasury Department request comments on whether safe harbor unit prices similar to those announced in Notice 88–24 should be made available again to taxpayers using the unit-livestock-price method. If so, comments specifically are requested as to an index or measure those safe harbor unit prices should be based on and how often those safe harbor unit prices should be adjusted.

Commentators also suggested that the unit-livestock-price method should be clarified to allow a taxpayer to remove from inventory animals that have been raised for use in a taxpayer's trade or business (such as a breeding cow) and depreciate the cost of the animal based on its inventoriable cost. Under § 1.471–6(g), a livestock raiser who uses the unit-livestock-price method is permitted to elect to include animals purchased for draft, breeding, or dairy purposes in inventory or to treat those animals as property used in a trade or business subject to depreciation after maturity. In contrast, § 1.471–6(f) does not specifically permit a livestock raiser who uses the unit-livestock-price method to elect to treat animals raised for draft, breeding, or dairy purposes as property used in a trade or business subject to depreciation after maturity. There does not appear to be a current rationale for distinguishing between animals raised versus animals purchased for draft, breeding, or dairy purposes. Accordingly, the proposed regulations clarify that a livestock raiser that uses the unit-livestock-price method may elect to remove from inventory after maturity an animal raised for draft, breeding, or dairy purposes and treat the inventoriable cost of such animal as an asset subject to depreciation.

Effective Date

These regulations are applicable to taxable years ending after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 12, 2002, at 10 a.m. in room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and 8 copies) by May 22, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is A. Katharine Jacob Kiss, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.471–6 also issued under 26 U.S.C. 471. * * *

2. Section 1.471–6 is amended as follows:

1. In paragraph (c), the last sentence is removed.

2. Paragraph (f) is revised.

3. In paragraph (g), the first sentence is amended by removing the language ''capital assets'' and adding in its place ''property used in a trade or business.''

The revisions read as follows:

§ 1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(f) A taxpayer that elects to use the ''unit-livestock-price method'' must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. The inventoriable costs of animals raised for draft, breeding, or dairy purposes can, at the election of the livestock raiser, be included in inventory or treated as property used in a trade or business subject to depreciation after maturity. See § 1.263A–4 for rules regarding the computation of inventoriable costs for purposes of the unit-livestock-price method. Once established, the methods of accounting used by the taxpayer to determine unit prices and to classify animals must be consistently applied in all subsequent taxable years. A taxpayer that uses the unit-livestock-price method must annually reevaluate its unit prices and adjust the prices either upward to reflect increases, or downward to reflect decreases, in the costs of raising livestock. The consent of the Commissioner is not required to make such upward or downward adjustments. No other changes in the classification of animals or unit prices may be made without the consent of the Commissioner. See § 1.446–1(e) for procedures for obtaining the consent of the Commissioner. The provisions of this paragraph (f) apply to taxable years ending after the [date that final regulations are published in the **Federal Register**.]

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–2625 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–142686–01]

RIN 1545–BA26

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rules; extension of time to submit written comments; correction.

SUMMARY: This document corrects the **DATES** section of the document published on January 28, 2002 (67 FR 3846), which changed the date of the public hearing on the proposed regulations that relate to incentive stock options and options granted under employee stock purchase plans and extended the time to submit outlines of oral comments. This document corrects the **DATES** section to indicate that we are also extending the time to submit written comments and for the hearing. The **DATES** section is corrected to read as set forth below.

DATES: The public hearing will be held May 14, 2002, beginning at 10 a.m. Written comments and outlines of oral comments must be received by April 23, 2002.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:ITA:RU (REG–142686–01), Room 5226, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–142686–01), Courier's Desk, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040; concerning submissions of comments, the hearing, and/or to be place on the building access list to attend the hearing, Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001, (66 FR 57023), announced that a public hearing on the proposed regulations relating to incentive stock options and options granted under employee stock purchase plans would be held on March 7, 2002, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has changed to May 14, 2002, at 10 a.m. in the IRS Auditorium. Written comments and outlines of oral comments must be received April 23, 2002.

Guy Traynor,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–2417 Filed 1–30–02; 4:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–01–144]

RIN 2115–AE47

Drawbridge Operation Regulations; Sanibel Causeway Drawbridge, Okeechobee Waterway, Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Sanibel Causeway Drawbridge, mile 151, Okeechobee Waterway, Fort Myers, Florida. This proposed rule would allow the drawbridge to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except that from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour and three quarter hour. This action is intended to improve the movement of vehicular traffic while not unreasonably interfering with the needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 5, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–144] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33130, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–01–144], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 406, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Sanibel Causeway bascule bridge is a two lane, narrow, undivided arterial roadway which is the only roadway onto and off of Sanibel Island. This roadway is severely congested due to insufficient vehicular capacity. The existing operating schedule is published in 33 CFR 117.317(j). The existing regulation allows the draw to open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m., the draw will open on signal if at least a five minute advance notice is given. The proposed rule will allow the bridge to open the bridge on the hour and half hour during the heavy vehicle traffic period from 7 a.m. until 6 p.m. each weekday.

From March 1, 2001 to April 30, 2001, the Coast Guard authorized a temporary deviation from the published regulations to determine the impacts of a change in the current operating regulation. The temporary deviation entitled Notice of temporary deviation from regulations (CGD07–01–005) was published on February 9, 2001 in 66 FR 9660. This temporary deviation allowed the bridge to open on signal, except that from 7 a.m. to 6 p.m. daily, the draw only had to open on the hour and half-hour. The five-minute advanced notice from 10 p.m. until 6 a.m. in 33 CFR 117.317(j) remained in effect during the deviation. This test resulted in a minor improvement for vehicular traffic; however, during weekends and Federal holidays there was a significant increase in vessel traffic congestion while awaiting the timed bridge openings. Due to the strong currents and sea conditions in the immediate area where vessels were required to standby for the next bridge opening, vessel safety was reduced.

We received 72 timely comments from the public concerning the temporary deviation. Sixty-one of the comments supported the half-hour opening on the weekdays and 11 supported the quarter-hour opening on weekends during the testing period of March 1, 2001 to April 30, 2001. The 61 comments were from motorists and the 11 comments were from vessels owners.

Discussion of Proposed Rule

In order to meet the reasonable needs of navigation while not significantly impacting vehicular traffic, the Coast Guard proposes to allow the Sanibel Causeway bridge to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays the bridge need open only on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. until 6 a.m. daily, the draw shall open on signal if at least five minutes advance notice is given to the bridge tender. This proposed rule will facilitate the movement of vehicle traffic across the bridge while not unreasonably interfering with or decreasing vessel safety while awaiting passage through the draw.

Regulatory Evaluation

This proposed rule is not a ‘‘significant regulatory action’’ under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this proposed rule only slightly modifies the existing bridge operation schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the Sanibel Causeway bridge during the hours of 7 a.m. to 6 p.m. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only slightly modifies the existing bridge operation schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed 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 my result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $1,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 117:

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.317(j) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(j) The draw of the Sanibel Causeway bridge, mile 151, shall open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. until 6 a.m. daily, the draw shall open on signal if at least five minutes advance notice is given to the bridge tender.

Dated: January 16, 2002.

James S. Carmichael,

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

[FR Doc. 02–2636 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–01–004b; FRL–7133–2]

Approval and Promulgation of State Implementation Plans; State of Alaska; Fairbanks

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Alaska. This revision provides for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Fairbanks Nonattainment Area. This action also proposes to approve the use of the ''CO Emissions Model'' for SIP development purposes in EPA Region 10.

DATES: Written comments must be received in writing by March 6, 2002.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue Suite 303, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 16, 2002.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 02–2506 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–139–1–7535; FRL–7137–4]

Proposed Approval and Promulgation of Implementation Plans; Texas; Agreed Orders with Airlines and Memoranda of Agreement with Airport Owners and Operators Regarding Control of Pollution from Airport Ground Support Equipment for the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Agreed Orders and Memoranda of Agreement (MOA) requiring airlines and owners and operators at major airports in the Dallas/Fort Worth (DFW) area to reduce oxides of nitrogen (NO_X) emissions from airport Ground support

Equipment (GSE) under their control. In addition, the EPA proposes to approve revisions to the GSE emissions inventory. These Orders and MOAs will contribute to attainment of the ozone standard in the DFW area. The EPA is proposing approval of these revisions to the Texas SIP to regulate emissions of NO_X in accordance with the requirements of the Federal Clean Air Act.

DATES: Written comments must be received on or before March 6, 2002.

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

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237. e-mail: *sherrow.herb@epa.gov.*

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

What Is the Background for This Action?

On April 19, 2000, the Texas Natural Resource Conservation Commission (TNRCC) adopted a rule that required reductions of NO_X emissions attributable to GSE from the airports which have the most air carrier operations in the DFW area. The reductions required were up to 90% of the 1996 base inventory. The rule was submitted to us as a SIP revision on April 28, 2000.

On March 26, 2001, we proposed approval of a number of rules affecting the DFW area, which included the GSE rule and the reductions expected from the rule, 9.54 tpd. (66 FR 16432).

On May 23, 2001, the TNRCC repealed the GSE rule; therefore, we can not take final action on the rule. Subsequently, the TNRCC adopted Agreed Orders and MOAs with American Airlines, American Eagle Airlines, Delta Airlines, Southwest Airlines, the City of Dallas, the Dallas/Fort Worth International Airport Board, and the City of Fort Worth as substitutes for the repealed rule.

On July 2, 2001, the TNRCC submitted its repeal of the GSE rule and substitution of the Agreed Orders and MOAs to us as a SIP revision.

On October 15, 2001, the TNRCC submitted a SIP revision which showed the reductions expected from the Agreed Orders and MOAs to be 6.12 tpd in 2007 based on a revised emissions inventory of GSE. The TNRCC also submitted the revised inventory for approval.

What Is the Effect of the Orders and MOAs?

The rule required NO_X reductions up to 90% of the 1996 emissions from GSE. The rule applied to the airlines operating at the Dallas/Forth Worth International Airport in Dallas and Tarrant Counties, Love Field in Dallas County, and Alliance and Meacham Airports in Tarrant County.

The Orders and MOAs were executed with the airlines and owners/operators at these airports as a substitute for the rule. The orders and MOAs mirror the rule in that they require up to 90% reductions of NO_X from GSE from airports in the DFW area. The sum of reductions in the orders and MOAs from the airlines and the airport owners/operators is up to 90% of the 2007 base inventory.

The revised 2007 NO_X emissions inventory is 6.8 tpd compared to the original inventory of 10.6 tpd; therefore, the reductions expected are 6.12 tpd. The inventory revision is the result of a more refined inventory of the GSE population at the airports in the DFW area. A study was conducted to survey actual equipment at the major airports in the DFW area which refined the original estimate.

Please refer to the March 26, 2001, proposed **Federal Register** document for details of the emission reduction requirements from the rule and the TSD for this action for details of the emission reduction requirements from the Agreed Orders and MOAs and the revised inventory.

Proposed Action

We are proposing approval of the Agreed Orders and MOAs with airlines and airport owners and operators in the DFW ozone nonattainment area and the revised emission inventory and associated emission reduction requirements as a replacement for the rule we proposed to approve at 66 FR 16432 (March 26, 2001). The Orders and MOAs provide reductions that are equivalent to those that would have occurred under the rule, and are a federally enforceable mechanism to achieve NO_X reductions necessary for the DFW attainment demonstration plan.

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 (Pub. L. 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 Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: January 22, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–2613 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–58; MM Docket No. 00–161; RM–9929]

Radio Broadcasting Services; Fort Bridger, WY and Woodruff, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Allocations Branch denies the petition for rule making filed by M. Kent Frandsen proposing the reallotment of Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah, as the community's first local aural transmission service. *See* 65 FR 55930, September 15, 2000. We find no compelling public interest benefit in removing the sole local service at Fort Bridger, Wyoming to provide a first local service at Woodruff, Utah.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–161, adopted January 2, 2002, and released January 11, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2619 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–257; FCC 01–358]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend the rules governing very high frequency public coast (VPC) stations. The Commission proposes, among other things, to allow the U.S. Coast Guard and VPC licensees the additional flexibility to choose non-offset, as well as offset, channel pairs when negotiating an agreement regarding the specification of two narrowband channel pairs that will be used by the U.S. Coast Guard for its Ports and Waterways Safety System (PAWSS); to expand the types of emission masks and designators permissible under the Commission's Rules in order to allow VPC licensees to provide a full range of data services; to allow public coast stations to maintain station documents via electronic means; and to limit the posting requirement for VPC geographic area licensees to a document identifying the licensee and a representative that may be contacted to answer any questions regarding the operation of a particular station transmitter.

DATES: Comments are due on or before April 5, 2002, Reply Comment are due on or before May 6, 2002.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Commission's *Fourth Further Notice of Proposed Rule Making,* PR Docket No. 92–257, FCC 01–358, adopted December 11, 2001, and released on December 28, 2001. The full text of this *Fourth Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Qualex International, Inc., 445 12th Street, SW., Room CY–B402 Washington, DC 20554. The full text may also be downloaded at: http://www.fcc.gov/Wireless/Orders/2000/fcc01358.txt. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Fourth Further Notice of Proposed Rule Making

The Commission concludes that it should not propose to amend Part 80 by adopting from Part 90 the occupied bandwidth, emission mask and related regulations that govern the operation of stations that employ 12.5 kHz narrowband channels. Its intent when it adopted the rule permitting offset operations without also adopting technical rules for narrowband operations was to maximize licensee flexibility by leaving such matters to the licensee's discretion, so long as emissions are attenuated at the edge of the licensee's contiguous 25 kHz channels.

The Commission tentatively concludes that it should not propose to reallocate to VPC stations nine channel pairs in the 156.0375–156.2375 MHz band and the 160.6375–160.8375 MHz band without first assessing the demand for this spectrum from Part 90 public safety eligibles.

The Commission proposes that the channel pairs for the Ports and Waterways Safety System. That are negotiated between the Coast Guard and the VPC licensee may be either offset channel pairs on non-offset channel pairs. The Commission believes that the parties should be able to specify non-offset channel pairs in addition to the currently permitted offset channel pairs, if it is mutually agreeable.

The Commission proposes to expand the permissible Part 80 emission masks and designators. It believes that expanding the data emissions permissible under Part 80 is in the public interest because such an approach would allow VPC licensees to provide a full range of data services.

The Commission proposes to allow station documents to be maintained electronically at a licensee's primary office or made available to the Commission via secured access to the licensee's Internet web site. It believes that electronic record keeping, particularly when done by Digital Selective Calling (DSC)-compatible systems, minimizes the risk of inadvertent data entry error. Furthermore, it believes that provision of such information via secured access to the licensee's web page would provide the Commission with quick and easy access.

The Commission proposes to limit the posting requirement for VPC Geographic area licensees to be satisfied by a document identifying the licensee, as a representative of the licensee. Who may be contacted to answer any question regarding the operation of a particular station transmitter. It believes that relaxing the posting requirement will reduce the regulatory burden on VPC licensees while still ensuring that the vital information inherent in the posting requirement (i.e., location of the license and telephone number of the licensee's representative) will still be maintained at each station.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603 (the RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA) (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA))), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Fourth Further Notice of Proposed Rule Making.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth Further Notice of Proposed Rule Making* provided in paragraph 30 of the item. The Commission will send a copy of the *Fourth Further Notice of Proposed Rule Making,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Fourth Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rules

Our objective is to determine whether it is in the public interest, convenience, and necessity to provide VHF public coast stations with additional flexibility and to improve the stations' efficiency as well. These proposals include (1) allowing the Coast Guard and VHF public coast licensees to have the additional flexibility to choose non-offset, as well as offset, channel pairs when negotiating an agreement regarding the specification of two narrowband channel pairs that will be used by the Coast Guard for its Ports and Waterways Safety System, (2) establishing emission masks and designators that will accommodate the full range of data services that may be provided by VHF public coast licensees, (3) extending tariff forbearance to public coast licensees, and (4) allowing public coast stations to maintain station documents via electronic means.

B. Legal Basis

Authority for issuance of this item is contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996).

The proposed rules would affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* 63 FR 40059, July 27, 1998, in this proceeding, the Commission defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order* 65 FR 76966, December 8, 2000, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected. Any entity that is capable of providing radiotelephone service is eligible to hold a public coast license. Therefore, we seek comment on the number of small entities that use VHF public coast spectrum and the number of small entities that are likely to apply for licenses under the various proposals described herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *Fourth Further Notice of Proposed Rule Making* neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

E. Significant Alternatives Minimizing the Economic Impact on Small Entities

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The *Fourth Further Notice of Proposed Rule Making* solicits comment on a variety of alternatives set forth herein. For example, the Commission seeks comment on its proposal to relax for all entities, including small entities, the current license posting requirement in order to reduce the regulatory burden. The Commission also seeks to reduce the regulatory burden of all entities, including small entities, by permitting the maintenance of records via electronic means. It also seeks comment on the proposal of Maritel, Inc. that the Commission no longer require geographic licensees, including those that are small entities, to provide station identification. Any significant alternative presented in the comments will be considered.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects 47 CFR Part 80

Communications equipment, radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 80 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1.The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.95 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.95 Message charges.

(a) Except as specified in § 20.15(c) of this chapter with respect to commercial mobile radio service providers, charges must not be made for service of:

* * * * *

3. Section 80.207 is amended by revising paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–27500 kHz:.	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP [14]	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
156–162 MHz [2]	F1B, F2B, F2C, F3C, F1D, F2D
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
1626.5–1646.5 MHz	([4])
Radiotelephony:	
1605–27500 kHz [5]	H3E, J3E, R3E
27.5–470 MHz [6]	G3D, G3E
1626.5–1646.5 MHz	([4])
Radiodetermination:	
285–325 kHz [7]	A1A, A2A
	A3N, H3N, J3N, NON
405–525 kHz (Direction Finding) [8]	
154–459 MHz[12]	A1D, A2D, F1D, F2D, G1D, G2D
2.4–9.5 GHz	PON
14.00–14.05 GHz	F3N
Land Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–2850 kHz:	
Manual	A1A, J2A
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, J2A
4000–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP [14]	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, A2A, F1B, F2B
72–76 MHz	A1A, A2A, F1B, F2B
156–162 MHz [2] [15]	F1B, F2B, F2C, F3C, F1D, F2D

Types of stations	Classes of emission
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
Radiotelephony:	
1605–27500 kHz	H3E, J3E, R3E
72–76 MHz	A3E, F3E, G3E
156–470 MHz	G3E
Radiodetermination:	
2.4–9.6 GHz	PON
Distress, Urgency and Safety [8 9]	
500 kHz[10]	A2A and A2B or H2A and H2B
2182 kHz[10 11]	A2B, A3B, H2B, H3E, J2B, and J3E
	A2A, H2A
	A3E, A3X, N0N
8364 kHz	A3E
121.500 MHz	G3E, G3N
123.100 MHz	A3E, A3X, N0N
156.750 and 156.800 MHz[13]	GID
243.000 MHz	
406.025 MHz	

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

[2] Frequencies used for public correspondence and in Alaska 156.425 MHz. *See* §§ 80.371(c), 80.373(f) and 80.385(b). Transmitters approved before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters approved on or after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are approved specifically for each emission designator.

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). *See* § 80.385(b).

[4] Types of emission are determined by the INMARSAT Organization.

[5] Transmitters approved prior to December 31, 1969, for emission H3E, J3E, and R3E and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.

[6] G3D emission must be used only by one-board stations for maneuvering or navigation.

[7] Frequencies used for cable repair operations. *See* § 80.375(b).

[8] For direction finding requirements see § 80.375.

[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

[10] On 500 kHz and 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.

[11] Ships on domestic voyages must use J3E emission only.

[12] For frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz, authorized for offshore radiolocation and related telecommand operations.

[13] Class C EPIRB stations may not be used after February 1, 1999.

[14] NB–DP operations which are not in accordance with CCIR Recommendation 625 or 476 are permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f).

[15] If a station uses another type of digital emission, it must comply with the emission mask requirements of § 90.210 of this chapter.

4. Section 80.213 is amended by revising paragraph (d) to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(d) Ship and coast station transmitters operating in the 156–162 MHz and 216–220 bands must be capable of proper operation with a frequency deviation that does not exceed +/−5 kHz when using any emission authorized by § 80.207.

* * * * *

5. Section 80.302 is amended by revising paragraph (a) to read as follows:

§ 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

(a) When changes occur in the operation of a public coast station which include discontinuance, reduction, suspension, or relocation of a watch required to be maintained on 500 kHz, 2182 kHz, or 156.800 MHz, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

* * * * *

6. Section 80.371 is amended by revising paragraphs (c)(1)(ii) introductory text, (c)(1)(iii), and (c)(3) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States.

* * * * *

(iii) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency. Coordination with Canada is required for offset operations under any circumstance in which operations on either adjoining 25 kHz channel would require such coordination. *See* § 80.57 of this part.

* * * * *

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz),

which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, within six months of the conclusion of the competitive bidding procedures to determine the licensees in each VPCSA, the U.S. Coast Guard shall submit to each licensee of VPCSAs 1–9 a plan specifying up to two channel pairs for use in the PAWSS. The final selection of the PAWSS channel pairs can be negotiated (if the VPCSA licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months) and established by an agreement between the parties. All parties are required to negotiate in good faith. If no agreement is reached within one year of the date the Coast Guard submitted its plan, the Coast Guard may petition the Commission to select up to two channel 12.5 kHz narrowband pairs offset from the channels set forth in the table in paragraph (c)(1)(i) of this section for use in the PAWSS. The Wireless Telecommunications Bureau shall announce the selection of the PAWSS channel pairs by Public Notice.

* * * * *

7. Section 80.405 is amended by redesignating paragraph (c) as (c)(1) and adding new paragraph (c)(2) to read as follows:

§ 80.405 Station license.

* * * * *

(c) * * *

(2) Public coast stations authorized under this part must make available either a clearly legible copy of the authorization for each station at the principal control point of the station or an address or location where the current authorization may be found and a telephone number of that authorization's representative.

* * * * *

8. Section 80.409 is amended by revising paragraph (b)(2) and paragraph (c) introductory text to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) Logs containing entries required by paragraph (c) of this section must be kept either at the principal control point of the station or electronically filed at the station licensee's primary office or available to the Commission via secured access to the licensee's Internet web site. Logs containing entries required by paragraphs (e) and (f) of this section must be kept at the principal radiotelephone operating location while the vessel is being navigated. All entries in their original form must be retained on board the vessel for at least 30 days from the date of entry. Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

* * * * *

(c) *Public coast station logs.* Public coast stations must maintain a log, whether by means of written or automatic logging or a combination thereof. The log must contain the following information:

* * * * *

9. Section 80.471 is revised to read as follows:

§ 80.471 Discontinuance or impairment of service.

Except as specified in § 20.15(b)(3) of this chapter with respect to commercial mobile radio service providers, a public coast station must not discontinue or impair service unless authorized to do so by the Commission.

[FR Doc. 02–2436 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–01–11157]

RIN 2127–AI32

Tire Safety Information; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correction to Notice of proposed rulemaking (NPRM).

SUMMARY: This document contains corrections to the proposal which was published Wednesday, December 19, 2001 (66 FR 65536).

DATES: Written comments may be submitted to this agency and must be received by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: *For technical and policy issues:* Mr. Roger Kurrus, Office of Planning and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The proposal that is the subject of these corrections was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It proposed to establish a new Federal Motor Vehicle Safety Standard that contains provisions to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. The NPRM also contained proposals for providing other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The proposals would apply to all new and retreaded tires for use on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and to all vehicles with a GVWR of 10,000 pounds or less, except for motorcycles and low speed vehicles.

Need for Correction

As published, the proposal contains errors which are in need of clarification.

Correction of Publication

Accordingly, the publication on December 19, 2001 (66 FR 65536) is corrected as follows:

On page 65537 in the second column, line 2, the phrase ''(paragraphs (a)–(e))'' is corrected to read ''(paragraphs (a)–(f))'.

On page 65537, footnote 2, paragraph (e), which stated:

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.'' is correct to read: ''(e) ''TIRE INFORMATION'';'' and paragraph (f) is added to read: ''(f) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.''

On page 65537 in the third column, line 7 in the second full paragraph, the phrase ''placard and/or label'' is corrected to read ''placard or placard and label''.

On page 65547, in the third column, beginning on line six, the sentence ''The standard would require tires for passenger cars, multipurpose vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 (10,000 pounds) or less, manufactured on or after November 1, 2003, to comply with the labeling requirements'' is corrected to read as follows: ''The standard would require tires for passenger cars, multipurpose vehicles, trucks, buses and trailers with a GVWR of 10,000 pounds or less, to comply with the labeling requirements. The agency proposes compliance dates for tires according to the following schedule: all P-metric tires manufactured on or after September 1, 2003, and all LT tires manufactured on or after September 1, 2004, would have to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003 would have to comply with the final rule.''

On page 65548, in the first column, in the first full paragraph, in line 9, the phrase ''(paragraphs (a)–(e))'' is corrected to read ''(paragraphs (a)–(f))''.

On page 65548, footnote 23, paragraph (e), which stated: ''(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION'';'' is corrected to read ''(e) ''TIRE INFORMATION'';'' and paragraph (f) is added, to read as follows: ''(f) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.''

On page 65548 in the second column, lines 2 and 5 in the third full paragraph, the phrase ''placard and/or label'' is corrected to read ''placard or placard and label''.

§ 571.110 [Corrected]

S4.3. On page 65561, in the second column, line 7, the phrase ''S4.3(e)'' is corrected to read ''S4.3(e) and (f).''

* * * * *

Issued: January 29, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–2627 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125626–01]

RIN 1545–BA25

Unit Livestock Price Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the use of the *unit-livestock-price method* of accounting. The proposed regulations affect livestock raisers and other farmers that elect to use the unit-livestock-price method. These proposed regulations provide rules relating to the annual reevaluation of unit prices and the depreciation of livestock raised for draft, breeding, or dairy purposes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 6, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 12, 2002, at 10 a.m. must be received by May 22, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–125626–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–125626–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html*. The public hearing will be held in room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, A. Katharine Jacob Kiss at (202) 622–4920; concerning submissions and the hearing, Sonya M. Cruse at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 471 of the Internal Revenue Code (Code). The unit-livestock-price method, contained in § 1.471–6, provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer that elects to use the unit-livestock-price method must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. Once established, unit prices and classifications selected by the taxpayer must be consistently applied in all subsequent years. Prior to 1997, § 1.471–6 did not allow a taxpayer to make any changes in the unit prices without first obtaining the consent of the Commissioner.

Following the enactment of section 263A, the IRS and Treasury Department published Notice 88–24 (1988–1 C.B. 491), which provided guidance to taxpayers regarding the application of the uniform capitalization rules to property produced in the trade or business of farming. Notice 88–24 indicated that forthcoming regulations would modify the rule contained in § 1.471–6 and require that taxpayers adjust their unit prices upward, from time to time as specified by those regulations, to reflect increases in costs taxpayers experience in raising livestock. Notice 88–24 also provided safe-harbor unit prices for the unit-livestock-price method with respect to female cattle raised or purchased by a taxpayer for purposes of breeding (beef cattle) or milk production (dairy cattle).

Contemporaneous with the publication of the section 263A temporary and proposed regulations on August 22, 1997, (TD 8729, 1997–2 C.B. 35), the IRS and Treasury Department modified the final regulations under § 1.471–6 to provide, for taxable years beginning after August 22, 1997, a taxpayer using the unit-livestock-price method must annually reevaluate its unit prices and must adjust the prices upward to reflect increases in the costs of raising livestock. The consent of the Commissioner is not required to make such upward adjustments, but no other changes in the classification of animals or unit prices may be made without the consent of the Commissioner.

On September 5, 2000, the IRS and Treasury Department published final regulations under section 263A (TD 8897, 2000–36 I.R.B. 234) in the **Federal Register** (65 FR 50638), which obsoleted Notice 88–24, relating to rules for property produced in a farming business. The preamble to these final regulations discussed comments received regarding the modification made to the unit-livestock-price method and indicated the IRS and Treasury Department's intent to study this method. These proposed regulations are promulgated in response to those comments.

Explanation of Provisions

Commentators expressed concern that if taxpayers are required to annually reevaluate their unit prices, they should be able to both increase and decrease the unit prices to reflect all changes in the costs of raising livestock. The IRS and Treasury Department agree that to the extent the unit-livestock-price method requires an annual reevaluation of the unit prices, a taxpayer should be able to increase and decrease its unit prices without securing the consent of the Commissioner. Such a change is not a change in method of accounting, but an application of the unit-livestock-price method, similar to the application of a standard cost method. Consequently, the proposed regulations allow a taxpayer to both increase and decrease its unit prices without obtaining the consent of the Commissioner.

However, the IRS and Treasury Department also recognize a broader concern that the requirement to annually reevaluate unit prices may have eliminated much of the simplicity of the unit-livestock-price method. In this respect, the IRS and Treasury Department welcome comments on how the rules could be made simpler to apply. For example, the IRS and Treasury Department request comments on whether safe harbor unit prices similar to those announced in Notice 88–24 should be made available again to taxpayers using the unit-livestock-price method. If so, comments specifically are requested as to an index or measure those safe harbor unit prices should be based on and how often those safe harbor unit prices should be adjusted.

Commentators also suggested that the unit-livestock-price method should be clarified to allow a taxpayer to remove from inventory animals that have been raised for use in a taxpayer's trade or business (such as a breeding cow) and depreciate the cost of the animal based on its inventoriable cost. Under § 1.471–6(g), a livestock raiser who uses the unit-livestock-price method is permitted to elect to include animals purchased for draft, breeding, or dairy purposes in inventory or to treat those animals as property used in a trade or business subject to depreciation after maturity. In contrast, § 1.471–6(f) does not specifically permit a livestock raiser who uses the unit-livestock-price method to elect to treat animals raised for draft, breeding, or dairy purposes as property used in a trade or business subject to depreciation after maturity. There does not appear to be a current rationale for distinguishing between animals raised versus animals purchased for draft, breeding, or dairy purposes. Accordingly, the proposed regulations clarify that a livestock raiser that uses the unit-livestock-price method may elect to remove from inventory after maturity an animal raised for draft, breeding, or dairy purposes and treat the inventoriable cost of such animal as an asset subject to depreciation.

Effective Date

These regulations are applicable to taxable years ending after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 12, 2002, at 10 a.m. in room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and 8 copies) by May 22, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is A. Katharine Jacob Kiss, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.471–6 also issued under 26 U.S.C. 471. * * *

2. Section 1.471–6 is amended as follows:

1. In paragraph (c), the last sentence is removed.

2. Paragraph (f) is revised.

3. In paragraph (g), the first sentence is amended by removing the language ''capital assets'' and adding in its place ''property used in a trade or business.''

The revisions read as follows:

§ 1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(f) A taxpayer that elects to use the ''unit-livestock-price method'' must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. The inventoriable costs of animals raised for draft, breeding, or dairy purposes can, at the election of the livestock raiser, be included in inventory or treated as property used in a trade or business subject to depreciation after maturity. See § 1.263A–4 for rules regarding the computation of inventoriable costs for purposes of the unit-livestock-price method. Once established, the methods of accounting used by the taxpayer to determine unit prices and to classify animals must be consistently applied in all subsequent taxable years. A taxpayer that uses the unit-livestock-price method must annually reevaluate its unit prices and adjust the prices either upward to reflect increases, or downward to reflect decreases, in the costs of raising livestock. The consent of the Commissioner is not required to make such upward or downward adjustments. No other changes in the classification of animals or unit prices may be made without the consent of the Commissioner. See § 1.446–1(e) for procedures for obtaining the consent of the Commissioner. The provisions of this paragraph (f) apply to taxable years ending after the [date that final regulations are published in the **Federal Register**.]

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–2625 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–142686–01]

RIN 1545–BA26

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rules; extension of time to submit written comments; correction.

SUMMARY: This document corrects the **DATES** section of the document published on January 28, 2002 (67 FR 3846), which changed the date of the public hearing on the proposed regulations that relate to incentive stock options and options granted under employee stock purchase plans and extended the time to submit outlines of oral comments. This document corrects the **DATES** section to indicate that we are also extending the time to submit written comments and for the hearing. The **DATES** section is corrected to read as set forth below.

DATES: The public hearing will be held May 14, 2002, beginning at 10 a.m. Written comments and outlines of oral comments must be received by April 23, 2002.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:ITA:RU (REG–142686–01), Room 5226, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–142686–01), Courier's Desk, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040; concerning submissions of comments, the hearing, and/or to be place on the building access list to attend the hearing, Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on November 14, 2001, (66 FR 57023), announced that a public hearing on the proposed regulations relating to incentive stock options and options granted under employee stock purchase plans would be held on March 7, 2002, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has changed to May 14, 2002, at 10 a.m. in the IRS Auditorium. Written comments and outlines of oral comments must be received April 23, 2002.

Guy Traynor,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–2417 Filed 1–30–02; 4:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–01–144]

RIN 2115–AE47

Drawbridge Operation Regulations; Sanibel Causeway Drawbridge, Okeechobee Waterway, Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Sanibel Causeway Drawbridge, mile 151, Okeechobee Waterway, Fort Myers, Florida. This proposed rule would allow the drawbridge to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except that from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour and three quarter hour. This action is intended to improve the movement of vehicular traffic while not unreasonably interfering with the needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 5, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–144] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33130, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–01–144], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 406, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Sanibel Causeway bascule bridge is a two lane, narrow, undivided arterial roadway which is the only roadway onto and off of Sanibel Island. This roadway is severely congested due to insufficient vehicular capacity. The existing operating schedule is published in 33 CFR 117.317(j). The existing regulation allows the draw to open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m., the draw will open on signal if at least a five minute advance notice is given. The proposed rule will allow the bridge to open the bridge on the hour and half hour during the heavy vehicle traffic period from 7 a.m. until 6 p.m. each weekday.

From March 1, 2001 to April 30, 2001, the Coast Guard authorized a temporary deviation from the published regulations to determine the impacts of a change in the current operating regulation. The temporary deviation entitled Notice of temporary deviation from regulations (CGD07–01–005) was published on February 9, 2001 in 66 FR 9660. This temporary deviation allowed the bridge to open on signal, except that from 7 a.m. to 6 p.m. daily, the draw only had to open on the hour and half-hour. The five-minute advanced notice from 10 p.m. until 6 a.m. in 33 CFR 117.317(j) remained in effect during the deviation. This test resulted in a minor improvement for vehicular traffic; however, during weekends and Federal holidays there was a significant increase in vessel traffic congestion while awaiting the timed bridge openings. Due to the strong currents and sea conditions in the immediate area where vessels were required to standby for the next bridge opening, vessel safety was reduced.

We received 72 timely comments from the public concerning the temporary deviation. Sixty-one of the comments supported the half-hour opening on the weekdays and 11 supported the quarter-hour opening on weekends during the testing period of March 1, 2001 to April 30, 2001. The 61 comments were from motorists and the 11 comments were from vessels owners.

Discussion of Proposed Rule

In order to meet the reasonable needs of navigation while not significantly impacting vehicular traffic, the Coast Guard proposes to allow the Sanibel Causeway bridge to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays the bridge need open only on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. until 6 a.m. daily, the draw shall open on signal if at least five minutes advance notice is given to the bridge tender. This proposed rule will facilitate the movement of vehicle traffic across the bridge while not unreasonably interfering with or decreasing vessel safety while awaiting passage through the draw.

Regulatory Evaluation

This proposed rule is not a ‘‘significant regulatory action’’ under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because this proposed rule only slightly modifies the existing bridge operation schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the Sanibel Causeway bridge during the hours of 7 a.m. to 6 p.m. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this proposed rule only slightly modifies the existing bridge operation schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed 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 my result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $1,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 117:

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.317(j) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(j) The draw of the Sanibel Causeway bridge, mile 151, shall open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday and Federal holidays the draw shall open on signal, except from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. until 6 a.m. daily, the draw shall open on signal if at least five minutes advance notice is given to the bridge tender.

Dated: January 16, 2002.

James S. Carmichael,

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

[FR Doc. 02–2636 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–01–004b; FRL–7133–2]

Approval and Promulgation of State Implementation Plans; State of Alaska; Fairbanks

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Alaska. This revision provides for attainment of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Fairbanks Nonattainment Area. This action also proposes to approve the use of the ''CO Emissions Model'' for SIP development purposes in EPA Region 10.

DATES: Written comments must be received in writing by March 6, 2002.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue Suite 303, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 16, 2002.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 02–2506 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–139–1–7535; FRL–7137–4]

Proposed Approval and Promulgation of Implementation Plans; Texas; Agreed Orders with Airlines and Memoranda of Agreement with Airport Owners and Operators Regarding Control of Pollution from Airport Ground Support Equipment for the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Agreed Orders and Memoranda of Agreement (MOA) requiring airlines and owners and operators at major airports in the Dallas/Fort Worth (DFW) area to reduce oxides of nitrogen (NO_X) emissions from airport Ground support

Equipment (GSE) under their control. In addition, the EPA proposes to approve revisions to the GSE emissions inventory. These Orders and MOAs will contribute to attainment of the ozone standard in the DFW area. The EPA is proposing approval of these revisions to the Texas SIP to regulate emissions of NO_X in accordance with the requirements of the Federal Clean Air Act.

DATES: Written comments must be received on or before March 6, 2002.

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

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT:
Herbert R. Sherrow, Jr., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237. e-mail: *sherrow.herb@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document ‘‘we,’’ ‘‘us,’’ and ‘‘our’’ refers to EPA.

What Is the Background for This Action?

On April 19, 2000, the Texas Natural Resource Conservation Commission (TNRCC) adopted a rule that required reductions of NO_X emissions attributable to GSE from the airports which have the most air carrier operations in the DFW area. The reductions required were up to 90% of the 1996 base inventory. The rule was submitted to us as a SIP revision on April 28, 2000.

On March 26, 2001, we proposed approval of a number of rules affecting the DFW area, which included the GSE rule and the reductions expected from the rule, 9.54 tpd. (66 FR 16432).

On May 23, 2001, the TNRCC repealed the GSE rule; therefore, we can not take final action on the rule. Subsequently, the TNRCC adopted Agreed Orders and MOAs with American Airlines, American Eagle Airlines, Delta Airlines, Southwest Airlines, the City of Dallas, the Dallas/Fort Worth International Airport Board, and the City of Fort Worth as substitutes for the repealed rule.

On July 2, 2001, the TNRCC submitted its repeal of the GSE rule and substitution of the Agreed Orders and MOAs to us as a SIP revision.

On October 15, 2001, the TNRCC submitted a SIP revision which showed the reductions expected from the Agreed Orders and MOAs to be 6.12 tpd in 2007 based on a revised emissions inventory of GSE. The TNRCC also submitted the revised inventory for approval.

What Is the Effect of the Orders and MOAs?

The rule required NO_X reductions up to 90% of the 1996 emissions from GSE. The rule applied to the airlines operating at the Dallas/Forth Worth International Airport in Dallas and Tarrant Counties, Love Field in Dallas County, and Alliance and Meacham Airports in Tarrant County.

The Orders and MOAs were executed with the airlines and owners/operators at these airports as a substitute for the rule. The orders and MOAs mirror the rule in that they require up to 90% reductions of NO_X from GSE from airports in the DFW area. The sum of reductions in the orders and MOAs from the airlines and the airport owners/operators is up to 90% of the 2007 base inventory.

The revised 2007 NO_X emissions inventory is 6.8 tpd compared to the original inventory of 10.6 tpd; therefore, the reductions expected are 6.12 tpd. The inventory revision is the result of a more refined inventory of the GSE population at the airports in the DFW area. A study was conducted to survey actual equipment at the major airports in the DFW area which refined the original estimate.

Please refer to the March 26, 2001, proposed **Federal Register** document for details of the emission reduction requirements from the rule and the TSD for this action for details of the emission reduction requirements from the Agreed Orders and MOAs and the revised inventory.

Proposed Action

We are proposing approval of the Agreed Orders and MOAs with airlines and airport owners and operators in the DFW ozone nonattainment area and the revised emission inventory and associated emission reduction requirements as a replacement for the rule we proposed to approve at 66 FR 16432 (March 26, 2001). The Orders and MOAs provide reductions that are equivalent to those that would have occurred under the rule, and are a federally enforceable mechanism to achieve NO_X reductions necessary for the DFW attainment demonstration plan.

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 (Pub. L. 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 Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ‘‘Protection of Children from Environmental Health Risks and Safety Risks’’ (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: January 22, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–2613 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–58; MM Docket No. 00–161; RM–9929]

Radio Broadcasting Services; Fort Bridger, WY and Woodruff, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Allocations Branch denies the petition for rule making filed by M. Kent Frandsen proposing the reallotment of Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah, as the community's first local aural transmission service. *See* 65 FR 55930, September 15, 2000. We find no compelling public interest benefit in removing the sole local service at Fort Bridger, Wyoming to provide a first local service at Woodruff, Utah.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–161, adopted January 2, 2002, and released January 11, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–2619 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–257; FCC 01–358]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend the rules governing very high frequency public coast (VPC) stations. The Commission proposes, among other things, to allow the U.S. Coast Guard and VPC licensees the additional flexibility to choose non-offset, as well as offset, channel pairs when negotiating an agreement regarding the specification of two narrowband channel pairs that will be used by the U.S. Coast Guard for its Ports and Waterways Safety System (PAWSS); to expand the types of emission masks and designators permissible under the Commission's Rules in order to allow VPC licensees to provide a full range of data services; to allow public coast stations to maintain station documents via electronic means; and to limit the posting requirement for VPC geographic area licensees to a document identifying the licensee and a representative that may be contacted to answer any questions regarding the operation of a particular station transmitter.

DATES: Comments are due on or before April 5, 2002, Reply Comment are due on or before May 6, 2002.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html.*

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Commission's *Fourth Further Notice of Proposed Rule Making,* PR Docket No. 92–257, FCC 01–358, adopted December 11, 2001, and released on December 28, 2001. The full text of this *Fourth Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Qualex International, Inc., 445 12th Street, SW., Room CY–B402 Washington, DC 20554. The full text may also be downloaded at: http://www.fcc.gov/Wireless/Orders/2000/fcc01358.txt. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Fourth Further Notice of Proposed Rule Making

The Commission concludes that it should not propose to amend Part 80 by adopting from Part 90 the occupied bandwidth, emission mask and related regulations that govern the operation of stations that employ 12.5 kHz narrowband channels. Its intent when it adopted the rule permitting offset operations without also adopting technical rules for narrowband operations was to maximize licensee flexibility by leaving such matters to the licensee's discretion, so long as emissions are attenuated at the edge of the licensee's contiguous 25 kHz channels.

The Commission tentatively concludes that it should not propose to reallocate to VPC stations nine channel pairs in the 156.0375–156.2375 MHz band and the 160.6375–160.8375 MHz band without first assessing the demand for this spectrum from Part 90 public safety eligibles.

The Commission proposes that the channel pairs for the Ports and Waterways Safety System. That are negotiated between the Coast Guard and the VPC licensee may be either offset channel pairs on non-offset channel pairs. The Commission believes that the parties should be able to specify non-offset channel pairs in addition to the currently permitted offset channel pairs, if it is mutually agreeable.

The Commission proposes to expand the permissible Part 80 emission masks and designators. It believes that expanding the data emissions permissible under Part 80 is in the public interest because such an approach would allow VPC licensees to provide a full range of data services.

The Commission proposes to allow station documents to be maintained electronically at a licensee's primary office or made available to the Commission via secured access to the licensee's Internet web site. It believes that electronic record keeping, particularly when done by Digital Selective Calling (DSC)-compatible systems, minimizes the risk of inadvertent data entry error. Furthermore, it believes that provision of such information via secured access to the licensee's web page would provide the Commission with quick and easy access.

The Commission proposes to limit the posting requirement for VPC Geographic area licensees to be satisfied by a document identifying the licensee, as a representative of the licensee. Who may be contacted to answer any question regarding the operation of a particular station transmitter. It believes that relaxing the posting requirement will reduce the regulatory burden on VPC licensees while still ensuring that the vital information inherent in the posting requirement (i.e., location of the license and telephone number of the licensee's representative) will still be maintained at each station.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603 (the RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA) (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA))), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Fourth Further Notice of Proposed Rule Making.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Fourth Further Notice of Proposed Rule Making* provided in paragraph 30 of the item. The Commission will send a copy of the *Fourth Further Notice of Proposed Rule Making,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *Fourth Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

A. Need for, and Objectives of, the Proposed Rules

Our objective is to determine whether it is in the public interest, convenience, and necessity to provide VHF public coast stations with additional flexibility and to improve the stations' efficiency as well. These proposals include (1) allowing the Coast Guard and VHF public coast licensees to have the additional flexibility to choose non-offset, as well as offset, channel pairs when negotiating an agreement regarding the specification of two narrowband channel pairs that will be used by the Coast Guard for its Ports and Waterways Safety System, (2) establishing emission masks and designators that will accommodate the full range of data services that may be provided by VHF public coast licensees, (3) extending tariff forbearance to public coast licensees, and (4) allowing public coast stations to maintain station documents via electronic means.

B. Legal Basis

Authority for issuance of this item is contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996).

The proposed rules would affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* 63 FR 40059, July 27, 1998, in this proceeding, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order* 65 FR 76966, December 8, 2000, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected. Any entity that is capable of providing radiotelephone service is eligible to hold a public coast license. Therefore, we seek comment on the number of small entities that use VHF public coast spectrum and the number of small entities that are likely to apply for licenses under the various proposals described herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *Fourth Further Notice of Proposed Rule Making* neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

E. Significant Alternatives Minimizing the Economic Impact on Small Entities

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The *Fourth Further Notice of Proposed Rule Making* solicits comment on a variety of alternatives set forth herein. For example, the Commission seeks comment on its proposal to relax for all entities, including small entities, the current license posting requirement in order to reduce the regulatory burden. The Commission also seeks to reduce the regulatory burden of all entities, including small entities, by permitting the maintenance of records via electronic means. It also seeks comment on the proposal of Maritel, Inc. that the Commission no longer require geographic licensees, including those that are small entities, to provide station identification. Any significant alternative presented in the comments will be considered.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects 47 CFR Part 80

Communications equipment, radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 80 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1.The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.95 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.95 Message charges.

(a) Except as specified in § 20.15(c) of this chapter with respect to commercial mobile radio service providers, charges must not be made for service of:

* * * * *

3. Section 80.207 is amended by revising paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–27500 kHz:.	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP [14]	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
156–162 MHz [2]	F1B, F2B, F2C, F3C, F1D, F2D
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
1626.5–1646.5 MHz	([4])
Radiotelephony:	
1605–27500 kHz [5]	H3E, J3E, R3E
27.5–470 MHz [6]	G3D, G3E
1626.5–1646.5 MHz	([4])
Radiodetermination:	
285–325 kHz [7]	A1A, A2A
	A3N, H3N, J3N, NON
405–525 kHz (Direction Finding) [8]	
154–459 MHz[12]	A1D, A2D, F1D, F2D, G1D, G2D
2.4–9.5 GHz	PON
14.00–14.05 GHz	F3N
Land Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–2850 kHz:	
Manual	A1A, J2A
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, J2A
4000–27500 kHz:	
Manual	A1A, J2A
DSC	F1B, J2B
NB–DP [14]	F1B, J2B
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, A2A, F1B, F2B
72–76 MHz	A1A, A2A, F1B, F2B
156–162 MHz [2 15]	F1B, F2B, F2C, F3C, F1D, F2D

Types of stations	Classes of emission
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
Radiotelephony:	
1605–27500 kHz	H3E, J3E, R3E
72–76 MHz	A3E, F3E, G3E
156–470 MHz	G3E
Radiodetermination:	
2.4–9.6 GHz	PON
Distress, Urgency and Safety [8] [9]	
500 kHz [10]	A2A and A2B or H2A and H2B
2182 kHz [10] [11]	A2B, A3B, H2B, H3E, J2B, and J3E
	A2A, H2A
	A3E, A3X, N0N
8364 kHz	A3E
121.500 MHz	G3E, G3N
123.100 MHz	A3E, A3X, N0N
156.750 and 156.800 MHz [13]	GID
243.000 MHz	
406.025 MHz	

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.
[2] Frequencies used for public correspondence and in Alaska 156.425 MHz. *See* §§ 80.371(c), 80.373(f) and 80.385(b). Transmitters approved before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters approved on or after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are approved specifically for each emission designator.
[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). *See* § 80.385(b).
[4] Types of emission are determined by the INMARSAT Organization.
[5] Transmitters approved prior to December 31, 1969, for emission H3E, J3E, and R3E and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[6] G3D emission must be used only by one-board stations for maneuvering or navigation.
[7] Frequencies used for cable repair operations. *See* § 80.375(b).
[8] For direction finding requirements see § 80.375.
[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.
[10] On 500 kHz and 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.
[11] Ships on domestic voyages must use J3E emission only.
[12] For frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz, authorized for offshore radiolocation and related telecommand operations.
[13] Class C EPIRB stations may not be used after February 1, 1999.
[14] NB–DP operations which are not in accordance with CCIR Recommendation 625 or 476 are permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f).
[15] If a station uses another type of digital emission, it must comply with the emission mask requirements of § 90.210 of this chapter.

4. Section 80.213 is amended by revising paragraph (d) to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(d) Ship and coast station transmitters operating in the 156–162 MHz and 216–220 bands must be capable of proper operation with a frequency deviation that does not exceed +/−5 kHz when using any emission authorized by § 80.207.

* * * * *

5. Section 80.302 is amended by revising paragraph (a) to read as follows:

§ 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

(a) When changes occur in the operation of a public coast station which include discontinuance, reduction, suspension, or relocation of a watch required to be maintained on 500 kHz, 2182 kHz, or 156.800 MHz, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

* * * * *

6. Section 80.371 is amended by revising paragraphs (c)(1)(ii) introductory text, (c)(1)(iii), and (c)(3) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the listed EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States.

* * * * *

(iii) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency. Coordination with Canada is required for offset operations under any circumstance in which operations on either adjoining 25 kHz channel would require such coordination. *See* § 80.57 of this part.

* * * * *

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz),

which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, within six months of the conclusion of the competitive bidding procedures to determine the licensees in each VPCSA, the U.S. Coast Guard shall submit to each licensee of VPCSAs 1–9 a plan specifying up to two channel pairs for use in the PAWSS. The final selection of the PAWSS channel pairs can be negotiated (if the VPCSA licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months) and established by an agreement between the parties. All parties are required to negotiate in good faith. If no agreement is reached within one year of the date the Coast Guard submitted its plan, the Coast Guard may petition the Commission to select up to two channel 12.5 kHz narrowband pairs offset from the channels set forth in the table in paragraph (c)(1)(i) of this section for use in the PAWSS. The Wireless Telecommunications Bureau shall announce the selection of the PAWSS channel pairs by Public Notice.

* * * * *

7. Section 80.405 is amended by redesignating paragraph (c) as (c)(1) and adding new paragraph (c)(2) to read as follows:

§ 80.405 Station license.

* * * * *

(c) * * *

(2) Public coast stations authorized under this part must make available either a clearly legible copy of the authorization for each station at the principal control point of the station or an address or location where the current authorization may be found and a telephone number of that authorization's representative.

* * * * *

8. Section 80.409 is amended by revising paragraph (b)(2) and paragraph (c) introductory text to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) Logs containing entries required by paragraph (c) of this section must be kept either at the principal control point of the station or electronically filed at the station licensee's primary office or available to the Commission via secured access to the licensee's Internet web site. Logs containing entries required by paragraphs (e) and (f) of this section must be kept at the principal radiotelephone operating location while the vessel is being navigated. All entries in their original form must be retained on board the vessel for at least 30 days from the date of entry. Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

* * * * *

(c) *Public coast station logs.* Public coast stations must maintain a log, whether by means of written or automatic logging or a combination thereof. The log must contain the following information:

* * * * *

9. Section 80.471 is revised to read as follows:

§ 80.471 Discontinuance or impairment of service.

Except as specified in § 20.15(b)(3) of this chapter with respect to commercial mobile radio service providers, a public coast station must not discontinue or impair service unless authorized to do so by the Commission.

[FR Doc. 02–2436 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–01–11157]

RIN 2127–AI32

Tire Safety Information; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correction to Notice of proposed rulemaking (NPRM).

SUMMARY: This document contains corrections to the proposal which was published Wednesday, December 19, 2001 (66 FR 65536).

DATES: Written comments may be submitted to this agency and must be received by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: *For technical and policy issues:* Mr. Roger Kurrus, Office of Planning and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The proposal that is the subject of these corrections was published in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. It proposed to establish a new Federal Motor Vehicle Safety Standard that contains provisions to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. The NPRM also contained proposals for providing other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The proposals would apply to all new and retreaded tires for use on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and to all vehicles with a GVWR of 10,000 pounds or less, except for motorcycles and low speed vehicles.

Need for Correction

As published, the proposal contains errors which are in need of clarification.

Correction of Publication

Accordingly, the publication on December 19, 2001 (66 FR 65536) is corrected as follows:

On page 65537 in the second column, line 2, the phrase ''(paragraphs (a)–(e))'' is corrected to read ''(paragraphs (a)–(f))'.

On page 65537, footnote 2, paragraph (e), which stated:

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.'' is correct to read: ''(e) ''TIRE INFORMATION'';'' and paragraph (f) is added to read: ''(f) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.''

On page 65537 in the third column, line 7 in the second full paragraph, the phrase ''placard and/or label'' is corrected to read ''placard or placard and label''.

On page 65547, in the third column, beginning on line six, the sentence ''The standard would require tires for passenger cars, multipurpose vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 (10,000 pounds) or less, manufactured on or after November 1, 2003, to comply with the labeling requirements'' is corrected to read as follows: ''The standard would require tires for passenger cars, multipurpose vehicles, trucks, buses and trailers with a GVWR of 10,000 pounds or less, to comply with the labeling requirements. The agency proposes compliance dates for tires according to the following schedule: all P-metric tires manufactured on or after September 1, 2003, and all LT tires manufactured on or after September 1, 2004, would have to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003 would have to comply with the final rule.''

On page 65548, in the first column, in the first full paragraph, in line 9, the phrase ''(paragraphs (a)–(e))'' is corrected to read ''(paragraphs (a)–(f))''.

On page 65548, footnote 23, paragraph (e), which stated: ''(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION'';'' is corrected to read ''(e) ''TIRE INFORMATION'';'' and paragraph (f) is added, to read as follows: ''(f) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.''

On page 65548 in the second column, lines 2 and 5 in the third full paragraph, the phrase ''placard and/or label'' is corrected to read ''placard or placard and label''.

§ 571.110 [Corrected]

S4.3. On page 65561, in the second column, line 7, the phrase ''S4.3(e)'' is corrected to read ''S4.3(e) and (f).''

* * * * *

Issued: January 29, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–2627 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

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

Animal and Plant Health Inspection Service

[Docket No. 01–124–1]

Environmental Impact Statement; Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement relative to a proposed release into the environment of genetically engineered autocidal pink bollworms as part of an ongoing research effort in the pink bollworm sterile insect program. The environmental impact statement will examine the full range of potential effects the release could have on the environment. We invite the public to comment on what specific issues we should address in the environmental impact statement. Public hearings are planned.

DATES: We will consider all comments that we receive that are postmarked, delivered, or e-mailed by April 5, 2002. We will also consider comments made at public hearings in Riverdale, MD, and Phoenix, AZ. The exact dates, times, and locations for the hearings will be announced in a notice to be published in a future issue of the **Federal Register**.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–124–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–124–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–124–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Stephens, Biological Scientist, Environmental Services, PPD, APHIS, 4700 River Road Unit 152, Riverdale, MD 20737–1234; (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2001, the Animal and Plant Health Inspection Service (APHIS) received an application for a permit from APHIS's Plant Protection Center in Phoenix, AZ, to release genetically engineered pink bollworms (*Pectinophora gossypiella*) in confined on-site experimentation and field performance tests. The pink bollworms are genetically engineered to express an enhanced green fluorescent protein derived from the jellyfish *Aequora victoria*, which could aid in the monitoring of sterilized pink bollworms released in APHIS's ongoing pink bollworm sterile insect technique program. Data from these experiments and tests will be used to determine whether the fluorescent marker affects the behavior or performance of the pink bollworm.

On June 21, 2001, APHIS published in the **Federal Register** (66 FR 33226, Docket No. 01–024–1) a notice of availability of an environmental assessment for the study described above. The environmental assessment considered potential environmental effects that could result from conducting the study. APHIS has considered and responded to all comments received on the environmental assessment, and based on the findings of the environmental assessment, has determined that implementation of the study would not significantly impact the quality of the human environment. On January 11, 2002, APHIS published a notice in the **Federal Register** (67 FR 1434–1435, Docket No. 01–024–2) announcing the availability of the final environmental assessment and finding of no significant impact relative to the issuance of a permit for the confined field study.

Prior to the next phase of research, the Phoenix Plant Protection Center may apply for a permit for the field release of genetically engineered pink bollworm containing the enhanced green fluorescent protein marker gene and a temperature-sensitive lethal gene. The objective of such a release would be to provide an opportunity for evaluating the use of genetically engineered pink bollworm in an autocidal biological control system for area-wide management of pink bollworm.

APHIS plans to prepare an environmental impact statement (EIS) that examines potential environmental effects associated with the field release of genetically engineered pink bollworm containing the enhanced green fluorescent protein marker gene and a temperature-sensitive lethal gene, and other alternatives.

The EIS would analyze and compare the full range of available alternatives, including existing techniques and technologies (no action), as well as the unconfined release into the environment of genetically engineered pink bollworm as explained above. We invite the public to comment on what issues we should address in the EIS. Issues presently under consideration include:

- Potential genetic transformation affecting the environment;
- Persistence of the genetically modified pink bollworm versus wild-type pink bollworm;
- Physical and biological containment measures for the proposed study;
- Potential gene transfer to other insect species;
- Potential gene transfer to non-insect species;

• Potential impacts on humans, including specific population groups such as minorities, low income populations, and children;

• Potential effects of use of genetically engineered pink bollworm on chemical load in the environment; and

• Risk to non-target plants and animals, including threatened and endangered species.

Interested persons and organizations may also present comments on the scope of the EIS at public hearings to be held in Riverdale, MD, and Phoenix, AZ. The exact dates and times for the hearings and the specific locations of the hearings will be announced in a notice published in a future issue of the **Federal Register**.

This notice and any further notices or environmental analyses related to this subject are intended to fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). If we prepare a draft EIS for public review, we will publish a notice announcing its availability in an upcoming issue of the **Federal Register**. The notice would request comments on the draft EIS.

This notice is issued in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 29th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–2604 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Forest Counties Payments Committee is required to provide Congress with the information specified in section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. In order to develop its recommendations to Congress, the Committee requests comments from the general public.

DATES: Comments on this notice must be received by April 30, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments should be submitted to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, PO Box 34718, Washington, DC 20043–4713, (202) 208–6574 or electronically to the Committee's web site at *http://countypayments.gov/comments.html.*

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574; or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of Pub L. 106–393, ''Secure Rural Schools and Community Self-Determination Act of 2000.''

The Committee asks that respondents provide information in response to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?
2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between federal revenue-sharing programs, and management activities on public lands?
9. What alternatives exist to provide equitable revenue-sharing to States and counties and to promote ''sustainable forestry?''
10. What has been your experience regarding implementation of Pub L. 106–393, The Secure Rural Schools and Community Self-Determination Act?
11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?
12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Dated: January 29, 2002.

Elizabeth Estill,

Deputy Chief, Programs and Legislation.

[FR Doc. 02–2586 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rogue/Umpqua Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Monday, February 11, 2002. The meeting is scheduled to begin at 10 a.m. and conclude at approximately 4 p.m. The meeting will be held at the La Quinta Inn, 243 NE Morgan Lane in Grants Pass. The tentative agenda includes (1) Review of Title II projects proposed by the Forest Service and (2) Public Forum. The Public Forum is scheduled to begin at 3 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the February 11th meeting by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3203.

Dated: January 28, 2002.

James Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–2566 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending the weighted–average margin for Pastificio Guido Ferrara S.r.l. (''Ferrara'') calculated for the July 1, 1999, through June 30, 2000, administrative review of this order. The revised weighted–average margin for Ferrara is 1.25 percent ad valorem.

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Young or Frank Thomson, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6397, or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department's'') regulations are to 19 CFR Part 351 (2000).

Amendment to Final Results

On January 3, 2002, the Department published the final results of administrative review of the antidumping duty order on certain pasta from Italy. See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy, 67 FR 300 (January 3, 2002) (''Final Results''). The review covers nine manufacturers/exporters. The period of review (''POR'') is July 1, 1999, through June 30, 2000.

On January 4, 2002, we received a timely clerical error submission from Ferrara. In its submission, Ferrara stated that the Department incorrectly applied a billing adjustment ratio to all U.S. sales. Ferrara maintained that the Department should have applied the billing adjustment ratio only to U.S. sales of the subject merchandise that contained billing adjustments.

We agree with Ferrara. The Department did err in applying the billing adjustment ratio to all U.S. sales of subject merchandise. However, because the U.S. sales that contained billing adjustments were not used in the calculation of the margin, the Department will set the billing adjustment ratio equal to zero. This issue is discussed more fully in the January 28, 2002 Calculation Memorandum to the File from the Team through James Terpstra (''Calculation Memorandum'').

In light of these findings, we are amending the weighted-average margin for Ferrara from 2.03 percent to 1.25 percent ad valorem.

Amended Final Results

We are amending the final results of the administrative review on certain pasta from Italy covering the period July 1, 1999, through June 30, 2000, pursuant to section 516A(e) of the Act. As a result of this redetermination, the recalculated final weighted–average margin for Ferrara is as follows:

Manufacturer/producer	Margin percentage
Ferrara	1.25

The cash deposit rate for Ferrara of 1.25 percent ad valorem is effective on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until publication of the final results of the next administrative review.

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from Ferrara during the period July 1, 1999 through June 30, 2000, in accordance with this amended final results.

This amended final results and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: January 28, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–2615 Filed 2–1–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: February 22, 2002.

Time: 9:00 a.m. to 12:15 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Room 3704.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on February 22, 2002, at the U.S. Department of Commerce.

ETTAC will hear briefings on the World Summit for Sustainable Development; the Trade Compliance Center's outreach program; the Agency for International Development's Global Development Alliance; and a status report on the U.S.-Asia Environmental Partnership. ETTAC will also be briefed on current World Trade Organization issues including an update on responses to the Office of Environmental Technologies Industries' (ETI) Survey of Non-Tariff Barriers to trade in environmental technologies. The meeting is open to the public.

ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002.

For further information phone Jane Siegel, ETI, International Trade

Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: January 29, 2002.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 02–2569 Filed 2–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Overseas Dependents' School National Advisory Panel (NAP) on the Education of Dependents with Disabilities

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, as amended, the Federal Advisory Committee Act, notice is hereby given that a meeting of the NAP on the Education of Dependents with Disabilities is scheduled to be held from 8:30 a.m. to 4 p.m. on April 16–18, 2002. The meeting is open to the public and will be held in the Holiday Inn Hotel conference room at 4610 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the meeting is to review the responses to the panel's recommendations from its May 8–10, 2001 meeting; review and comment on data and information provided by DoDEA; and review and comment on reports from subcommittees. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Ms. Diana Patton at (703) 696–4387 extension 1947.

Dated: January 28, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 02–2590 Filed 2–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On Friday, December 14, 2001 (66 FR 64810), the Department of Defense announced closed meeting of the Defense Science Board (DSB) Task Force on Defense Against Terrorists' Use of Biological Weapons. One of the announced meetings has been rescheduled from February 18–19, 2002, to February 19–20, 2002, due to the holiday. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: January 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2591 Filed 2–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Intent To Prepare a Sitewide Environmental Assessment for Sandia National Laboratories, California

AGENCY: Office of Kirtland Site Operations, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE), National Nuclear Security Administration (NNSA), Office of Kirtland Site Operations (OKSO), announces its intent to prepare a Site-Wide Environmental Assessment (SWEA) for its Sandia National Laboratories/California (SNL/CA), a DOE research and development laboratory located east of Livermore, California. The SWEA will address operations and activities that DOE foresees at SNL/CA for approximately the next 5 to 10 years. The purpose of this Notice of Intent (Notice) is to invite public participation in the SWEA scoping process and to encourage public dialogue on alternatives that should be considered.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 6, 2002. Public scoping meetings are scheduled to be held February 20, 2002.

ADDRESSES: Public scoping meetings are scheduled to be held as follows: February 20, 2002, 1 p.m.–4 p.m. and 6 p.m.–9 p.m., at Lawrence Livermore National Laboratory, Visitors Center Auditorium (T–6525) at the Eastgate entrance from Grennville Road.

The purpose of these meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between DOE and the public and will provide an opportunity for individuals to provide written or oral statements. The DOE will publish additional notices on the date, times, and location of the scoping meeting in local newspapers in advance of the scheduled meeting. Any necessary changes will be announced in the local media. In addition to providing oral comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the SNL/CA SWEA, or request to be placed on the SNL/CA SWEA mailing or document distribution list.

The DOE invites other Federal agencies, Native American tribes, State and local governments, and the general public to comment on the scope of this SWEA. DOE will consider all comments received or postmarked by that date in defining the scope of this SWEA. Comments received or postmarked after that date will be considered to the extent practicable.

Written comments or suggestions concerning the scope of the SNL/CA SWEA should be directed to: Ms. Susan D. Lacy, U.S. Department of Energy, National Nuclear Security Administration, Office of Kirtland Site Operations, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, by facsimile at (505) 845–4710, or email at *slacy@doeal.gov.* Please mark envelopes, faxes, and email: ''Sandia National Laboratories, California Site-Wide Environmental Assessment Comments.'' For express delivery services, the appropriate address is Pennsylvania and H Streets, Kirtland Air Force Base, Albuquerque, NM 87116.

FOR FURTHER INFORMATION CONTACT: Susan Lacy at the address and facsimile number listed above.

For Information On DOE's NEPA Process Contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Ms. Borgstrom can be reached at (202) 586–4600, by facsimile at (202) 586–7031.

SUPPLEMENTARY INFORMATION: Copies of all written comments and transcripts of all oral comments will be available at the following location:

Sandia National Laboratories, California, 7011 East Avenue, Visitor Entrance, Building 911 Lobby, Livermore, Califorina.

and

Livermore Public Library, 1000 South Livermore Avenue, Livermore, California.

SNL/CA's Mission

Sandia Corporation is a prime contractor to the Department of Energy (DOE). Sandia Corporation, a wholly owned subsidiary of Lockheed Martin Corporation, manages and operates Sandia National Laboratories (SNL), with principal facilities in Albuquerque, NM; Livermore, CA; Tonopah, NV; and Kauai, HI. As one of the United States' multipurpose national laboratories, SNL develops solutions to a wide range of problems facing the country. SNL's mission includes advanced military technology, energy and environmental research, arms control/nonproliferation, and advanced manufacturing technology. Operations at SNL's California facility in Livermore comprise four broad areas:

Vital Role in Weapons: This program involves work in support of our nation's nuclear weapons program. These activities include weapon systems, weapon components/subsystems (gas transfer, use control, and instrumentation), reliability assessments, engineering sciences, advanced computing/networking, and supporting research.

Integrated Systems and Technologies: This program applies strong systems engineering practices and selected Sandia technologies to providing solutions for evolving national security needs, as well as to contributing to our nation's economic competitiveness. Work includes detection, nonproliferation, and demilitarization of weapons of mass destruction; development of secure, distributed information systems; applied research and development on combustion systems and other energy-intensive industrial processes; and advances in microsystems and micro-fabrication. Partnering with industry is an important and integral aspect of many of these activities.

Strong Research Base: This program performs world-class science in key competencies such as materials and engineering sciences, chemical sciences, information sciences, and an emerging competency in biological sciences. The work builds on both modeling and experimentation to provide linkages to global science and to ensure a seamless transition to many applications within the Laboratories Weapons, and Integrated Systems and Technologies roles.

Exemplary Operations: This program partners with the three business areas described above to ensure an infrastructure that provides a competitive advantage in implementing the site strategy. Most of the site's support and operations services are included in this business area. The site operates under the scope of Federal, State, and local regulatory authorities and has obtained all applicable operating permits.

SNL/CA has an annual budget of approximately $130 million and employs approximately 1,080 people. It occupies 410 acres in Alameda County California adjacent to the City of Livermore.

In addition to SNL/CA, Lawrence Livermore National Laboratory, a DOE/NNSA Laboratory, is located in close proximity to SNL/CA. The environmental impacts of operations at both the DOE/NNSA laboratories will be included in the discussion of cumulative impacts in the SWEA. DOE welcomes comments on this approach.

Role of the SWEA in the DOE NEPA Compliance Strategy

The SWEA will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021). The DOE has a policy (10 CFR 1021.330) to prepare site-wide documents for certain large, multiple-facility sites, such as SNL/CA. The purpose of a SWEA is to provide DOE and its stakeholders with an analysis of the environmental impacts caused by ongoing and reasonably foreseeable new operations and facilities and reasonable alternatives at a DOE site, to provide a basis for site-wide decision making, and to improve and coordinate agency plans, functions, programs, and resource utilization. The SWEA provides an overall NEPA baseline so that the environmental effects of proposed future changes in programs and activities can be compared with the baseline. A SWEA also enables DOE to ''tier'' its NEPA documents at a site to eliminate repetitive discussion of the same issues in future project-specific NEPA studies, and to focus on the actual issues ready for decisions at each level of environmental review. The NEPA process allows for Federal, Native American, state and local government, and public participation in the environmental review process. The Final Environmental Impact Statement and Environmental Impact Report for Continued Operation of Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore [DOE/EIS–0157], August 1992, is the existing site-wide environmental document for SNL/CA.

Related NEPA Reviews

The following is a list of recent NEPA documentation that affects the scope of this SWEA. The summaries below are intended to familiarize the reader with the purpose of these other NEPA reviews and how SNL/CA is considered in them.

Programmatic NEPA Reviews

The Waste Management Programmatic Environmental Impact Statement (PEIS) (DOE/EIS–0200) analyzes the DOE plan to formulate and implement a national integrated waste management program. The Final PEIS was published in May 1997. The Nonnuclear Consolidation Environmental Assessment [DOE/EA–0792] was published in June, 1993. A Finding of No Significant Impact on the Consolidation of the Nonnuclear Component within the Nuclear Weapons Complex was signed on September 8, 1993. The Stockpile Stewardship and Management PEIS was published in 1996 [DOE/EIS–0236] and a Record of Decision (ROD) was signed by the Secretary of Energy on December 19, 1996. Inherent in the many decisions made in the ROD was to continue the operations of the three national weapons laboratories, SNL being one of the three. The ROD emphasized stockpile stewardship as an essential program to maintain the safety and reliability of the stockpile in the absence of underground nuclear testing, therefore requiring enhanced experimental capabilities in the future at the three national weapons laboratories.

Preliminary Alternatives

The scoping process is an opportunity for the public to assist the DOE in determining the alternatives and issues for analysis in the SWEA. DOE welcomes specific comments or suggestions on the content of the proposed preliminary alternatives, or on other alternatives that could be considered. DOE is proposing to continue current operations at SNL/CA. Two preliminary alternatives were identified during internal scoping: the No Action alternative and the Expanded Operations alternative. DOE also considered a Reduced Operations alternative. However, current activities at SNL/CA are at the minimum level of operations needed to protect the technical capability and competency to support the site's assigned missions. Therefore, the Department plans to include the Reduced Operations alternative in the SWEA as an alternative considered but eliminated from further analysis.

No Action. NEPA regulations require analysis of the No Action alternative to provide a benchmark for comparison with environmental effects of the other alternatives. The No Action alternative would continue current facility operations throughout SNL/CA in support of assigned missions, and for this SWEA, it is also the proposed action. With respect to the Defense Programs mission, the future role of SNL was defined at the programmatic level by the Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) Record of Decision (ROD) (61 FR 68014) (December 26, 1996).

Expanded Operations. This alternative would reflect an increase in facility operations to the highest levels that can be supported by current facilities. This could require construction projects to address safety, security and environmental compliance as well as to support reconfiguration of facility equipment and operations to optimize use of current facilities' capabilities. This alternative will set the bounding conditions for assessing the environmental impacts.

Preliminary Issues Identified by Internal Scoping

The issues listed below have been identified for analysis in this SWEA as being applicable to the operation of SNL/CA. The list is tentative and is intended to facilitate public comment on the scope of this SWEA. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The SWEA will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. In accordance with the Council on Environmental Quality Regulations (40 CFR 1500.4 and 1502.21), other documents, as appropriate, may be incorporated into the impacts analyses by reference, in whole or in part. DOE specifically welcomes suggestions and comments for the addition or deletion of items on the following list of potential effects:

—Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations and from reasonably postulated accidents;

—Potential effects on air and groundwater quality from normal operations and potential accidents;

—Potential cumulative effects of past, present, and future operations at SNL/CA (this SWEA will include effects of current and reasonably foreseeable federal actions including Lawrence Livermore National Laboratory);

—Effects on waste management practices and activities, including pollution prevention, waste minimization, and waste stream characterization; and

—Potential impacts of noise levels to the ambient environment and sensitive receptors.

Classified Material

DOE will review classified material while preparing this SWEA. Within the limits of classification, DOE will provide to the public as much information as possible. Any classified material required to explain the purpose and need for action, or the uses, materials, or impacts analyzed in this SWEA, will be segregated into a classified appendix or supplement.

Issued in Albuquerque, New Mexico on January 29, 2002.

Michael J. Zamorski,

Director, U.S. Department of Energy, Office of Kirtland Site Operations.

[FR Doc. 02–2700 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–15; Low Dose Radiation Research Program—Basic Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE) and the Office of Biological and Physical Research (OBPR), National Aeronautics and Space Administration (NASA), hereby announce their interest in receiving grant applications for well justified research that supports the DOE/OBER Low Dose Radiation Research Program, and that may include complementary research of direct interest to the NASA/OBPR Space Radiation Health Program that is of sufficient scientific merit to qualify for partial NASA support. These Programs use modern molecular tools to develop a better scientific basis for understanding exposures and risks to humans from low dose and low fluence radiation.

Research areas of particular programmatic interest include:

• Endogenous oxidative damage versus low dose radiation-induced damage

• Radio-adaptive responses

• Bystander effects

• Individual genetic susceptibility to low dose radiation exposure

Please review the Supplementary Information section below for further discussion of programmatic needs.

DATES: Preapplications (letters of intent) are strongly encouraged, but not mandatory. A response to preapplications discussing the potential program relevance of a formal application will be communicated within one week.

The deadline for receipt of formal applications is 4:30 P.M., E.S.T, April 16, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002 and Fiscal Year 2003.

ADDRESSES: One-page preapplications referencing Program Notice 02–15, should be sent by e-mail to *joanne.corcoran@science.doe.gov,* or by facsimile transmission to (301) 903–8521. Preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 02–15, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–15. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Noelle Metting for general scientific or technical questions, telephone: (301) 903–8309, e-mail: *noelle.metting@science.doe.gov,* Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. For specific information on NASA/OBPR interests, contact Dr. Walter Schimmerling, telephone: (202) 358–2205, e-mail: *wschimmerling@hq.nasa.gov,* NASA Headquarters, Mail Code UB, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: The DOE/OBER Low Dose Radiation Research Program is faced with the challenge of conducting research that can be used to inform the development of future national radiation risk policy for the public and the workplace. For the present solicitation, DOE/OBER is chiefly concerned with very low doses of low Linear Energy Transfer (LET) radiation (electrons, x- and gamma-rays). The focus of research should be on doses of low linear energy transfer radiation that are at or near current workplace exposure limits. In general, research in this program should focus on total radiation doses that are less than or equal to 10 rads. Some experiments will likely involve selected exposures to higher doses of radiation for comparisons with previous experiments or for determining the validity of extrapolation methods previously used to estimate the effects of low doses of radiation from observations made at high doses. Research projects utilizing the ''systems biology'' or ''discovery science'' approach, including the tools of comparative genomics and proteomics, are especially sought. Research projects that use experimental protocols or cell microenvironments that will lead to an understanding of radiobiological responses in intact human tissue are also strongly encouraged. This research program will be a success if the science it generates is useful to policy makers, standard setters, and the public. Successful applicants will be expected to effectively communicate research results whenever possible through education and outreach, so that current thinking and the public debate reflect sound science.

The NASA/OBPR Space Radiation Health Program is charged with providing input for the determination of health risks to humans visiting the space radiation environment. NASA is especially interested in human exposure to low fluences of high-energy particulate ionizing radiation (protons and heavy ions). Where possible, projects that address the interests of both DOE/OBER and NASA/OBPR are particularly encouraged. Applications whose principal focus is on low LET radiation are encouraged to include complementary research with high-energy particulate ionizing radiation that leverages progress, resources, and technology used for the low LET radiation research (*see* Specifics for NASA below). Investigators with currently funded low dose projects may also apply for supplementary funding to address closely related research of interest to NASA.

Not all research on the biological effects of low doses of radiation will be equally useful for the development of radiation risk policy, though the path from basic radiation biology research to radiation risk policy is admittedly not clear at this time. In the present context, the research considered to be most useful will focus on biological responses that:

• Are known to be induced at low doses of radiation,
• Have the potential to directly impact (i.e., increase or decrease) subsequent development of cancer or other harmful health impacts,
• Are potentially quantifiable,
• Could potentially be linked to the development of a biologically based model for radiation risk, and
• Could potentially lead to the development of biological predictors (biomarkers) of individual risk.

Alternatively, a biological response of interest could meet all of the above criteria only at high doses but may actually be absent (as opposed to simply undetectable) at low doses of radiation. Since the mechanisms of action may be different after high versus low doses of radiation, such studies would help define these mechanisms, and delimiting the unique doses where these mechanisms shift is important.

Endogenous oxidative damage in relation to low dose radiation induced damage—A key goal of this research program will remain the elucidation of similarities and differences between endogenous oxidative damage and damage induced by low levels of ionizing radiation, as well as understanding the health risks from both. This information will underpin our interpretation of the biological effects of exposure to low doses of ionizing radiation. Although qualitative descriptions of differences and/or similarities between the types of damage induced under both conditions will be useful in the design and interpretation of experiments in other parts of the program, there is a need for quantification of the levels of damage induced by normal oxidative processes and incremental increases due to low dose irradiation.

Living organisms are subject to a daily plethora of environmental insults. Carcinogenesis in an individual occurs as a function of all the forces and phenomena that go into the production of that individual's phenotype. These include (but are not limited to) individual genotype, as well as current and historical aspects of diet, physical exercise, and exposures to chemicals and radiation. To understand all factors responsible for individual responses to radiation, we are also soliciting research on key factors that influence the extent of metabolic, endogenously produced oxidative damage and, concomitantly, affect susceptibility to low doses of radiation.

Radio-Adaptive Response—The ability of a low dose of radiation to induce cellular changes that alter the level of subsequent radiation-induced or spontaneous damage. If low doses of radiation regularly and predictably induce a protective response in cells exposed to subsequent low doses of radiation or to spontaneous damage, this could have a substantial impact on estimates of adverse health risk from low dose radiation. The generality and the extent of the process of the induction itself need to be quantified, and the responsible genes and proteins discovered. By ''generality'' is meant quantification as a function of cell tissue type and species type; by ''extent'' is meant quantification as a function of priming dose, dose rate, and time constant of action.

Bystander effects—Biological responses observed in cells that are not directly traversed by radiation but are neighbors of an irradiated cell. Bystanders in cell monolayers have been shown to respond with gene induction and/or production of clastogenic changes. It is important for the DOE/OBER Low Dose program to determine if bystander effects can be induced by exposure to low LET radiation delivered at low total doses. A detrimental bystander effect, in essence, ''amplifies'' the biological effects (and the effective radiation dose) of a low dose exposure by effectively increasing the number of cells that experience adverse effects to a number greater than the number of cells directly exposed to radiation. Conversely, bystander cells may in some cases exert a protective effect on the irradiated cell or cells, although very few studies of this type of effect have been tried. More importantly, entirely different types or levels of bystander effects may be occurring in three-dimensional tissues and intact organisms. Hence, there is considerable interest in extending studies to tissues, or at least toward more complex tissue-like models, and priority consideration will be given to these projects. Research is sought to characterize and determine mechanisms of low LET radiation induced bystander effect, and to quantify its induction and extent as a function of dose. New research projects studying bystander effects in isolated cells or cell monolayers will be considered only in exceptionally well-justified or novel approach cases.

Individual genetic susceptibility to low dose radiation—The Low Dose Radiation Research Program is interested in determining if genetic differences exist that result in sensitive individuals or sub-populations that are at increased risk for radiation-induced cancer. For example, research could focus on genes involved in the recognition, repair, and processing of damage induced by ionizing radiation, or on genes involved in maintaining the normal degree of irreversibility of cell differentiation for a particular tissue. Of critical interest would be the identification of these genes, determining frequencies of their polymorphisms in the population, and determining the biological significance of these polymorphisms with respect to cancer and radiation sensitivity. Ingenious, high throughput approaches, that evaluate many endpoints or individuals experimentally using pooling schemes, are of particular interest. We are also interested in mouse models that speed the discovery or characterization of putative human susceptibility genes. New studies focused only on a single or a few genes will not be funded unless substantial evidence is provided that those genes play a significant role in individual susceptibility to radiation. A long-term goal is to identify any genetic polymorphisms that significantly impact individual and population-level sensitivity to radiation, and characterize their mechanism of action.

Background information on the Low Dose Radiation Research Program can be found in the research program plan at: *http://www.lowdose.org/index.html.* A list of currently funded projects can be found at: *http://lowdose.org/research.html.* The program is currently funding a number of projects to develop micro-irradiation devices capable of delivering low doses of low LET radiation to individual cells or to specific parts of individual cells. For links to currently funded ''microbeam'' projects see: *http://lowdose.org/99meeting/abstracts/tool.html*—projects 26, 28, 29 and also: *http://lowdose.org/99meeting/abstracts/response.html*—project 3. Investigators are encouraged to use these or similar irradiators, as appropriate, in the design and conduct of their research. Funds are available to assist in the collaborative use of these or comparable tools.

Other resource considerations—Research in the areas discussed above will strongly complement ongoing initiatives at the National Institutes of Health (NIH). DOE/OBER staff is working with staff at the NIH to ensure that research in the Low Dose Radiation Research Program is not duplicative of research funded by NIH programs.

A collaborative effort of five major centers, termed the International SNP Map Working Group, along with over 50 other contributing laboratories, are creating the largest publicly available catalog of single base-pair differences between two copies of the same gene (single nucleotide polymorphisms, or SNPs). The current catalog contains 1.4 million SNPs, each with their exact location mapped within the human genome. SNPs are the most common polymorphisms in the human genome, and some contribute to the traits that make us unique individuals. The catalog (*http://www.ncbi.nlm.nih.gov/SNP/index.html*) will be a boon for mapping complex traits such as cancer susceptibility and susceptibility to low dose radiation.

Inbred mouse strains and other model organisms with well-characterized differences in susceptibility to radiation-induced cancer are also important tools for identifying significant polymorphisms. Direct assessment of the biological significance of candidate ''susceptibility genes'' can also be undertaken using animal models such as knockout and knock-in mice, mice with specific genes removed or added.

Specifics for the Space Radiation Health Program—NASA

The primary area of emphasis of the NASA/OBPR Space Radiation Health Program is the development of mechanistic insights into biological effects of space radiation that account for radiation risks. Applications are required to be hypothesis-driven and are expected to obtain their data in ground-based experimental radiobiology studies with protons and high-energy heavy ion beams in the energy range corresponding to space radiation. This is mainly a ground-based program using accelerator facilities to simulate space radiation. In addition to the research topics already described above this includes research on non-phenomenological predictors of late cell and tissue effects and the control and modification of radiation effect mechanisms

A short description of the current Space Radiation Health Strategic Program may be found at: *http://spaceresearch.nasa.gov/common/docs/1998_radiation_strat_plan.pdf.* Activities of OBPR, including research opportunities, descriptions of previous tasks, and other relevant information can be found at: *http://SpaceResearch.nasa.gov/.* A description of the ground-based facilities and experimental program at Brookhaven National Laboratory can be found at: *http://www.bnl.gov/medical/NASA/NASA-home%20frame.htm.* The proton therapy facilities at Loma Linda University Medical Center are described at: *http://www.llu.edu/proton/patient/nasa1.html.* Finally, a description of the NASA Specialized Center of Research and Training at the Lawrence Berkeley National Laboratory may be found at: *http://www.lbl.gov/lifesciences/NSCORT.*

Scientists working in rapidly developing areas of biological sciences not necessarily associated with the study of radiation are particularly encouraged to consider the contributions that their field of study can make to Radiation Health. Applications are required to provide evidence for expertise in radiation, either by reference to the Principal Investigator's work or by inclusion of active collaborators expert in radiation research. Hypotheses should be substantiated by presentation of preliminary data wherever feasible, or by adequate references to the published literature. Experimental applications should include a clear discussion of the relevant aspects of the required radiation dosimetry and an estimate of the statistical power of the expected results.

Research applications to which NASA will assign high priority:

a. Studies that increase the confidence in the accuracy of extrapolating the probability of radiation-induced genetic alterations or carcinogenesis from rodents to humans.

b. Determination of carcinogenic risks following irradiation by protons and HZE particles.

c. Determination if exposure to heavy ions at the level that would occur in deep space poses a risk to the integrity and function of the central nervous system.

d. Studies likely to result in the development of biological countermeasures in humans that could lead to prevention or intervention (including genetic or pharmacological agents) against effects of radiation damage in space.

Research that can lead to future space flight investigations will be welcome, and should take into account the impact of gender, age, nutrition, stress, genetic predisposition, or sensitivity to other factors of importance in managing space radiation risks.

NASA envisions that the selected applications will be structured and operated in a manner that supports the country's educational initiatives and goals (including historically black colleges and universities and other minority universities), and in particular the need to promote scientific and technical education at all levels. NASA envisions that the selected applications will support the goals for public awareness and outreach to the general public. The selected investigators are invited to participate in NASA-funded educational programs.

The applications represent an opportunity to enhance and broaden the public's understanding and appreciation of radiation effects, as specified in the DOE Low Dose Program emphasis on communication of research results and the OBPR Policy for Education and Public Outreach. Therefore, all investigators are strongly encouraged to promote general scientific literacy and public understanding of radiation induced health risk research through formal and/or informal education opportunities. If appropriate, applications should include a clear and concise description of the education and outreach activities proposed. Examples include such items as involvement of students in the research activities, technology transfer plans, public information programs that will inform the general public of the benefits being gained from the research, and/or plans for incorporation of scientific results obtained into educational curricula consistent with educational standards.

Where appropriate, the supported institution will be required to produce, in collaboration with NASA, a plan for communicating to the public the value and importance of their work.

The particles of interest to the Space Radiation Health Program are protons with energies between 20 and 1000 MeV, and nuclei of He, C, N, O, Ne, Si, Ar, Ca, Mn, and Fe, with energies between 50 and 3000 MeV/nucleon. Fluencies of interest are of the order of 1–2 particles per cell; studies with higher fluencies will need to be justified by compelling arguments, including an explanation of how the results can be applied in the low fluency regime. NASA has developed facilities for use of protons at Loma Linda University Medical School and high-energy heavy ion beams at the Brookhaven National Laboratory Alternating Gradient Synchrotron (AGS). A dedicated irradiation facility, using the Booster Synchrotron at Brookhaven, is under construction and is expected to be operational in 2003. Applications should not budget for the use of beams at these facilities, which is paid by NASA. NASA will cooperate with DOE to expand the range of technical resources available for experimentation and analysis of experimental results at Brookhaven.

Program Funding

It is anticipated that up to $2.5 million will be available from DOE/OBER for new grant awards during Fiscal Year 2002, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of appropriated funds, progress of the research, and continuing program need. Applications whose principal focus is on low LET radiation can include complementary research on high-energy particulate ionizing radiation that leverages progress, resources and technology used for the low LET radiation research. Up to $0.5M will be available from NASA in the first year, with higher amounts projected for successive years, also contingent upon the availability of funds. Funds will be available from DOE to assist in the collaborative use of certain microbeam irradiators. NASA provides beam time at the Brookhaven AGS and the Loma Linda proton accelerator; investigators will not be required to pay for the beam time. It is expected that most awards will be from 1 to 3 years and will range from $200,000 to $500,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Applications found to be scientifically meritorious and programmatically relevant will be selected in consultation with DOE and NASA selecting officials depending upon availability of funds in each agency's budget. In the course of the selection process, projects will be identified as addressing DOE requirements, NASA requirements, or both. The selected projects will be required to acknowledge support by one or both agencies, as appropriate, in all public communications of the research results.

The Application

(Please Note Critical New Information Below on Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web: *http://www.science.doe.gov/production/grants/guide.html.* In particular, please note the instructions on Collaboration available via the World Wide Web: *http://www.science.doe.gov/production/grants/Colab.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage of providing more text in their applications by using small type. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½″ x 11″ (or metric A4, i.e., 210 mm x 297 mm). Applications must be written in English, with all budgets in U.S. dollars.

Applicants are expected to use the following ordered format, in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program.

Face Page (DOE F 4650.2 (10–91))

- *Project Abstract Page*—Single page only, should contain:
- Title
- PI name
- Abstract text should concisely describe the overall project goal in one sentence, and limit background/significance of project to one sentence.

Short descriptions of each individual aim should focus on what will actually be done

• *Relevance Statement*—Single page only, should identify DOE or NASA requirements that each specific aim is intended to address

• *Budgets*—for each year and a summary budget page for the entire project period (using DOE F 4620.1)

• *Budget Explanation*—Budgets and Budget explanation for each collaborative subproject, if any (again, see information at: *http://www.science.doe.gov/production/grants/Colab.html*)

• *Project Description*—(The Project Description must be 20 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 20 pages will be returned to applicants and will not be reviewed for scientific merit.*) The Project Description should contain the following five parts:

• Goals

• Background (concisely-stated, relevant)

• Experimental Approach

• Preliminary Studies (and Progress, if applicable)

• Statistical Design and Methodologies

• *Literature Cited*

• *Collaborative Arrangements* (if applicable)

• *Biographical Sketches* (limit 2 pages per senior investigator, consistent with NIH guidelines)

• *Facilities and Resources* description

• *Current and Pending Support* for each senior investigator

• *Letters of Intent* from collaborators (if applicable)

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna–apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE requirements for reporting, protection of human and animal subjects and related special matters can be found on the World Wide Web at: *http://www.science.doe.gov/production/grants/Welfare.html.*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 23, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2593 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–13; Genomes to Life

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) and the Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce their interest in receiving applications for research from large, well integrated, multidisciplinary research teams (*see* SUPPLEMENTARY INFORMATION below) that support the Genomes to Life research program (*http://www.doegenomestolife.org/*). A central theme of the entire Genomes to Life program is to develop the necessary experimental and computational capabilities to enable a predictive understanding of the behavior of microbes and microbial communities of interest to DOE. To this end, proposals that integrate strong experimental biology and computational science research components are strongly encouraged. In such proposals, the leadership role may rest either with experimentation or with computation.

DATES: Statements of intent to apply, including information on collaborators and areas of proposed research and technology development should be submitted by March 1, 2002. Research applications are due by 4:30 PM E.D.T. Tuesday May 7, 2002.

ADDRESSES: Statements of intent to apply should be sent to Ms. Joanne Corcoran by e-mail at *joanne.corcoran@science.doe.gov* with copies to Dr. David Thomassen at *david.thomassen@science.doe.gov* and Dr. Walter Polansky at *walt.polansky@science.doe.gov.* Formal applications, referencing Program Notice 02–13, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–13. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant. (For safety reasons, the Washington, DC area continues to experience delays in the processing of all U.S. Mail. Please check the Office of Science, Grants and Contacts Web site at: *www.sc.doe.gov/production/grants/grants.html* for the latest updates regarding the processing of U.S. Mail.)

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, e-mail: david.thomassen@science.doe.gov, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290 and Dr. Walter Polansky, telephone: (301) 903–5800, e-mail: *walt.polansky@science.doe.gov,* Office of Advanced Scientific Computing Research, SC–31, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

A complementary request for proposals from DOE national laboratory led teams has been issued *http://www.sc.doe.gov/production/grants/LAB02_13.html.*

SUPPLEMENTARY INFORMATION:

This solicitation will support the establishment of large, well integrated, multidisciplinary (e.g., biology, computer science, mathematics, computational science, engineering, informatics, biophysics, biochemistry) research teams. Applicants are invited to include, where appropriate, partners from multiple institutions, including DOE National Laboratories, universities, private research institutions, and companies. Successful applications will include a detailed management plan describing the responsibility of and relationship between all participating institutions and investigators, a strategy for maximizing communication and exchange of information between investigators, a data and information management plan, and project milestones.

Research partners at individual universities, private research institutions and companies, and DOE National Laboratories will be funded directly by DOE but will be reviewed as part of the overall research application submitted by the lead research institution. To facilitate funding of individual non-laboratory research partners beginning in FY 2002, each application should include a complete set of forms for each non-laboratory research institution as described in the instructions contained in the Grant Application Guide, the Guide and

Forms are available on the Web at: *http://www.sc.doe.gov/production/grants/grants.html.* This includes:

- Signed Face Page (DOE F 4650.2 (10–91))
- Budgets for each year, (using DOE F 4620.1)
- Budget Explanation
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator
- Other institutional forms as described

Research Focus

The Genomes to Life research program will cut across components of each of the goals described in the Genomes to Life program plan, available on the Web at: *http://www.doegenomestolife.org/.* Applicants should refer to the program plan for additional information on the overall organization of the Genomes to Life program. Individual applications should address one or more of the individual research elements described below.

Other useful Web sites include:
MCP Home Page—*http://microbialcellproject.org.*
Microbial Genome Program Home Page—*http://www.er.doe.gov/production/ober/microbial.html.*
DOE Joint Genome Institute Microbial Web *Page—http://www.jgi.doe.gov/JGI_microbial/html/.*
GenBank Home Page—*http://www.ncbi.nlm.nih.gov/.*
Human Genome Home Page—*http://www.ornl.gov/hgmis.*

Microbes of Interest to DOE

The initial focus of Genomes to Life should be on microbes (including fungi) directly relevant to DOE mission needs in energy (cleaner energy, biomass conversion, carbon sequestration), bioweapons defense (biothreat agents or their close relatives), or the environment (cleanup of metals and radionuclides at DOE sites). Research in Goals 1 and 2 should take advantage of and focus on microbes whose complete DNA sequence is already known. Research in Goal 3 should focus on microbes or microbial communities of interest to, directly relevant to, or that would contribute substantially to an ability to address DOE mission needs. Selected, well-justified research using yeast may also be appropriate as a means of quickly generating data that addresses the needs of this solicitation and of the Genomes to Life Program. However, the use of yeast as a long-term research focus is not encouraged.

Data and Other Results

Any data and results that are generated through the investigations into goals 1 through 4 that are appropriate to share with the broader community should be provided in timely, open, and machine-readable format where possible. Microbial DNA sequence data will be publicly released according to the ''Data Release Requirements: Microbial Genome Sequencing Projects'' (*http://www.sc.doe.gov/production/ober/EPR/data.html*). Plans should be included that describe the procedures and policies the teams will institute to make the data and results available and interoperable with other significant sources of relevant data. Any code development should be open source. Teams should be amenable to the adoption of open data standards and interoperability requirements, as they evolve and are specified by the Genomes to Life program.

Goal 1—Identify and Characterize the Molecular Machines of Life—the Multiprotein Complexes that Execute Cellular Functions and Govern Cell Form

Current structural genomics or proteomics efforts generally focus on individual proteins, either one at a time or at a genomic scale, or as pairs of interacting proteins. An initial focus of the Genomes to Life program will be to develop and implement research strategies and technologies that will enable the systematic identification, characterization, and, eventually, understanding of all the multi protein molecular machines in an organism. A research plan should be described that will lead, within five years, to the development of the capability to measure and characterize thousands of molecular machines per year. The initial focus of this research should be on microbial processes with application to DOE needs (see section on Microbes of Interest to DOE). The research plan should describe how the proposed research and technology and computational tool development will, within the next four to six years, enable at least 80% of the molecular machines in a single microbe to be identified and characterized within a single year.

An overarching goal of the Genomes to Life program is to develop computational tools, based on experimental data, that enable us to predict the functions and behaviors of complex biological systems beginning with genome sequence data. In the context of Goal 1, computational tools are needed to predict the inventory of molecular machines, and the functions of those machines, likely to be found in a microbe whose DNA sequence is known. This could include development of computational modeling tools, including high performance implementations of techniques analogous to Rosetta-type algorithms and threading programs to characterize the molecular machinery on the scale of complete microbial organisms. Significant effort should be devoted to the development of high-precision computational models able to identify the principal components and functions of characterized molecular machines. These computational approaches will also provide an important future interface with the projected increases in the rate of protein structure determination to understand the molecular details of protein interactions in molecular machines.

Milestones of progress and success should be included as part of the research plan. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Understanding the role that these molecular machines play within an organism will require information on both the interactions of molecular machines and on the physical and temporal location and behavior of molecular machines within cells. Research plans should be described that will lead to high-throughput strategies, technologies, and computational tools for achieving these goals. Investigators conducting research on these goals should describe how they will work in close collaboration with or maintain a detailed awareness of the progress of investigators who are developing high-throughput strategies for identifying molecular machines. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Experimental research is *not* being requested to determine the three-dimensional, high-resolution structure of individual proteins or multi protein molecular machines. As the number of high resolution protein structures in the Protein Data Bank increases dramatically over the next five years, that information will serve as an important starting point for characterizing the molecular details of protein-protein interactions within and between individual molecular machines.

Goal 2—Characterize Gene Regulatory Networks

Understanding the structure and function of an organism's molecular machines is a limited, though substantial, first step towards a predictive understanding of the organism's complex functions. This will only come by understanding the complex gene regulatory networks that govern the coordinated formation and behavior of molecular machines and their individual protein subunits. A goal of Genomes to Life is to develop large-scale research strategies, technologies, and computational tools needed to identify all the components of gene regulatory networks with an initial focus on cis-acting regulatory sequences. Although the principal focus should be on microbial processes with application to DOE needs (see section on Microbes of Interest to DOE), these studies will likely benefit from comparative genomics approaches that may cross species.

Again, an overarching goal of the Genomes to Life program is to develop computational tools, based on experimental data, that enable us to predict the functions and behaviors of complex biological systems beginning with genome sequence data. In the context of Goal 2, computational tools are needed to predict regulatory networks for the molecular machines and their component proteins identified in Goal 1. A major goal is to be able to predict and reconstruct regulatory networks for molecular machines, metabolic pathways, or entire organisms beginning with knowledge of the organism's DNA sequence. Determination and verification of regulatory interactions will be enabled by the development of the integrated computational approaches assembling many types of experimental information together with relevant computational algorithms.

These studies should be closely integrated with genome-scale proteomics efforts or efforts to identify all of an organisms's molecular machines and their dynamic behavior within cells. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Goal 3—Characterize the Functional Repertoire of Complex Microbial Communities in their Natural Environments at the Molecular Level

Understanding the structure and functional capabilities and diversity of complex microbial communities is key to using the diverse functions and capabilities of microbes to address DOE mission needs. However, the majority of microbes of importance and interest to DOE have not been isolated, purified, and cultured. An initial goal of Genomes to Life is to use high throughput DNA sequencing and computational approaches to determine the genetic and functional diversity of individual uncultured microorganisms and of microbial communities. It is anticipated that the majority of high throughput DNA sequencing required for this Goal will be conducted at the DOE Joint Genome Institute. An estimate of the amount of DNA sequencing that will be required should be included as part of the application. Funds for high throughput DNA sequencing should not be included as part of the budget request for individual applications as funds will be provided directly to the Joint Genome Institute for Genomes to Life sequencing needs.

The organisms and microbes chosen for sequencing should be chosen to help make an initial determination of:

- The extent and patterns of phylogenetic and genetic diversity in microbial communities from different environments.
- Whether microbial communities conserve metabolic function in spite of extensive individual phylogenetic diversity and whether a microbial community's metabolic functions correlate with the physical properties of its environmental niche.
- Improvements in the ability to infer the metabolic, physiologic, and behavioral characteristics of a microbe or microbial community from its DNA sequence (including improvements in the ability to infer gene function from DNA sequence).

Just as development of computational tools to predict the inventory, functions, and regulation of molecular machines from genome sequence data is a key part of Goals 1 and 2, development of computational tools to predict the metabolic, physiologic, and behavioral characteristics of microbial communities from community DNA sequence data is a key part of Goal 3. It is expected that some of the computational tools developed will be executed on existing computer resources with little need for additional computational power. However, special consideration will be given to the development of computational tools that can be ported across high-performance computing environments, including computing capabilities that are not yet available but are expected soon.

A scientific and experimentally based strategy for selecting the microbes and microbial communities proposed for analysis should be provided. Estimates of the number and diversity of uncultured microbes and microbial communities chosen for sequencing during the first three years of the project should be made. A strategy for estimating the degree of sequence coverage for DNA isolated from microbial communities should be provided.

Goal 4—Develop the Computational Methods and Capabilities to Advance Understanding of Complex Biological Systems and Predict Their Behavior

Computational capabilities, including data management, modeling of complex biological systems, and prediction of biological responses, underpin all of Genomes to Life. In particular, the needs include:

- Computational research on analysis and modeling of the structure and function of molecular machines, as integrated with the research to be conducted under Goal 1 above, with an emphasis on the interactions among the proteins and other molecules that make up these machines. This could also include investigations into prediction of functions of the molecular machines through the use of consensus groupings or proxies, such as analogs to ''Rosetta'' or threading-type methods used for predicting the structure of single proteins.
- Computational research on models and simulations of metabolic pathways, regulatory networks, and whole-cell functions, as integrated with the research to be conducted under Goal 2 above. This may include computational tools to integrate data from a wide variety of high-throughput experimental data, such as mass spectrometry, protein arrays, cross linking, and Nuclear Magnetic Resonance data with other biological data, such as genome annotation and experimental genetic data, such as results from knockout experiments.
- Computational research in support of sequencing environmental samples to be conducted under Goal 3 above. Computational tools will be needed to analyze the output of the simultaneous sequencing of multiple organisms. This will include a need to infer properties of the environmental sample, such as the presence or absence of both certain classes of organisms and certain functional capabilities, such as particular metabolic pathways.
- Computational research in support of biological databases and database tool development. Any applications for

subprojects to augment or develop databases will be judged primarily on the degree that they contribute to the successful completion of the team's research conducted as part of Goals 1, 2, and 3 above. The subprojects will also be judged on the predicted utility of the database and tools to the broader community and to the degree that the tools contribute to the broader goal of database interoperability.

• It is expected that some of the computational tools developed in Goal 4 will be executed on existing computer resources with little need for additional computational power. Other tools may require particularly compute-intensive resources. Special consideration will be given to the development of computational tools that can be ported across high-performance computing environments, including computing capabilities that are not yet available but are expected soon. Appropriate attention should be paid to attributes such as modularity, interoperability, and scalability.

Program Funding

Up to $15 million is available in FY 2002, contingent upon availability of appropriated funds. It is anticipated that individual research grants will be funded at a level of $1–4 million per year. Applications should also describe a scientifically justified scale-up plan to maximize technology development and research productivity.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

In addition, applications will be evaluated for the robustness of their organizational framework and coordination plan.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications

These large, multi investigator applications will be reviewed as individual research projects consisting of several individual subprojects. The research description (see description of Narrative below) for individual subprojects should be no more than 20 pages each, exclusive of attachments. The combined research descriptions for all individual subprojects for each application should be no more than 100 pages, exclusive of attachments. In addition, each application should contain a project overview, not to exceed 20 pages, that contains an overall project summary, research integration plan, management plan, data and information management plan, and a communication plan. Each research team should identify a single scientific coordinator or point of contact for its application.

Each subproject description must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, fax, and e-mail listed. Each subproject or project must include letters of intent from outside collaborators briefly describing the intended contribution of each to the research and short curriculum vitaes, consistent with National Institutes of Health (NIH) guidelines, for all principal investigators and any co-PIs.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web at *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitas consistent with NIH guidelines.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage, or by using small type, of providing more text in their applications. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½″ x 11″ (or metric A4, i.e., 210 mm x 297 mm).

Applicants are expected to use the following ordered format to prepare Applications in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program. Applications must be written in English, with all budgets in U.S. dollars.

• Face page (DOE F 4650.2 (10–91))
• Project abstract (no more than one page)
• Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
• Budget explanation
• Budgets and budget explanation for each collaborative subproject, if any
• Project description (includes goals, background, research plan, preliminary studies and progress, and research design and methodologies)
• Goals
• Background
• Research plan
• Preliminary studies and progress (if applicable)
• Research design and methodologies
• Literature cited
• Collaborative arrangements (if applicable)
• Biographical sketches (limit 2 pages per senior investigator)
• Description of facilities and resources
• Current and pending support for each senior investigator

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE policy requires that potential applicants adhere to 10 CFR part 745 ''Protection of Human Subjects'' (if applicable), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is

81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC January 28, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2597 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge. 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: Wednesday, February 13, 2002—6 p.m.—9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Transuranic Waste

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. The notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on January 29, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2602 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 27, 2002, 9 a.m. to 6 p.m.; Thursday, February 28, 2002, 9 a.m. to 12 noon.

ADDRESSES: The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The main purpose of this meeting is to brief the members of the committee on the preparations for and planning of the Fusion Energy Sciences Summer Workshop. The technical information developed at the workshop will be used by the Committee as input in completing its next charge from the Department of Energy (DOE).

Tentative Agenda

Wednesday, February 27, 2002

- DOE Perspective
- FY 2003 Fusion Budget
- Preparations and Plans for Summer Workshop
- Report from Basic Energy Sciences Advisory Committee Panel on Use of Performance Measures
- Discussion of Possible Joint Office of Fusion Energy Sciences-Mathematical, Information and Computational Sciences Effort on Integrated Modeling
- Presentation of the Results of the Recently Completed Review of the Diagnostics Program

Thursday, February 28, 2002

- Presentation on Status of International Thermonuclear Experimental Reactor (ITER) Negotiations
- Discussion of New Charges
- Public Comments

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2600 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Salmon Creek Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on the Salmon Creek Project, a proposal by the Confederated Tribes of the Colville Indian Reservation (CCT) and the Okanogan Irrigation District (OID) to enhance fish habitat and fish passage and increase instream flows in lower Salmon Creek, a tributary to the Okanogan River in Okanogan County, Washington. The goal of the project is to re-establish self-sustaining anadromous fish populations in the creek while maintaining OID's ability to continue water delivery to its irrigators and, therefore, helping maintain the economic viability of the agricultural community.

DATES: Written comments on the NEPA scoping process are due to the address below no later than March 6, 2002. Comments may also be made at EIS scoping meetings to be held on February 21 and 22, 2002, at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. You may also call BPA's toll-free comment line at 1–800–622–4519 and record your complete name, address, and comments. Comments may also be sent to the BPA Internet address: comment@bpa.gov. To be placed on the project mail list, call 1–800–622–4520. In all communications, please specify the Salmon Creek Project.

Comments may also be made at a public EIS scoping meeting to be held on Thursday, February 21, 2002, 6:30 p.m., at The Cedars Inn, lower-level ballroom, 1 Apple Way Road, Okanogan, Washington. A scoping meeting for staff of government agencies will be held on Friday, February 22, 10 a.m., at the Wenatchee Red Lion Hotel, 1225 N. Wenatchee Avenue, Wenatchee, Washington.

FOR FURTHER INFORMATION, CONTACT: Nancy Weintraub, Project Environmental Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–5373; fax number 503–230–5699; or e-mail *nhweintraub@bpa.gov.*

SUPPLEMENTARY INFORMATION: BPA's need in proposing to fund this project is to mitigate for the loss of anadromous fish and fish habitat due to the operation of the Federal Columbia River hydrosystem and to meet its responsibilities under the Endangered Species Act. The project is proposed to include the rehabilitation of stream channel geometry, revegetation of the streambanks, and provision of increased flows in the lower 4.3 miles of Salmon Creek between OID's diversion dam and the Okanogan River. The Northwest Power Planning Council (Council) has recommended this project to BPA for funding as one of the measures under the Council's program.

This action may involve floodplain and wetlands located in Okanogan County, Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

Proposed Action

BPA proposes to fund the rehabilitation of the lower 4.3 miles of Salmon Creek to achieve long-term channel stability, erosion control, and dependable water supply, thus allowing the passage of spring chinook and summer steelhead to the high-quality habitat existing upstream between Conconully Dam and the OID Diversion Dam on Salmon Creek. Proponents and participants in this action include BPA, CCT, OID, the Bureau of Reclamation (BOR), the Natural Resource Conservation Service, the Okanogan Conservation District, and the Washington Department of Ecology. BOR, CCT, and OID have been identified as cooperating agencies for this EIS process. The project proponents further propose to develop a long-term stream management plan to address daily reservoir operations, water management to meet the needs of the various life cycles of anadromous fish, adaptive management for the channel rehabilitation, and the repopulation of the stream with salmon and steelhead.

Anadromous fish species known to have historically occurred in Salmon Creek include spring chinook (*Oncorhynchus tshawytscha*) and summer steelhead (*Oncorhynchus mykiss*). Before the construction of Conconully Dam in 1910 and the OID diversion dam in 1916, these anadromous fish probably utilized a substantial portion of the watershed, which includes approximately 66 miles of perennial streams. Both of these species are listed as ''endangered'' under the Endangered Species Act. Spring chinook are thought to be extirpated from Salmon Creek, although steelhead are occasionally observed in the creek during high-water years.

Today, conditions in the lower reaches of Salmon Creek (downstream of the OID diversion dam) are inadequate for fish passage. For more than 80 years, the lower 4.3 miles of Salmon Creek have been dewatered under normal irrigation operations, except during high runoff years that result in uncontrolled spill at the reservoirs and diversion dam. The lack of streamflow below the diversion dam has significantly impaired fish access into the potentially productive upper reaches of Salmon Creek from the Okanogan River. Historical land uses on uplands have altered vegetation and increased sediment production. These changes, together with alterations of streambanks and riparian vegetation, have adversely affected the channel geometry, streambank stability, and riparian and aquatic habitat values of lower Salmon Creek. Despite these problems, the Council has identified Salmon Creek as having the best potential for improved fish habitat of all Okanogan River tributaries. Increased instream flows and rehabilitation of the stream channel in the lower reaches of Salmon Creek would allow the passage of spring chinook and summer steelhead to the suitable habitat upstream of the OID diversion dam and would substantially increase the available spawning and rearing habitat for these species in the United States' portion of the Okanogan River Basin.

Process to Date

The project proponents have assessed the feasibility of rehabilitating lower Salmon Creek, have preliminarily identified potential water supply sources for the stream channel and irrigation needs, have conducted field surveys along the affected stream reaches, and have developed a draft conceptual plan for rehabilitating lower Salmon Creek. The proponents have engaged in public outreach and consultation including the landowners within the affected stream reaches, the residents of the project area, and a variety of stakeholders in the stream rehabilitation process.

Alternatives Proposed for Consideration

The rehabilitation of Salmon Creek involves engineering/construction activities in the lower 4.3 miles of the stream channel, establishment of adequate water supply (to be achieved through a combination of measures) to maintain sufficient instream flow in the stream channel in future years while preserving irrigation water supply, and activities both now and in the future to facilitate the redevelopment of viable populations of spring chinook and summer steelhead. Salmon Creek rehabilitation will be accomplished through a combination of (1) stream channel reconstruction, (2) streambank revegetation, and (3) increased instream flows. Alternatives from each of these three areas will be combined in a preferred Salmon Creek rehabilitation program. The No Action alternative will also be considered. Alternatives currently under consideration in each of these areas include:

No Action Alternative

Under this alternative, no changes to the existing environment would occur, and migration of spring chinook and summer steelhead into the upper reaches of Salmon Creek would not be facilitated.

Water Supply Alternatives

Previous studies have determined that, in order to continue full water supply delivery to OID and provide adequate water supply to meet the various life cycle requirements of anadromous fish in Salmon Creek, 7,122 to 9,737 acre-feet of water would be required in addition to the existing supply. The following alternatives, identified in earlier studies, will be considered in the EIS. A combination of these alternatives, in conjunction with existing water conservation efforts, would satisfy irrigation and fish requirements:

• *Replace Salmon Lake feeder canal.* Under this alternative, the existing feeder canal diverting water from North Fork Salmon Creek to Salmon Lake (the upper reservoir) would be repaired and resized to allow OID to capture additional water for storage in Salmon Lake.

• *Construct new pump station.* Under this alternative, a new pump station on the Okanogan River would be built along with a new water supply pipeline from the pump station to OID Diversion 2. Under this alternative, the Okanogan River would replace the Conconully reservoirs as the major source of irrigation water supply. The reservoirs would provide year-round instream flows for Salmon Creek and partial water supply to OID.

• *Upgrade existing pump station.* Under this alternative, the existing pump station on the Okanogan River would be upgraded and the pipeline resized to allow transfer of water to OID Diversion 4. The Conconully reservoirs would supply partial water supply to the irrigation district and year round instream flows in Salmon Creek.

• *Raise Salmon Lake Dam.* Under this alternative, Salmon Lake Dam would be raised 2 feet, and OID would dedicate a third foot of Salmon Lake storage for instream flows for Salmon Creek.

• *Water rights acquisition.* Under this alternative, stored water in Conconully would be taken out of permanent supply to the irrigation district, and would be dedicated to instream flows for fish. Partial water rights acquisition may also be considered. Water rights acquisition might reduce the need for pumping water out of the Okanogan River.

• *Long-term water lease.* Under this alternative, existing water rights would be leased and might provide instream flows for one or more phases of anadromous fish life-cycle requirements.

Stream Channel Alternatives

These alternatives provide for reconstruction of stable stream channel geometry in lower Salmon Creek and will be developed during ongoing engineering studies.

Streambank Revegetation Alternatives

These alternatives provide for erosion control and streambank stabilization in lower Salmon Creek by the recovery or reestablishment of riparian vegetation. They will be developed during ongong engineering studies.

Public Participation and Identification of Environmental Issues

At the informal meetings, a brief opening presentation will be made to introduce the proposal, followed by an open house where people can circulate among information stations to discuss specific issues and have questions answered by members of the project team. Nancy Weintraub of BPA will be available to discuss BPA's purpose and need for the proposed action and the overall EIS process. Hilary Lyman of CCT will discuss the project history, the participants in project planning to date, and the overall project goals. Tom Sullivan of OID will describe the role of OID in project development and the alternatives currently under review for water availability within lower Salmon Creek. Woody Trihey of ENTRIX Environmental Consultants will present the conceptual plan for stream rehabilitation in the lower 4.3 miles of Salmon Creek. Written information will also be available, and BPA and project staff will answer questions and accept oral and written comments.

BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings on the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS.

Environmental issues identified to date include: socioeconomic impacts, fish and wildlife impacts and benefits, water use, water quality, flood control/safety, land use, recreational use, and cultural resources.

Maps and further information about the project are available from BPA at the address above.

Issued in Portland, Oregon, on January 22, 2002.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–2598 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice for 2002 State Energy Program Special Projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 2002, the Office of Energy Efficiency and Renewable Energy of the Department of Energy (DOE) is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. Financial assistance will be awarded to the States separately for each special project, with the activities to be carried out in conjunction with their efforts under SEP. The special projects funding and activities are

tracked separately so that the sector programs may follow the progress of their projects.

DATES: The program announcement was issued on December 20, 2001. Applications must be received by March 15, 2002.

ADDRESSES: The 2002 State Energy Program Special Projects Announcement contains complete information about this program and is available to view and/or access at the following Web site: *http://www.eren.doe.gov/buildings/state_energy/pdfs/special_projects_02.pdf.*

FOR FURTHER INFORMATION CONTACT: For referral to the appropriate DOE Regional Office or State Office, you may contact Mr. Eric W. Thomas, (202) 586–2242, or Ms. Faith Lambert, (202) 586–2319, at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The projects must meet the relevant requirements of the program providing the funding, as well as of SEP, as specified in the 2002 Special Projects Announcement. Among the goals of the special projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

Fiscal year 2002 is the seventh year special project activities have been funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 2002 Funds

With this publication, DOE is announcing the availability of an estimated $18.5 million in financial assistance funds for fiscal year 2002. The awards will be made through a competitive process. The sector programs that are participating in the SEP Special Projects for fiscal year 2002, with the estimated amount of funding available for each, are as follows:

- *Clean Cities/Alternative Fuels:* Accelerating the introduction and increasing the use of alternative fuels and alternative fuel vehicles through the development of infrastructure, niche markets, and clean corridors, and by promoting the use of advanced transportation technologies ($4,500,000)
- *Industrial Technologies:* Implementing Industries of the Future at the State level by building partnerships among State government agencies, industry, universities and research institutions: to develop new technologies tied to Industries of the Future road maps and visions; and to utilize best practices which can improve energy efficiency, environmental performance and productivity ($3,000,000).
- *Codes and Standards:* Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($1,800,000).
- *Rebuild America:* Helping community and regional partnerships achieve their objectives through energy efficiency and energy technology solutions in buildings for K–12 schools, colleges/universities, state/local governments, commercial and multifamily housing ($2,500,000).
- *Building America:* Applying systems engineering approaches to the development of advanced residential buildings, including production techniques, products, and technologies that result in higher quality, energy-efficient housing. ($300,000)
- *Federal Energy Management Program:* Working to reduce the cost and environmental impact of government by advancing energy efficiency and water conservation, promoting the use of distributed and renewable energy, and improving utility management decisions at Federal sites. ($500,000)
- *Uninterrupted Power Source (UPS):* Collaborating with the States and Territories in the siting and development of hydrogen fuel cells of 1 to 5 kilowatts in size to better understand the performance, maintenance, operation, and economic viability of these systems as uninterruptable power source systems. ($200,000)
- *Power Park:* Determining if the Power Park concept of hydrogen production from natural gas or municipal solid waste reforming (continental U.S.) or renewable resources for islands, villages, and remote areas is economically viable as a clean technology that can co-produce hydrogen fuel for stationary hydrogen fuel cells and reciprocating engines for hydrogen fuel cell cars. ($450,000)
- *Hydrogen Compressors, Storage, and Dispensers:* Testing the ability of a hydrogen generation system to fuel buses and/or light and heavy duty vehicle storage tanks. ($350,000)
- *Solar Powered Security:* Developing photovoltaic-powered application hardware for protecting our power delivery systems (*e.g.* pipelines, and national grid). ($200,000)
- *Solar Schools Demonstration and Educational Outreach:* Incorporating new solar energy generation into the schools energy mix and incorporating learning about solar and renewables into the State educational curriculum for schools. ($300,000)
- *Zero Energy Homes:* Designing, building and/or showcasing one or more currently marketable Zero Energy Homes in conjunction with local partners such as homebuilders, universities, and utilities. ($200,000)
- *Million Solar Roofs Initiative—Small Grant Program for State Partnerships:* Assisting the Million Solar Roofs Initiative (MSR) State Partnerships in developing and implementing programs to further the use of solar energy on buildings. ($500,000)
- *State Wind Energy Support:* Proposals from States are sought for (1) wind resource assessment efforts to enable producing more accurate and detailed state wind maps, (2) wind resource data collection using existing tall towers (100 meters or taller preferred), and (3) activities to overcome barriers to use of small wind systems. ($770,000)
- *Distributed Energy Resources Electrical Interconnection:* Developing education and/or training materials (video tapes with hard copy manuals), on the process of interconnecting new Distributed Generation systems with the electrical grid (distribution and transmission levels), and permitting such installations. ($55,000)
- *Distributed Energy Resources Technologies:* Undertaking distributed generation projects that will support Regional and/or State restructuring activities as well as accelerating the installation of new distributed generation facilities. ($1,240,000)
- *Superconductivity Program Information Dissemination and Outreach Activities to State Agencies:* Encouraging activities to broaden the national effort and deliver the accomplishments of the Superconductivity Program to the State and local level. ($435,000)
- *State Geothermal Energy Support:* Proposals from States are sought for (1) projects that involve case studies of the benefits and costs of deployment of geothermal direct use or electric generation projects in the Western U.S.; (2) projects that involve providing public access to information about geothermal energy resources,

technologies, and economics, and (3) projects that involve the creation of expert teams to conduct ''trade missions'' designed to inform community leaders of the potential for geothermal development in their area of the state. ($475,000)

• *Energy Storage for Transmission Congestion Relief, Price Response, and System Security:* Evaluating the feasibility and potential economic advantages of deferring power transmission system upgrades and relieving transmission congestion using modern electricity storage technologies. ($125,000)

• *Biofuels for Power Generation:* Assessing the feasibility of site-specific power projects using biofuels and/or implementing actual site-specific biopower projects. ($600,000)

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, and any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants. The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119. Requirements for cost sharing contributions are addressed in the December 20, 2001 program announcement for each special project activity, as appropriate. (*See http://www.eren.doe.gov/buildings/state_energy/pdfs/special_projects_02.pdf*). Cost sharing contributions beyond any required percentage are desirable. Any application must be signed by an authorized State official, in accordance with the program announcement.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. The end-use sector offices select projects for funding. The Office of Building Technology Assistance then recommends project allocations to the Assistant Secretary for Energy Efficiency and Renewable Energy for final determination. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

Issued in Washington, DC, on January 29, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–2599 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: February 28, 2002 from 8 am to 5:30 pm, and March 1, 2002 from 8:30 am to 5 pm.

PLACE: The Madison Hotel, Fifteenth and M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda

• STEAB Committee updates
• STEAB Annual Report Kickoff
• EERE State Success Stories
• Homeland and Energy Security Discussion
• Open Discussion with the Office of Energy Efficiency and Renewable Energy, USDOE
• Update on Current Energy Legislation
• STEAB Budget Committee Meeting
• Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2601 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–17–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 24, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to become effective January 24 2002:

Fourth Revised Sheet No. 36A
Eleventh Revised Sheet No. 37
Seventh Revised Sheet No. 241
Seventh Revised Sheet No. 245
Seventh Revised Sheet No. 247
Seventh Revised Sheet No. 248
Ninth Revised Sheet No. 940
Seventh Revised Sheet No. 942

Algonquin asserts that the purpose of this filing is to include the Phelps Dodge Lateral in its Rate Schedule AFT–CL and AFT–CL Form of Service Agreement, and to include the applicable rates on the rate sheets, in compliance with the Commission's order issued April 27, 2001 in Docket No. CP01–17–000, authorizing Algonquin to provide firm lateral transportation service to Phelps Dodge Copper Products Company under Rate Schedule AFT–CL.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions, as well as all parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2572 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–645–001]

American Transmission Company, LLC; Notice of Filing

January 29, 2002.

Take notice that on January 16, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Letter of Clarification related to its December 28, 2001 filing of OATT revisions to accommodate retail access in Michigan, for which ATCLLC requested an effective date of January 1, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: February 6, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2573 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–043]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

January 29, 2002.

Take notice that on January 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of February 1, 2002:

Fifth Revised Sheet No. 20
Fourth Revised Sheet No. 20A
Fourth Revised Sheet No. 20B

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's October 24, 2001 orders approving negotiated rate agreements in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2579 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–45–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

January 29, 2002.

Take notice that on January 18, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Thirteenth Revised Sheet No. 7, proposed to be effective January 1, 2002.

Great Lakes states that the tariff sheet described above corrects an oversight made in its November 9, 2001 filing to reflect the revised funding surcharges for the Gas Research Institute for the year 2002. Specifically, the November 9 filing failed to update the GRI amounts shown in Footnote 3 of Thirteenth Revised Sheet No. 7. The November 9, 2001 filing was accepted by the Commission in its December 14, 2001 Letter Order under Docket No. RP02–45–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2581 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–151–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

January 29, 2002.

Take notice that on January 24, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective February 25, 2002:

First Revised Sheet No. 305
Second Revised Sheet No. 306
Original Sheet No. 307
Sheets 308–399 Reserved

Gulf South and its No Notice Service (NNS) customers have developed several contractual provisions that allocate certain market and regulatory risks. Gulf South is filing tariff sheets to allow its NNS Customers the ability to include some or all of these provisions in their NNS service agreements.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2584 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–519–004]

Northern Natural Gas Company; Notice of Amendment

January 29, 2002.

Take notice that on January 18, 2002, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–519–004, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, requesting an amendment to the Commission's order issued April 17, 1997 in Docket No. CP95–519–000 and the order on rehearing issued May 31, 2001, which authorized the abandonment and sale of Northern's interest in certain offshore and onshore facilities located in Texas, known as the Matagorda Offshore Pipeline System (MOPS), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Northern states that the amendment proposes to abandon the MOPS facilities by sale for $13 million to Williams Field Services-Gulf Coast Company, L.P. (Williams), with the exception of the MOPS compression facilities on the platform located in Matagorda Island Block 686 (MAT 686). Northern plans to replace approximately 70 feet of 4-inch piping on the platform located in MAT 686. This piping is necessary to allow for the pigging of the MOPS facilities. Concurrently, Northern states that it proposes to abandon and remove two 3,300 HP compressor units and appurtenant natural gas facilities on the platform located in MAT 686. The MOPS compression has not operated since late 1996. This compression is no longer needed as the gas reserves connected to MOPS have depleted to the extent that the units are no longer required to produce the natural gas connected to the MOPS system. Further, Northern states that the abandonment of the MAT 686 facilities will not result in the abandonment of service to any MOPS shipper. Northern intends to utilize this equipment in the future at other locations on its system as necessary or salvage this equipment as appropriate.

Williams Field Services-Matagorda Offshore Company, LLC (WFS–MOC) has concurrently filed an application in Docket Nos. CP02–70–000, CP02–71–000, and CP02–72–000 to acquire and operate the jurisdictional portion of the MOPS facilities. Williams will operate the non-jurisdictional facilities.

Any questions concerning this application may be directed to Keith L. Petersen, Director, Certificates and Reporting, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or fax (402) 398–7592 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2571 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–116–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 23, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2002:

Substitute Eighth Revised Sheet No. 6
Substitute Fifteenth Revised Sheet No. 14
Substitute Second Revised Sheet No. 115
Substitute Second Revised Sheet No. 116
Substitute Third Revised Sheet No. 117
Substitute Second Revised Sheet No. 118
Substitute Eighth Revised Sheet No. 231
Seventh Revised Sheet No. 231–A
Third Revised Sheet No. 231–B
Substitute Original Sheet No. 359
Substitute Third Revised Sheet No. 360

Northwest states that the purpose of this filing is to provide explanations and tariff revisions, as needed, to address the issues raised by the Commission in its order dated January 2, 2002 pertaining to Northwest's new Rate Schedule DEX–1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2582 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–395–004, and RP96–348–012 (Not Consolidated)]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 18, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to be effective February 1, 2002:

Sub Fifth Revised Sheet No. 252
Original Sheet No. 252A
Sub Third Revised Sheet No. 255A
Sub Fourth Revised Sheet No. 283

Panhandle asserts that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order on Compliance Filing issued on December 19, 2001 in the above referenced proceedings. 97 FERC ¶ 61,285 (2001). Specifically, the revised tariff sheets reflect clarifications regarding changes to primary and secondary points in Sections 10.5(c), (d) and (e) and 11.9(d), (e) and (f) of the General Terms and Conditions. Additionally, the replacement shipper's right to reserve primary point capacity is clarified in Section 15.7(b) of the General Terms and Conditions.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2580 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–150–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 29, 2002.

Take notice that on January 23, 2002, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective February 1, 2002:

Sixteenth Revised Sheet No. 73

Transwestern states that the above tariff sheet is being filed in compliance with the Commission's Regulations to update the specific contact person referenced in Transwestern's tariff for Order No. 497 compliance.

Transwestern further states that copies of the filing have been mailed to each of its 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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2583 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–322–001, et al.]

CinCap Madison, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 28, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. CinCap Madison, LLC

[Docket Nos. ER02–322–001 and ER01–1784–003]

Take notice that on January 23, 2002, CinCap Madison, LLC (CinCap Madison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its notice of change in status and an amendment to the market-based rate tariff and code of conduct.

Comment Date: February 13, 2002.

2. CH Resources, Inc.

[Docket No. ER99–1001–002]

Take notice that on January 23, 2002, WPS Power Development, Inc. (PDI) on behalf of CH Resources, Inc. (CH Resources) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of change in status under CH Resources' market-based rate authority to reflect PDI's acquisition of CH Resources from Central Hudson Energy Services, Inc.

Comment Date: February 13, 2002.

3. Public Service Company of New Mexico

[Docket No. EC02–43–000]

Take notice that on January 22, 2002, Public Service Company of New Mexico (PNM) submitted for filing an application under section 203 of the Federal Power Act for approval of the reacquisition by PNM of legal title to a portion of the Eastern Interconnection Project, a 216 mile, 345 kV transmission line currently leased by PNM pursuant to a sale and lease-back transaction through the acquisition by PNM of all of the outstanding shares of the entity that owns the facilities, and the termination of a non-jurisdictional lease associated with that portion of the facilities.

Comment Date: February 12, 2002.

4. Central Hudson Energy Services, Inc., CH Resources, Inc., WPS Power Development

[Docket No. EC02–44–000]

Take notice that on January 23, 2002, Central Hudson Energy Services, Inc. (CHES), CH Resources, Inc. (CH Resources) and WPS Power Development, Inc. (PDI), filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to transfer by sale 100% of the outstanding securities of CH Resources from CHES to PDI. The Applicants have requested Commission approval of the proposed transaction to permit the Applicants to close after March 22, 2002 after the receipt of all necessary regulatory approvals and satisfaction of other closing conditions.

Comment Date: February 13, 2002.

5. Westcoast Power Holdings Inc.

[Docket No. EG02–69–000]

Take notice that on January 23, 2002, Westcoast Power Holdings Inc. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulation.

The applicant states that it is a Canadian company who is engaged directly and exclusively in developing, owning, and operating a gas-fired 110 MW combined cycle power plant in Ontario, Canada, which will be an eligible facility.

Comment Date: February 19, 2002.

6. Shanghai WEI-Gang Energy Company Ltd.

[Docket No. EG02–70–000]

Take notice that on January 23, 2002, Shanghai WEI-Gang Energy Company Ltd. filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 365 of the Commission's regulations.

The applicant states that it is a Sino-foreign cooperative joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 50 MW simple cycle power plant in Shanghai, China, which will be an eligible facility.

Comment Date: February 19, 2002.

7. McMahon Project Joint Venture

[Docket No. EG02–71–000]

Take notice that on January 23, 2002, the McMahon Project Joint Venture filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant states that it is a joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 117 MW combined cycle power plant in British Columbia, Canada, which is an eligible facility.

Comment Date: February 19, 2002.

8. Capital District Energy Center Cogeneration Associates

[Docket No. EG02–72–000]

Take notice that on January 23, 2002, Capital District Energy Center Cogeneration Associates (CDECCA), a Connecticut general partnership with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CDECCA describes the facts as follows: It owns and operates an approximate 56–MW natural gas-fired, combined-cycle, independent power production facility in Hartford, Connecticut (the Facility); and electric energy produced by the Facility will be sold by CDECCA to the wholesale power market operated by ISO-New England and any successor organization(s).

Comment Date: February 19, 2002.

9. Bayside Power L.P.

[Docket No. EG02–73–000]

Take notice that on January 23, 2002, Bayside Power L.P. (Bayside), a limited partnership organized under the laws of the Province of New Brunswick, Canada and with its principal place of business at 509 Bayside Drive, Saint John, New Brunswick, Canada, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Bayside states that it owns and/or leases and operates a 280-MW combined cycle, natural gas-fired electric generation facility located at the site of New Brunswick Power Corporation's Courtenay Bay Generating Station in Saint John, New Brunswick, Canada and that all sales by Bayside of power from the facility will be exclusively at wholesale.

Comment Date: February 19, 2002.

10. LG&E Capital Trimble County LLC

[Docket No. EG02–74–000]

Take notice that on January 24, 2002, LG&E Capital Trimble County LLC (Applicant), a Delaware limited liability company with its principal place of business at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant proposes to construct, own and operate two 152 MW (summer rating) combustion turbine electric generating units in Trimble County, Kentucky. The units are expected to be in service by May 2002. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment Date: February 19, 2002.

11. Thoroughbred Generating Company, LLC

[Docket No. EG02–75–000]

Take notice that on January 23, 2002, Thoroughbred Generating Company, LLC (Thoroughbred) with a principle place of business at 701 Market Street, Suite 900, St. Louis, MO 63101, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Thoroughbred states that it is a wholly owned subsidiary of Peabody Energy Corporation, a private-sector coal company. Thoroughbred filed its Application in conjunction with the proposed construction of two 750 MW ''mine-mouth'' pulverized coal generating units to be located in Muhlenberg County, Kentucky.

Comment Date: February 19, 2002.

12. Ameren Energy Generating Company

[Docket No. EG02–76–000]

Take notice that on January 25, 2002, Ameren Energy Generating Company (AEG) One Ameren Plaza, 1901 Chouteau Plaza, P. O. Box 66149, St. Louis, Missouri, 63166–6149, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 381.801 of the Commission's regulations, 18 CFR 381.801.

AEG states that it repowered the Grand Tower, Illinois Unit 2/4, as further detailed in the application. The unit is now a 270 MW Natural gas-fired combustion turbine unit, which began commercial operations on December 6, 2001. AEG also submits certain information intended to correct a minor error contained in an earlier application. AEG states that all of the electric energy from the affected units will be sold at wholesale.

Comment Date: February 19, 2002.

13. San Diego Gas & Electric Company

[Docket No. EL02–54–000]

Take notice that on January 22, 2002, San Diego Gas & Electric Company filed a Petition for a Declaratory Order in the above-captioned proceeding.

Comment Date: February 19, 2002.

14. CinCap VII, LLC

[Docket Nos. ER02–319–001 and ER00–1831–003]

Take notice that on January 23, 2002, CinCap VII, LLC tendered for filing an amendment to its notice of change in status and an amendment to the market-based rate tariff and code of conduct.

Comment Date: February 23, 2002.

15. American Ref-Fuel Company of Delaware Valley, L.P.; American Ref-Fuel Company of Niagara, L.P.; Bridgeport Energy, LLC.; Casco Bay Energy Company, LLC; Duke Energy Hinds, LLC; Duke Energy Lee, LLC; Duke Energy Moapa, LLC; Duke Energy Mohave, LLC; Duke Energy Morro Bay, LLC; Duke Energy Moss Landing, LLC; Duke Energy Oakland LLC; Duke Energy Power Marketing, LLC; Duke Energy St. Francis, LLC; Duke Energy St. Lucie, LLC; Duke Energy South Bay LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Trenton, LLC; Duke Energy Vermillion, LLC; Duke Energy Washoe, LLC; Duke/ Louis Dreyfus L.L.C.; DukeSolutions, Inc.; Griffith Energy, LLC; New Albany Power I, LLC;

[Docket Nos. ER00–2677–001; ER01–1302–002; ER98–2783–004; ER99–2482–001; ER99–3822–001; ER01–691–002; ER01–545–002; ER01–1208–002; ER01–1619–003; ER98–2681–003; ER98–2680–003; ER98–2682–003; ER01–1129–002; ER99–3118–001; ER00–2225–001; ER99–1785–002; ER97–3858–001; ER99–2930–001; ER00–1113–001; ER00–1782–002; ER00–1783002; ER01–241–001; ER96–108–021; ER98–3813–008; ER00–3696–002; and ER01–2746–002]

Take notice that on January 23, 2002, the above noted affiliates of Duke Energy Corporation (the Duke Affiliates) filed a notice of status change with the Federal Energy Regulatory Commission in connection with the pending change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc.

Copies of the filing were served upon all parties on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Comment Date: February 13, 2002.

16. Delmarva Power & Light Company

[Docket No. ER02–797–000]

Take notice that on January 23, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing an Interconnection Agreement between Delmarva and Conectiv Delmarva Generation, Inc. (CDG). The Interconnection Agreement provides for the interconnection of CDG's Hay Road 5, Hay Road 6, Hay Road 7, and Hay Road 8 generating facilities with the Delmarva transmission system.

Delmarva respectfully requests that the Interconnection Agreement become effective on January 23, 2002.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public

Service Commission and the Virginia State Corporation Commission.

Comment Date: February 13, 2002.

17. Thoroughbred Generating Company, LLC

[Docket No. ER02–814–000]

Take notice that on January 23, 2002, Thoroughbred Generating Company, LLC (Thoroughbred), an wholly owned subsidiary of Peabody Energy Corporation, tendered for filing a Petition seeking the Commission's approval of Thoroughbred Rate Schedule FERC No. 1, a rate schedule to engage in sales at market-based rates, and seeking the waiver of certain Commission regulations.

Comment Date: February 13, 2002.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–816–000]

Take notice that on January 23, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Serve Agreements and Network Transmission Service and Operating Agreements held by Cinergy Services, Inc.

Copies of this filing were sent to all applicable customers under the Cinergy Open Access Transmission Tariff.

Comment Date: February 13, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–817–000]

Take notice that on January 23, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Entergy Services and Entergy-Koch Trading, LP.

Comment Date: February 13, 2002.

20. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–833–000]

Take notice that on January 23, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 155 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of December 31, 2001 to Old Dominion Electric Cooperative.

Copies of the filing have been provided to the Maryland Public Service Commission, the Virginia State Corporation Commission, and all parties of record.

Comment Date: February 13, 2002.

21. Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC, Troy Energy, LLC

[Docket No. ER02–835–000, ER02–836–000, ER02–837–000]

Take notice that on January 23, 2002, Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC and Troy Energy, LLC filed Service Agreements with Virginia Electric and Power Company. It is requested that the effective date of these Service Agreements will be January 24, 2002.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Ohio Public Utilities Commission and the Pennsylvania Public Utility Commission.

Comment Date: February 13, 2002.

22. American Electric Power Service Corporation

[Docket No. ER02–838–000]

Take notice that on January 23, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing twelve (12) non-redacted, confidential copies and eleven (11) redacted, non-confidential copies of Service Agreements for the sale of power by AEPSC which are greater than one year in length. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies).

AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to January 1, 2002. A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: February 13, 2002.

23. Entergy Services, Inc.

[Docket No. ER02–405–001]

Take notice that on January 23, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi) tendered for filing an amendment to Entergy Services' November 26, 2001, filing of an unexecuted amended Interconnection and Operating Agreement (Amended Interconnection Agreement) between Entergy Mississippi and Duke Energy Hinds, LLC (Duke). The amendment supplies additional information supporting the classifications of the Optional System upgrades identified in the appendices of the Amended Interconnection Agreement and the Interconnection Facilities identified in the original executed Interconnection and Operating Agreement between Entergy Mississippi and Duke

Comment Date: February 13, 2002.

24. New England Power Company

[Docket No. ER96–237–003]

Take notice that on January 23, 2002, New England Power Company (NEP) submitted for filing a Refund Report along with supporting documents. The refunds were made in compliance with an order issued in the above-referenced docket.

NEP states that copies of the Refund Report have been served on the persons listed on the official service list for this proceeding, the Massachusetts Department of Telecommunications and Energy, Massachusetts Municipal Wholesale Electric Company and Norwood Municipal Light Department.

Comment Date: February 13, 2002.

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.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2559 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2694–002]

Nantahala Power and Light, a Division of Duke Engineering Company; Notice of Availability of Final Environmental Assessment

January 29, 2002.

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 application for a new license for the existing and operating Queens Creek Hydroelectric Project FERC No. 2694–002, located on Queens Creek, in Macon County, North Carolina and has prepared a Final Environmental Assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA 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).

For further information, contact Steve Kartalia at (202) 219–2942.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2575 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

January 29, 2002.

a. *Type of Filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 2146.

c. *Date Filed:* November 19, 2001.

d. *Submitted By:* Alabama Power Company—current licensee.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* On the Coosa River in Calhoun, Cherokee, Chilton, Coosa, Elmore, Etowah, Shelby, St. Clair, and Talladega Counties, Alabama, and in Floyd County, Georgia. The project occupies federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Jim Crew, JFCREW@southernco.com, (205) 257–4265, or Barry Lovett, *BKLOVETT@southernco.com,* (205) 257–1268.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* August 1, 1957.

k. *Expiration date of current license:* July 31, 2007.

l. *Description of the Project:* The project consists of the following five developments:

The Weiss Development consists of the following existing facilities: (1) The 392-foot-long Weiss Dam consisting of: (a) A 263-foot-long concrete spillway section equipped with five 40-foot-wide by 38-foot-high Taintor gates and one 16-foot-wide by 22-foot-high Taintor trash gate; (b) a 7,000-foot-long east embankment; (c) a 4,800-foot-long west embankment; (2) the 30,200-acre Weiss Lake with a normal water surface elevation of 564 feet msl; (3) a 7,000-foot-long intake canal leading to; (4) a 8,900-foot-long east embankment and a 9,800-foot-long west embankment; (5) a powerhouse containing three generating units with a total installed capacity of 87.75 MW, (6) a 1,300-foot-long tailrace; (7) two 115-kV transmission lines; and (8) other appurtenances.

The Henry Development consists of the following existing facilities: (1) The 858-foot-long Henry Dam consisting of: (a) A 305-foot-long concrete spillway section equipped with six 40-foot-wide by 29-foot-high Taintor gates; (b) a 300-foot-long intake section; (c) an 850-foot-long east embankment; (d) a 3,200-foot-long west embankment; (2) the 11,235-acre Henry Lake with a normal water surface elevation of 508 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 72.9 MW; (4) two 115-kV transmission lines; and (5) other appurtenances.

The Logan Martin Development consists of the following existing facilities: (1) The 702-foot-long Logan Martin Dam consisting of: (a) A 327-foot-long concrete spillway section equipped with six 40-foot-wide by 38-foot-high Taintor gates and one 17.5-foot-wide by 21.0-foot-high trash gate; (b) a 4,650-foot-long east embankment; (c) a 870-foot-long west embankment; (2) the 15,263-acre Logan Martin Lake with a normal water surface elevation of 465 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 128.25 MW; (4) four 115-kV transmission lines; and (5) other appurtenances.

The Lay Development consists of the following existing facilities: (1) The Lay Dam consisting of: (a) A 194-foot-long concrete bulkhead; (b) a 304-foot-long concrete intake section; (c) a 930-foot-long concrete spillway section equipped with twenty-six 30-foot-wide by 17-foot-high vertical lift gates; (d) a 180-foot-long concrete bulkhead; (e) a 512-foot-long embankment; (2) the 12,000-acre Lay Lake with a normal water surface elevation of 396 feet msl; (3) a powerhouse containing six generating units with a total installed capacity of 177.0 MW; (4) two 44-kV transmission lines and four 115-kV transmission lines; and (5) other appurtenances.

The Bouldin Development consists of the following existing facilities: (1) The Bouldin Dam consisting of: (a) A 2,200-foot-long embankment; (b) a 228-foot-long concrete intake section; (c) a 7,000-foot-long embankment; (2) the 920-acre Bouldin Lake with a normal water surface elevation of 252 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 255.0 MW; (4) a 5-mile-long tailrace canal; (5) four 115-kV transmission lines; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

n. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2574 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 4204–024.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* City of Batesville (City).

e. *Name of Project:* White River Lock and Dam No. 1 Hydroelectric Project.

f. *Location:* The project is located on the White River, in the Town of Batesville, Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street NW., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: *janet.hutzel@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4204–024) on any comments or motions filed. Comments, motions to intervene, 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 (http://www.ferc.gov) under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Amendment: The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). The City of Batesville now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. The City thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed 25 kV transmission line would extend along the north side of the White River westward 9.6 miles from Lock and Dam No. 1 to the proposed substation. Underground transmission line is proposed for the first 3000 ft from Lock and Dam No. 1, while the remaining line would use single pole structures.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4204–024) 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 City of Batesville specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2576 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of License.

b. *Project No.:* 4659–026.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* Independence County.

e. *Name of Project:* White River Lock and Dam No. 3 Hydroelectric Project.

f. *Location:* The project is located on the White River, in Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street N.W., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: *janet.hutzel@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4659–026) on any comments or motions filed. Comments, motions to intervene, 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). Independence County now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. Independence County thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed transmission line would extend along the north side of the White River eastward nine miles from Lock and Dam No. 3 to the proposed substation. Single pole structures would be used to construct the 25 kV transmission line.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket ι'' 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. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4659–026) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of Independence County specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2577 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 4660–028.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* Independence County.

e. *Name of Project:* White River Lock and Dam No. 2 Hydroelectric Project.

f. *Location:* The project is located on the White River, in Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street N.W., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: janet.hutzel@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, and protests: March 6, 2002.*

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4660–028) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The license, issued November 8, 1985, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). Independence County now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. Independence County thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed transmission line would extend along the north side of the White River eastward two miles from Lock and Dam No. 2 to the proposed substation. Single pole structures would be used to construct the 25 kV transmission line.

The proposed substation would be located approximately two miles east of

White River Lock and Dam No. 2, on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4660–028) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of Independence County specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2578 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 28, 2002, 67 FR 3894.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 30, 2002 10 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item E–42 on the Commission Meeting of January 30, 2002.

Item No., Docket No., and Company

E–42—ER02–788–000, Gulf Power Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–2716 Filed 1–31–02; 2:07 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Final Allocation of the Post-2004 Resource Pool-Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Salt Lake City Area Integrated Projects (SLCA/IP) Post-2004 Resource Pool Final Allocation of Power developed under the requirements of Subpart C-Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. This notice also includes Western's responses to comments on proposed allocations published June 13, 2001.

Final allocations are published to indicate Western's decisions prior to beginning the contractual phase of the process. Firm electric service contracts, negotiated between Western and allottees in this notice, will permit delivery of the allotted power from the October 2004 billing period through the September 2024 billing period.

DATES: The Post-2004 Resource Pool Final Allocation of Power will become effective March 6, 2002, and will remain in effect through September 30, 2024.

ADDRESSES: All documents developed or retained by Western in developing the final allocations are available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (64 FR 48825, September 8, 1999) to implement Subpart C-Power Marketing Initiative of the Program's Final Rule (10 CFR part 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers.

Proposed allocations were published in the **Federal Register** (66 FR 31910, June 13, 2001). Public information/comment forums concerning the proposed allocations were held August 10, 15, 16, 21, and October 4, 2001. The public comment period closed October 11, 2001.

The Procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4844, February 7, 1986), establish the framework for allocating power from the SLCA/IP Post-2004 Power Pool.

I. Comments and Responses

Comment: Headgate Rock Dam generation should not be considered as an offset to Federal power when calculating the allocation for the Colorado River Indian Tribes (CRIT).

Response: Western has researched the authorizing legislation for Headgate Rock Dam and electric generation facilities and agrees with this comment. The dam was built as an Indian project by the Department of the Interior for the benefit of the CRIT under the Snyder Act (25 U.S.C. 13) and will not be considered a Federal power resource.

Comment: The marketing area of the SLCA/IP was limited to Arizona, Colorado, New Mexico, Utah, and Wyoming, and parts of Nevada. Some tribes have portions of their reservations in California. These should have been considered in making allocations.

Response: Originally, the marketing area for the Colorado River Storage Project included all of the drainage area of the Colorado River. The Post-1989 Marketing Plan reduced the marketing area to Arizona, Colorado, New Mexico, Utah, Wyoming, and portions of

Nevada. The current action is an extension of that marketing plan. Therefore, Western is not able to consider expanding the marketing area at this time. Any expansion of the marketing area to include portions of reservations in California is outside the scope of this effort. The portions of reservations in California are within the Parker-Davis Project marketing area. Power resource pools from these projects will be allocated effective upon expiration of existing contracts on September 30, 2008. Tribes with reservation lands and eligible loads in California may be able to participate in that process.

Comment: Allocations were not proposed for the Indian Pueblos of San Ildefonso, Santo Domingo, and Taos because their applications were not complete. They should be allowed to complete the application process and receive allocations.

Response: Western's mandate is to ensure the most widespread use of the Federal resources. Consistent with this, Western's goal was to achieve 100 percent participation by the eligible Indian tribes within the SLCA/IP marketing area. These three Pueblos along with the Moapa Band of Paiute Indians had not completed the application process and were not included in the proposed allocations. The Pueblos have now completed the application process. Allocations for these tribes are included in this notice. The Moapa Band of Paiutes has not indicated any further interest in Federal power and will not receive an allocation.

Comment: Western should closely review data submitted by tribes. The proposed allocations were based on Indian-owned loads on the reservations. Some ineligible loads may have been used in determining allocations.

Response: Western has conducted a reasonable review and verification of the Applicant Profile Data submitted by the tribes. Western believes that the tribes submitted their data in good faith and complied with the criteria. Tribes were asked to divide their commercial loads into Indian and non-Indian owned.

The allocation proposed for the Yavapai Prescott Tribe was based on a large amount of non-Indian owned commercial load on the Yavapai Prescott reservation. This was correctly identified by the Yavapai Prescott Tribe but incorrectly included by Western in determining the proposed allocation. The Tribe's allocation has been revised to base it only on allowed loads and to make it consistent with other tribes' allocations.

Comment: Because Tri-State Generation and Transmission Association (Tri-State) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) merged (in addition to the 7 percent withdrawal for the Post-2004 Power Pool), an additional 7,000 kilowatts (kW) and associated energy will be withdrawn from Tri-State. Some tribes commented that these 7,000 kW and the energy should be placed in the SLCA/IP Power Pool and allocated to the tribes.

Response: As stated in the June 13, 2001, **Federal Register** notice, Western's intent in withdrawing additional resources from Tri-State was to provide an allocation for Navopache Electric Cooperative (Navopache). Navopache was a member of Plains and received the benefit of Federal power through this membership. However, in the merger, Navopache chose not to become a member of Tri-State, thus losing access to Federal power. Western's intent in withdrawing an additional 7,000 kW from Tri-State was to provide an allocation to Navopache. This will enable Navopache to again receive Federal power after the merger of Tri-State and Plains eliminated its Federal power benefit. Navopache will be allocated 7,000 kW in both of the Summer and Winter seasons. It will receive 15,350,991 kilowatthours (kWh) of energy in the Summer season and 14,660,861 kWh in the Winter season.

Comment: Western should not consider the benefits of Federal power from current tribal service providers when making allocations to the tribes. In the event of the formation of a tribal utility, that power would be inaccessible to the tribes.

Response: The intent of the Program is to provide the benefits of Federal hydropower directly to individual tribes. Allocations listed in this notice will be made directly to the tribes. Any indirect Western hydroelectric benefits recognized in the calculation method were used by Western to determine a fair share for tribes at the time of allocation with no intent to create any commitment to transfer those benefits to the tribes. Any indirect Western hydroelectric benefits received by the tribes are due to contractual commitments between Western and the existing customers.

The White Mountain Apache Tribe (White Mountain) argued that since Navopache does not currently receive Federal power, indirect Federal benefits should not be considered in proposing a power allocation for White Mountain. However, Navopache will receive an allocation of SLCA/IP power at the same time that White Mountain is eligible to receive service under this proposal. Since White Mountain and its members receive electric service from Navopache, they will at that time receive indirect Federal benefits through Navopache. They were also receiving the indirect benefit of Federal power during the base year established by Western for determination of the allocations. Consistent with the methodology used for all tribes, these indirect benefits have been accounted for in the proposed allocation for White Mountain.

Comment: Several tribes commented that energy not contracted for tribes should be used to increase other tribes' allocations to reach the target of 65 percent of eligible load. On the other hand, current customers commented that energy not contractually committed to tribes should be returned to the current customers.

Response: Western's intent is to enter into contracts with all tribes and/or nations receiving an allocation prior to October 1, 2004. In the event that a contract with a tribe for its allocation is not consummated prior to this date, such tribe's allocation will be held until a contract is completed or arrangement to take delivery of the power or the benefits of the power are made. Western stated in the criteria that energy not contracted for by new customers would be returned to current customers. It is now evident that the quantity of energy not contractually committed will be so small that reallocating it would not be administratively effective. The energy will not be reallocated to other tribes or existing customers but will be made available for the use of all customers through standard terms of the firm electric service contracts.

Comment: Western's current customers commented that the firm electric service contracts with the tribes should be the same as the contracts with current customers. However, some Indian representatives commented that certain changes should be made to the General Power Contract Provisions that take into account tribal sovereignty. Underlying reserve contracts should be offered to tribes to reserve the power allocation for each tribe and would allow changes to the method of implementation. Western's Integrated Resource Planning (IRP) requirements should be useful but not burdensome to the tribes.

Response: Entering into contractual arrangements with the tribes is the next step of the resource pool allocation process. However, contractual arrangements will not begin until final allocations are completed. Contractual provisions will be consistent with Section IV of the Procedures.

Comment: Several comments were submitted concerning delivery points for Federal power.

Response: Delivery issues will be addressed after the allocation is final. Contracts for transmission service will be developed between the tribes and transmission providers. The tribes are ultimately responsible for transmission and delivery arrangements beyond the SLCA/IP Federal delivery points. However, Western will assist tribes in securing the necessary transmission or other arrangements that are necessary to ensure that they will receive the benefits of SLCA/IP power.

Comment: If changes to the proposed allocations are made, Western should publish revised proposed allocations and provide time for public review and comment.

Response: Western has made changes to the proposed allocations. However, all of the changes are the result of better information about applicants' loads and not the result of changes in criteria or policy. Western has consistently applied the criteria to all applicants in making the allocations. Allowing further public review and comment would delay further the implementation of the program and delay the offer of contracts to the tribes.

II. Amount of Pool Resources

Western will allocate to the tribes 7 percent of the SLCA/IP long-term firm hydroelectric resource available as of October 1, 2004, as firm power. Current hydrologic studies indicate that 203,251,178 kWh of energy and 93,679 kW of capacity will be available for the Summer season. In the Winter season, 217,281,509 kWh of energy and 93,680 kW of capacity will be available. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long-term firm power electric service contracts.

Based on the applications submitted by the Northern Arapaho and the Eastern Shoshone tribes, Western could not differentiate between each tribe's load. The data from each tribe were used to arrive at a final allocation for the Wind River Reservation (Reservation) instead of each tribe. The final SLCA/IP allocation for the Reservation considers, in addition to the hydroelectric benefit from Western through the reservation's serving utility, the proposed allocation from Western's Loveland Area Projects resource pool.

III. Final Power Allocation

The following final power allocations are made in accordance with the Procedures. All of the allocations are subject to the execution of a contract in accordance with the Procedures.

The final allocations for Indian tribes and organizations are shown in this table.

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS

Indian Tribes or Organizations	Summer Energy (kWh)	Winter Energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Alamo Navajo Chapter	408,790	480,748	188	207
Canoncito Navajo Chapter	299,506	355,370	138	153
Cocopah Indian Tribe	2,806,867	2,523,150	1,294	1,088
Colorado River Indian Tribes	13,197,379	8,305,968	6,083	3,581
Confederated Tribes of the Goshute Reservation	86,101	149,588	40	64
Duckwater Shoshone Tribe	151,243	161,901	70	70
Ely Shoshone Tribe	170,672	310,489	79	134
Fort Mojave Indian Tribe	680,593	775,099	314	334
Ft. McDowell Mojave-Apache Indian Community	5,142,570	5,418,248	2,370	2,336
Gila River Indian Community	30,506,505	31,786,232	14,061	13,704
Havasupai Tribe	437,268	565,997	202	244
Hopi Tribe	5,951,066	6,698,757	2,743	2,888
Hualapai Tribe	1,372,287	1,455,714	632	628
Jicarilla Apache Tribe	1,285,957	1,806,153	593	779
Kiabab Band of Paiute Indians	0	4,515	0	2
Las Vegas Paiute Tribe	1,578,851	1,246,804	728	538
Mescalero Apache Tribe	2,164,024	2,432,979	997	1,049
Nambe Pueblo	129,837	160,606	60	69
Navajo Tribal Utility Authority	45,923,355	59,159,156	21,166	25,506
Paiute Indian Tribe of Utah	348,269	371,538	161	160
Pascua Yaqui Tribe	2,896,605	2,468,394	1,335	1,064
Picuris Pueblo	167,980	54,273	77	23
Pueblo De Cochiti	405,413	535,074	187	231
Pueblo of Acoma	931,658	1,007,712	429	434
Pueblo of Isleta	2,405,246	2,644,248	1,109	1,140
Pueblo of Jemez	474,564	650,399	219	280
Pueblo of Laguna	1,646,121	1,850,708	759	798
Pueblo of Pojoaque	461,500	666,340	213	287
Pueblo of San Felipe	718,673	1,004,843	331	433
Pueblo of San Ildefonso	139,859	157,241	64	68
Pueblo of San Juan	661,979	745,095	305	321
Pueblo of Sandia	2,065,478	1,947,417	952	840
Pueblo of Santa Clara	474,377	650,190	219	280
Pueblo of Santo Domingo	989,749	1,044,975	456	451
Pueblo of Taos	491,193	835,116	226	360
Pueblo of Tesuque	1,375,087	1,426,471	634	615
Pueblo of Zia	151,801	208,061	70	90
Pueblo of Zuni	2,261,793	2,913,662	1,042	1,256
Quechan Indian Tribe	1,106,528	1,738,295	510	749
Ramah Navajo Chapter	665,272	1,012,039	307	436
Salt River Pima-Maricopa Indian Community	35,393,766	31,944,155	16,313	13,773
San Carlos Apache Tribe	8,175,836	8,147,557	3,768	3,513

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS—Continued

Indian Tribes or Organizations	Summer Energy (kWh)	Winter Energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Santa Ana Pueblo	1,007,669	977,463	464	421
Skull Valley Band of Goshute Indians	33,427	35,292	15	15
Southern Ute Indian Tribe	2,489,955	2,886,844	1,148	1,245
Tohono O'Odham Utility Authority	1,263,833	1,814,028	583	782
Tonto Apache Tribe	837,790	832,681	386	359
Ute Indian Tribe	1,013,717	1,692,229	467	730
Ute Mountain Ute Tribe	1,057,428	1,248,391	487	538
White Mountain Apache Tribe	12,786,934	14,387,553	5,894	6,203
Wind River Reservation	1,074,186	1,207,269	495	521
Yavapai Apache Nation	4,147,563	3,493,615	1,912	1,506
Yavapai Prescott Indian Tribe	768,247	812,225	354	350
Yomba Shoshone Tribe	68,806	72,645	32	31
Total	203,251,178	217,281,509	93,679	93,680

The tribes' SLCA/IP allocations, combined with existing and future Western hydropower benefits, total approximately 55.7 percent of eligible load in the Summer season and 58.8 percent in the Winter season based on the adjusted seasonal energy data submitted by each tribe. The allocation process considered the current Western hydroelectric benefits received through serving utilities and future Western hydroelectric benefits that will be received by serving utilities as a result of this allocation process. The final allocations of power shown in the table are based on the SLCA/IP marketable resource currently available. If the SLCA/IP marketable resource is adjusted in the future, all allocations will be adjusted accordingly.

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

V. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: January 17, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–2594 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–5]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement providing for rulemaking to amend regulations issued pursuant to section 112(d) of the Clean Air Act.

SUMMARY: EPA hereby gives notice of a proposed settlement agreement in the cases entitled *American Crop Prot. Ass'n* v. *EPA*, No. 99–1332 and *BASF Corp.* v. *EPA*, No 99–1334 (D.C. Cir.). EPA issues this notice in accordance with section 113(g) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(g),which requires EPA to give notice and provide an opportunity for public comment on proposed settlement agreements.

The litigation challenges EPA's promulgation of the final rule entitled National Emissions Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production ("PAI NESHAP" or the "rule"). 64 FR 33550 (June 23, 1999). Petitioners the American Crop Protection Association and BASF Corp. filed petitions for review of the rule under section 307(b) of the Act, 42 U.S.C. 7607(b).

The proposed Settlement Agreement provides that EPA will undertake a rulemaking to amend the PAI NESHAP. Among the rulemaking commitments, the Settlement Agreement calls for EPA to clarify applicability of the rule to "reconstructed" sources, make technical corrections to performance testing requirements, and amend standards and applicability provisions related to wastewater units and storage tanks covered by the rule. A copy of the proposed Settlement Agreement is available from Phyllis Cochran, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–5566.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments regarding the proposed Settlement Agreement from persons who are not named as parties or intervenors to this litigation. Written comments should be sent to Paul R. Cort, at the above address and must be submitted on or before March 6, 2002.

EPA or the Department of Justice may withhold or withdraw consent to the proposed Settlement Agreement if the comments disclose facts or circumstances that indicate the agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice makes such a determination following the comment period, EPA will take the actions set forth in the Settlement Agreement.

Dated: January 29, 2002.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–2609 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–1]

''Mobile Source Outreach Assistance Competition Fiscal Year 2002: Solicitation Notice''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's Notice announces the availability of funding and solicits proposals from state, local, multi-state and tribal air pollution control agencies for mobile source-related public education and outreach projects. The funding will be allocated by EPA's Office of Transportation and Air Quality (OTAQ) through the competitive process described in this notice.

DATES: The deadline for submitting Final Proposals is Monday, April 15, 2002. To allow for efficient management of the competitive process, OTAQ is requesting agencies to submit an informal Intent to Apply by Friday, February 22, 2002. (Instructions for submitting final proposals and Intents to Apply are found in Section X. below.)

ADDRESSES: This proposal can also be found in two places on the Office of Transportation and Air Quality Web Page: ''*www.epa.gov/OTAQ/*'' click on ''What's New'' or ''*www.epa.gov/OTAQ/rfp.htm*''. Addresses for submitting final proposals can be found in Section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach, USEPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue NW., (mail code 6406J), Washington, DC, 20460. Telephone (202) 564–9856; Fax (202) 565–2085. Or email ''*bullard.susan@epa.gov*''.

SUPPLEMENTARY INFORMATION:

Contents by Section

Deadline for Informal Intent To Apply—Friday, February 22, 2002

Deadline for Final Proposal—Monday, April 15, 2002

This proposal can also be found on the Office of Transportation and Air Quality Web Page: ''*www.epa.gov/otaq/* Click on ''What's New'' or *www.epa.gov/OTAQ/rfp.htm*''.

Mobile Source Outreach Assistance Agreements 2002: Request for Proposals

Section I. Overview and Deadlines

A. Overview

Over the past five years, EPA's Office of Transportation and Air Quality (OTAQ) has entered into agreements and established partnerships with a number of organizations to (1) provide national support for community-based mobile source public education efforts supporting implementation of the Clean Air Act and the Transportation Equity Act for the 21st Century, (2) encourage responsible choices for organizational and individual actions through public education. Current OTAQ/Section 105-Funded Outreach Projects are listed on the OTAQ web site ''*www.epa.gov/otaq/whatsnew*'' and emphasize transportation choices to reduce vehicle miles traveled; education of vehicle owners and drivers of the future; alternative fuels; car care and the role of the automotive technician; outreach to ethnic populations; environmental justice; and, related projects such as ozone mapping and small engines. EPA's Office of Transportation and Air Quality receives set-aside funds from the State and Tribal Assistance Grants (STAG) account to provide support to community-based mobile source-related outreach projects. This Notice solicits proposals for public education and outreach projects which directly support state and local air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from state, local, tribal and multi-state air management agencies which are identified as such under section 302(b) of the Clean Air Act. Interested persons can also obtain copies of this solicitation at no charge by accessing the OTAQ Web site at ''*www.epa.gov/otaq/*'' Click on ''What's New'' or ''*www.epa.gov/OTAQ/rfp.htm*''.

B. What Are the Deadlines for This Competition?

In order to efficiently manage the selection process, the Office of Transportation and Air Quality requests that an informal ''Intent to Apply'' be submitted by Friday, February 22, 2002. (Please provide project title or subject and email address for project contact). An ''Intent to Apply'' simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. Submitting an ''Intent to Apply'' does not commit an organization to submit a final proposal. Those not submitting an Intent to Apply may still apply by the deadline. *The deadline for final proposals (original and six copies) is midnight on Monday, April 15, 2002.* The Office of Transportation and Air Quality expects to complete the Evaluation/Selection process in May, 2002.

Section II. Eligible Organizations

C. Who Is Eligible To Submit Proposals?

According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under section 302(b) of the Clean Air Act, (for projects to be undertaken which will have replicability to other communities nationally), as well as multi-state organizations supporting section 302(b) agencies. OTAQ has no discretion over this requirement.

Interested air management, non-governmental or related organizations which are *not* air pollution control agencies as defined under section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

D. What Is the Amount of Available Funding?

A minimum of $550K.

E. How Will Funds Be Allocated?

The competition process will be managed by OTAQ and selected cooperative agreements will be awarded by EPA's Regional offices and funded through Section 105 authority (state and local air pollution control agencies), except in the case of *multi-state organizations as defined by law*, which must be funded under Section 103. OTAQ has no discretion over this requirement.

F. How Many Agreements Will Be Awarded?

Approximately eight agreements will be awarded, none to exceed $100,000 for the entire project.

G. Are Matching Funds Required?

Possibly. Clean Air Act section 105 mandates that eligible agencies provide matching funds of at least 40%. Therefore, an air pollution control agency which submits a proposal must include a statement in their proposal indicating that the match could and would be met if their proposal is selected. Organizations unable to meet a required match must be considered ineligible. (By statute, this requirement does not apply to multi state organizations.) Organizations which are unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator (see Section XII below).

H. Can Funding Be Used To Acquire Services or Fund Partnerships?

Yes—subgrants and other procurement services are allowed. Because the method used to fund subgrants is not a federal matter, procedures governing your organization's procurement practices must be followed. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis

This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches) rather than grow ongoing projects.

I. Program Emphasis

—Voluntary Measures
—Commuter Choice initiatives
—Transportation choices
—Environmental Justice
—Car care (testing, repair, maintenance)
—On Board Diagnostics (OBD)
—Alternative fuels
—Involving youth in mobile source issues/environmental education
—Other mobile source issues (including but not limited to: diesel, particulate matter, heavy duty engines; nonroad engines; air quality index; and ozone mapping/forecasting.)

Section V. Selection Criteria

J. Primary Criteria

—Clearly addresses environmental goals of improved air quality from mobile sources
—Demonstrates national or regional applicability/transferability
—Indicates some level of funding for replication and transfer to other communities
—Links actions, air quality and public health
—Demonstrates effectiveness of delivery mechanism to reach targeted audience
—Exhibits clearly-stated and appropriate levels of funding
—Includes effective evaluation methods
—Reflects potential for sustainability

K. Other Factors To Be Considered

—Innovation
—Effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project
—Integration with existing programs
—Willingness to coordinate with other OTAQ-funded outreach activities
—Demonstrated capability of candidate organization to accomplish the goals presented

L. Presentation Criteria

—Proposal must address each of the components outlined in Section VII (N)
—Action-oriented
—Clearly-stated goals and objectives
—Reasonable time frames and budget

Section VI. Evaluation and Selection

M. The Evaluation Team is chosen to represent a full range of mobile source and EPA program expertise. In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation solely on the criteria referenced in this Notice. Completed evaluations will be forwarded for further consideration to a Selection Committee representing OTAQ senior managers and Regional representatives who are responsible for final selection. To ensure equity and objectivity throughout the process, the OTAQ Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

N. What Must Be Included in the Proposal?

Proposals should be approximately 5–7 pages in length (*please do not include binders or spiral binding*) and must include the following. [It is recommended that the proposal conform to the outline below to ensure that all components are addressed.] *A copy of the cover letter should be attached to each copy to be submitted.*

(1) Project contact(s) (*must provide name, organization, phone, fax, and e-mail*) An email address is essential in order to ensure OTAQ's ability to quickly reach all applicants with important information.

(2) Clear statement of amount being requested. (No project will be funded in an amount to exceed $100,000 *for the entire project*.)

(3) Brief statement that the candidate organization is defined as an air pollution control agency under section 302(b) of the Clean Air Act.

(4) Statement that any required match will be met.

(5) Statement of project background/objectives highlighting relationship to improving air quality from mobile sources.

(6) Detailed project summary—description of specific actions to be undertaken.

(7) Projected time frame for project from initiation through completion.

(8) Associated deliverables to be developed and funded through the agreement.

(9) Explanation of project benefits.

(10) Detailed explanation of how project outcomes will be designed and funded for replication in other communities.

(11) Description of collaborative activities and partnerships with other stakeholders.

(12) Detailed budget estimate (clearly explain how funds will be used, including estimated cost for each task.) (Note: Budget estimates should include funding for participation in the annual 3-day ''Communities in Motion'' Outreach and Partnerships Workshop typically held in Washington, DC in late October.)

O. Will 2-Year Proposals Be Considered?

Yes. If a proposal with a 2-year project period is submitted, OTAQ requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years.The total for the project is not to exceed $100,000.

P. May an Eligible Organization Submit More Than One Proposal?

An organization may submit more than one proposal *only* if the proposals are for different projects.

Q. May an Eligible Organization Resubmit a Proposal Which Was Previously Submitted to the Mobile Source Outreach Assistance Competition, but Was Not Selected?

Yes. The proposals received by OTAQ in previous competitions were generally of very high quality. Clearly, all proposals of merit could not be selected due to limited resources available.

R. May an Eligible Organization Submit a Proposal for This Fiscal Year, Even if It Were Previously Awarded Funding Under This Program?

Yes. Applicants awarded funding in previous competitions may submit new proposals to fund a different project. This program is intended to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches).

S. Does This Funding Expire at the End of FY 02 (September 2002)?

No. The statute states that State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended (''no-year money'').

T. Ineligible Proposals.

Proposals will be determined to be ineligible if: (1) The candidate organization is not currently defined as an air pollution control agency under section 302(b) of the Clean Air Act; (2) a required match could not be met; (3) the proposal is incomplete (proposals must address each and every component outlined in Section VII (N); or (4) the proposal is postmarked after the deadline.

Section VIII. Current OTAQ/Section 105 Funded Outreach Projects

U. Since this program is designed to fund new projects (rather than simply duplicating or growing existing programs), potential candidate organizations are recommended to visit the OTAQ web site to identify representative projects already being funded. The item, entitled ''Current OTAQ/Section 105 Funded Outreach Projects,'' can be found at ''*www.epa.gov/otaq/*'' Click on ''What's New''—Added November 2001 to find a brief sketch of projects funded to date through the Office of Transportation and Air Quality, either with Section 105 funding (indicated by year of funding) or projects that are intended to be national in scope, supported by OTAQ program funding (indicated by an asterisk ''*''). (**Note:** Some web sites listed by funded organizations provide helpful information on a variety of air quality efforts being undertaken by the funded organization.)

Section IX. Other Items of Interest

V. Is There Other Information I Should Have Before Applying?

Yes.

—Submission of an Intent to Apply or a final proposal does not guarantee funding.

—Supplementary information, including letters of recommendation, will not be reviewed by the evaluators.

—Only those organizations *selected* will be required to submit a complete ''Application for Federal Assistance and Budget Information'' (SF 424 and SF 424A) to the appropriate EPA Regional Office.

Section X. How To Apply

W. How Do I Apply?

Informal ''Intents to Apply'' may take the form of email, fax or phone call to the EPA Program Contact listed below. Include organization, contact, phone, email and project title/subject.

Please submit informal ''Intents to Apply'' by Friday, February 22, 2002.

To be considered eligible, Completed Proposals must be date stamped (postmarked or dated by overnight express) on or before midnight, Monday, April 15, 2002 (original + 6, including cover letters on copies—no binders, spiral binding or supplemental materials please!)

Please pay special attention to the distinction in addresses for regular mail and in-person delivery.

Via regular mail to: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 1200 Pennsylvania Avenue NW, Mail Code 6406J, Washington, DC 20460.

Express mail which is to be delivered in-person (FedEx, UPS, Airborne, etc) must leave the sender and be dated by no later than midnight on Monday, April 15, 2002 at the following address: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 501 Third Street NW Room 5304D, Washington, DC 20001, (202) 564–9856, (202) 564–8991 (backup number for expressed proposals only).

Note: Proposals e-mailed or faxed *will serve only as a placeholder,* and *must* be followed by a hard copy original and 6 copies postmarked no later than the deadline. If no original is received which meets the deadline, the proposal will not be considered.

Deadline for Completed Final Proposals

Date stamped (postmarked or express mail dated) no later than midnight on Monday, April 15, 2002.

Section XI. EPA Regional Section 105 Grant Coordinators

Region 1 (Boston), Paul Bryan, 617–918–1673.
Region 2 (New York), Marlon Gonzales, 212–637–3769.
Region 3 (Philadelphia), Russ Bowen, 215–814–2057.
Region 4 (Atlanta), Todd Rinck, 404–562–9062.
Region 5 (Chicago), Robert Miller, 312–353–0396; Pamela Blakley, 312–886–4447.
Region 6 (Dallas), Rexene Hanes, 214–665–2726; Javier Balli, 214–665–7261.
Region 7 (Kansas City), Wayne Leidwanger, 913–551–7607.
Region 8 (Denver), Marisa Mcphilliamy, 303–312–6965.
Region 9 (San Francisco), Jack Colbourn, 415–744–1239; Valerie Cooper, 415–744–1237.
Region 10 (Seattle), David Debruyn, 206–553–4218.

Section XII. OTAQ Program Contact

Susan Bullard, Director of Outreach, EPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue NW (Mail Code 6406J), Washington, DC 20460, (Phone) 202/564–9856, (Fax) 202/565–2085, ''*bullard.susan@epa.gov*''.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02–2610 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–2]

Notice of Request for Proposals for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the Clean Water Act (CWA) interested in applying for Federal assistance for Water Quality Cooperative Agreements under the CWA Section 104(b)(3) in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Region 6 EPA will award an estimated $1 million to eligible applicants through assistance agreements ranging in size from $50,000

up to $200,000 for innovative projects/demonstrations/studies that can be used as models relating to the prevention, reduction, and elimination of water pollution. A Request for Proposals for Tribal governments will be issued under a separate notice.

DATES: EPA will consider all proposals received on or before 5 p.m. Central Standard Time March 21, 2002. Proposals received after the due date will not be considered for funding.

ADDRESSES: Proposals can be submitted either electronically via e-mail or mailed through the postal service or other means. If e-mailed, proposals should be sent to *mendiola.teresita@epa.gov.* If mailed, proposals should be sent to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Request for Proposals?

EPA Region 6's Water Quality Protection Division is requesting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, i.e., storm water, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. Innovative studies leading to the development of Total Maximum Daily Loads (TMDL) is another priority on which these funds could be focused.

An organization whose proposal is selected for Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 & 31.10).

Has EPA Region 6 Identified High Priority Areas for Consideration?

EPA Region 6 has identified several project areas for priority consideration to the extent they are for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution:

Concentrated Animal Feeding Operations

Alternative markets for excess manure
Voluntary Comprehensive Nutrient Management Plans for Animal Feeding
Operations with 300 to 500 animal units

Wet Weather (Sanitary Sewer Overflows (SSOs), Storm Water)

Integration of SSO and storm water requirements
Measuring the effectiveness of storm water Best Management Practices (BMPs)
Trends analysis of load reductions due to implementation of storm water BMPs
Storm water monitoring techniques
Estimating quantified benefits of enhanced sewer performance (*e.g.*, reduced backups)
Quantifying the impacts of sewage overflows
Evaluation of impacts of peak wet weather flows on Publicly Owned Treatment Works (POTW)
Capacity, Management, Operations and Maintenance (CMOM) of POTWs
Inflow/Infiltration reduction
Sewer rehabilitation methods
Municipal Stormwater Inspection Training Modules

NPDES Programs

Stakeholder watershed approaches
Nutrient trading
Watershed integration of NPDES programs
Innovative Permit Writing Tools
Strategy to effectively manage Permit Backlog

Pretreatment

Performance measures
Facilitation of innovative technology transfer
Pretreatment on the Mexican Border

Environmental Management System (EMS)

Benefits and impacts of EMS
EMS adoption by public agencies

Cooling Water Intake Structures (CWA, Section 316(b))

Innovative technologies that reduce impingement and entrainment of aquatic organisms into cooling water intakes
Ecological effects of cooling water intake structures on aquatic environments
Effectiveness of ecological restoration activities in reducing the impact of cooling water intake structures on the aquatic environment

Infrastructure Funding related to:

Asset Management
Operations and Maintenance (O&M) issues for small communities

Biosolids

Demonstrations of regional biosolids approaches
Food crop applications on biosolids and/or reclaimed water (assessments, research, demonstrations analyses)

Onsite/Decentralized Systems

State-level adoption of EPA management guidelines
Overcoming institutional, regulatory and funding barriers to implementation of decentralized options
Development of tools to assist communities with conducting comprehensive, watershed-wide assessments of risks associated with decentralized wastewater systems

TMDL

Innovative studies leading to TMDL development on a watershed basis for multiple pollutants including but not limited to nutrients, sediments, turbidity, metals, toxics, pesticides, bacteria, and unknown toxicity impacted by point sources as well as non-point sources. The innovative studies should be based on credible research on the physical, chemical, and biological processes governing the stochastic properties of pollutants in the environment. The innovative studies should lead to the development of scientific methods and/or statistical tools to identify the water quality problems and the extent of contamination but should not include TMDL modeling calculations.

Water Quality Standards Program

Innovative projects or studies that will lead to the development and refinement of water quality standards and associated water quality monitoring and assessment methods or procedures that result in improved decisions about the status of waterbodies relative to the goals of the CWA. The projects may include, but are not limited to, refinement of waterbody classification systems and associated designated uses, refinement or development of narrative or numeric criteria, development of sampling schemes for improved integration of risk assessment in use attainment decisions, improved methods to identify emerging environmental problems, development of methods to assess attainment of numeric criteria using indicators that integrate conditions over time, and GIS based land use analyses for targeting monitoring and assessment resources.

Statutory Authority, Applicable Regulations, and Funding Level

Funding is authorized under the provisions of the CWA Sec.104(b)(3), 33U.S.C.1254(b)(3).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR part 31 (for States, local governments, and interstate agencies).

Total funding available for award by Region 6 is dependent on EPA's appropriation for Fiscal Year 2002; however, it is estimated that $1 million will be available for funding approved projects. A minimum match of five percent will be required for all approved projects and should be included in the total funding requested for each proposal submitted.

Proposal Format and Contents

Proposals should be no more than three pages in Wordperfect or Word with a minimum font size of 10 pitch. Failure to follow the format or to include all requested information could result in proposal not being considered for funding. Full application packages should not be submitted at this time. The following format should be used for all proposals:

Name of Project:

Point of Contact: (Individual and Agency/Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Federal Amount:

Proposed Non-Federal Match (minimum of 5%):

The match is based on the total project cost not the Federal amount. To determine a proposed minimum match of 5%, use the following example:

Federal amount = $25,000

Total Project Cost = T

The Federal amount is 95 % of T, therefore:

$25,000 = T x 0.95

$25,000 / 0.95 = T

$26,316 = T (round the decimal)

If the total project cost is $26,316, then:

$26,316 x 0.05 = $1,316 non-Federal match

Proposed Total Award Amount:

Description of General Budget Proposed To Support Project:

Project Description: (Should not exceed two pages of single-spaced text)

Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA Proposal Evaluation Criteria

EPA will consider proposals based on the following criteria:

- The relationship of the proposed project to the priorities identified in this notice.
- How well the project furthers the goals of the CWA to prevent, reduce, and eliminate water pollution.
- Innovation of project proposal.
- Cost effectiveness of the proposal.
- Applicant's past performance, if applicable.
- Compliance with directions for submittal contained in this notice.

Eligible Applicants

For the purpose of this notice, eligible applicants for assistance agreements under section 104(b)(3) of the CWA are State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA. This solicitation is limited to applicants within EPA Region 6 which includes the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Proposals received for projects outside of Region 6 will not be considered.

Application Procedure

If mailed, please send three copies of the proposal.

Schedule of Activities

This is the estimated schedule of activities for review of proposals and notification of selections:

March 21, 2002—Proposals due to EPA.

May 20, 2002—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

Dated: January 24, 2002.

Larry Wright,

Acting Director, Water Quality Protection Division.

[FR Doc. 02–2608 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–3]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held February 27–March 1, 2002 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Wednesday, February 27, Science/Regulatory Work Group, the Schools Work Group, and the Data Needs Workgroup will meet; plenary sessions Thursday, February 28 and Friday, March 1, 2002.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet February 27, from 9 a.m. to 5:30 p.m. The Schools Work Group, and the Data Needs Workgroup will meet on February 27 from 10 a.m. to 4 p.m The plenary CHPAC will meet on Thursday, February 28, from 9 a.m. to 5:30 p.m., with a public comment period at 5 p.m., and on Friday, March 1 from 9 a.m. to 12:30 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a reports from the Schools Work Group, the Data Needs Work Group, and the Science and Regulator Work Group. Other potential agenda items include an informational panel on smart growth and the built environment and it's potential effect on children's health.

FOR FURTHER INFORMATION CONTACT: Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

Dated: January 29, 2002.

Joanne K. Rodman,

Designated Federal Official.

[FR Doc. 02–2614 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 01–344; FCC 01–359]

Kevin David Mitnick

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC starts a hearing proceeding regarding the application of Kevin David Mitnick for renewal of his Amateur Radio Station License and General Class Amateur Radio Operator License N6NHG. The hearing gives the Commission an opportunity to ascertain whether Mr. Mitnick's felony convictions render him unqualified to hold such license.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Hearing Designation Order*, DA 01–359, adopted on December 11, 2001 and released on December 19, 2001. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. By this Order, we commence a hearing proceeding before an FCC Administrative Law Judge to determine, ultimately, whether the application of Kevin David Mitnick for renewal of Amateur Radio Station and General Class Operator License N6NHG should be granted. As discussed below, Mr. Mitnick is a convicted felon whose illegal activities have included the interception of electronic communications, computer fraud, wire fraud, and causing damage to computers. Based on the information before us, we believe that Mr. Mitnick's criminal behavior raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Because we are unable to make a determination that grant of Mr. Mitnick's application would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by section 309(e) of the Communications Act of 1934, as amended.

A. Ordering Clauses

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 309(e), the captioned application *is designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

3. (a) To determine the effect of the criminal convictions of Kevin David Mitnick on his qualifications to be and remain a Commission licensee.

4. (b) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Kevin David Mitnick is qualified to be and remain a Commission licensee.

5. (c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Kevin David Mitnick should be granted.

6. Pursuant to section 4(i) and section 1.221(c) of the Commission's Rules, in order to avail himself of the opportunity to be heard, Mr. Mitnick, in person or by his attorney, *shall file* with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

7. Pursuant to section 1.221(c) of the Commission's Rules, if Mr. Mitnick fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administration Law Judge *shall dismiss* the captioned application with prejudice for failure to prosecute.

8. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden or proof with respect to all of the issues specified above *shall be* on Mr. Mitnick.

9. This *Hearing Designation Order* contains the statements required by scetion 1.221(a)(1), 1.221(a)(2), 1.221(a)(3), and 1.221(a)(4) of the Commission's Rules.

10. The Commission's Reference Operations Division of the Consumer Information Bureau *shall send* a copy of this Order, via Certified Mail—Return Receipt Requested, to Kevin David Mitnick at the address specified by him in his captioned application: 7113 W. Gowan Road, Las Vegas, Nevada 89129.

11. The Secretary of the Commission *shall cause* to have this *Hearing Designation Order* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2553 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 01–352; FCC 01–392]

Herbert L. Schoenbohm

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC starts a hearing proceeding regarding whether the application of Herbert L. Schoenbohm for a new Amateur Radio Service Station License and Amateur Radio Service Operator License should be granted. The hearing gives the Commission an opportunity determine whether Mr. Schoenbohm, a convicted felon who the Commission previously deemed unqualified to hold such licenses, is currently qualified to do so.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm., Wireless Telecommunications Bureau, at (202) 418–0860.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, DA 01–392, adopted on December 31, 2001 and released on January 9, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. By this *Order,* we commence a hearing proceeding before an FCC Administrative Law Judge to determine whether the applications of Herbert L. Schoenbohm for a new Amateur Radio Service Station License and new General Class Amateur Radio Service Operator License should be granted. Mr.

Schoenbohm's former Amateur Radio Service Station License, call sign KV4FZ, and Amateur Radio Service Operator License were not renewed after it was determined, after an August 8, 1995, hearing before an administrative law judge, that Mr. Schoenbohm's previous criminal behavior, misrepresentation and lack of candor warranted denial of his renewal application. Mr. Schoenbohm is a convicted felon and was found to have misrepresented facts and lacked candor in his testimony in that hearing.

2. The facts leading to Mr. Schoenbohm's disqualification are *res judicata;* they have been thoroughly explored and the determination was made that, at the time of hearing, Mr. Schoenbohm was not qualified to be a Commission licensee. We may not revisit that determination here. However, in evaluating Mr. Schoenbohm's instant application, we must determine if, since the time of his disqualifying behavior in 1982–89 and 1995, Mr. Schoenbohm has been sufficiently rehabilitated that the Commission could be confident that he could be relied upon to observe our rules and policies and deal with the Commission in an honest and forthright manner. There are no facts now before us that would support a finding of rehabilitation. Hence, because we are unable to make a determination that grant of Mr. Schoenbohm's applications would serve the public interest, convenience, and necessity, we hereby designate the applications for hearing, as required by section 309(e) of the Communications Act of 1934, as amended.

A. Ordering Clauses

3. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i); 309(e), the above captioned applications *are designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order,* upon the following issues:

a. To determine whether Herbert Schoenbohm possesses the requisite character qualifications to be a Commission licensee.

b. To determine in light of the evidence adduced under issue (a), whether the captioned applications should be granted.

4. Pursuant to section 4(i) of the Communications Act of 1934, as amended, and section 1.221(c) of our rules, in order to avail himself of the opportunity to be heard, Mr. Schoenbohm, in person or by his attorney, *shall file* with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issue specified herein.

5. Pursuant to section 1.221(c) of our rules, if Mr. Schoenbohm fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the presiding Administrative Law Judge *shall dismiss* the captioned applications with prejudice for failure to prosecute.

6. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above *shall be* on Mr. Schoenbohm.

7. The Commission's Reference Operations Division of the Consumer Information Bureau *shall send* a copy of this *Order,* via Certified Mail—Return Receipt Requested, to Herbert L. Schoenbohm, at the address shown in his captioned applications: Post Office Box 4419, Kingshill, Virgin Islands, 00851.

8. The Secretary of the Commission *shall cause* to have this *Hearing Designation Order* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2552 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–44–A (Auction No. 44); DA 02–200]

Auction No. 44 Fixed, Mobile, and Broadcasting Services Auction Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses in fixed, mobile, and broadcast services to commence on June 19, 2002, and seeks comment on auction procedural issues.

DATES: Comments are due on or before February 6, 2002 and reply comments are due on or before February 13, 2002.

ADDRESSES: The Wireless Telecommunications Bureau (''Bureau'') requires that all comments and reply comments be sent by electronic mail to the following address: *auction44@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as ADOBE® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Legal questions: Howard Davenport (202) 418-0660 or e-mail *hdavenpo@fcc.gov.* For general auction questions: Craig Bomberger (202) 418–0660 or e-mail *cbomberg@fcc.gov* or Kathy Garland (717) 338–2888 or e-mail *kgarland@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 44 Comment Public Notice* released January 24, 2002. The complete text of the *Auction No. 44 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 44 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 44 Comment Public Notice,* the Bureau announces the auction of licenses for Fixed, Mobile, and Broadcasting services in the 698–746 MHz (''Lower 700 MHz'') band scheduled to commence on June 19, 2002 (''Auction No. 44''). The Lower 700 MHz band consists of 758 licenses. Two 12-megahertz blocks consisting of a pair of 6 megahertz segments and two 6-megahertz blocks of contiguous, unpaired spectrum will be offered in each of six regions known as the 700 MHz band economic area groupings (700 MHz band EAGs). Additionally, one 12-megahertz block consisting of a pair of 6 megahertz segments will be offered in each of 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs''). The

Commission adopted the MSA and RSA definitions originally adopted for the cellular radiotelephone service, with the following modifications: (i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* FCC 01–364, paragraph 90, note 258 (rel. January 18, 2002). A complete list of licenses available for Auction No. 44 and their descriptions is included as Attachment A of the *Auction No. 44 Comment Public Notice.*

2. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *. .'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 44.

II. Auction Structure

A. Auction Inventory

3. The Bureau offers two options for grouping the 758 licenses in the Lower 700 MHz band. The Bureau seeks comment on the following:

i. Group all 758 licenses together in Auction No. 44, which the Bureau proposes to structure as a simultaneous multiple round (SMR) auction as described further.

ii. Include only the 734 MSA/RSA Lower 700 MHz band licenses in Auction No. 44 and group the 24 licenses based on 700 MHz EAGs with the 12 licenses in the 747–762 and 777–792 MHz bands (''Upper 700 MHz'' bands) currently scheduled to be auctioned in Auction No. 31. Should we group according to this option, the 36 700 MHz EAG licenses from the Upper and Lower bands would be auctioned according to the procedures established for Auction No. 31, including any modifications to the procedures that the Bureau may establish before the auction begins.

B. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureau proposes to award all licenses included in Auction No. 44 in a single, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

C. Upfront Payments and Initial Maximum Eligibility

5. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 44, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$0.0125 * MHz * License Area Population with a minimum of $1,000 per license.

6. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 44 Comment Public Notice.* The Bureau seeks comment on this proposal.

7. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 44 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

8. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether, instead of applying the formula, the upfront payments should be the same for licenses of the same bandwidth. That is, each of the A block and B block licenses would have the same upfront payment amount and associated number of bidding units, and each of the D block and E block licenses would have the same upfront payment amount and associated number of bidding units.

D. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. For Auction No. 44, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

12. The Bureau seeks comment on these proposals. If commenters believe that these activity rules should be changed, they should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

E. Activity Rule Waivers and Reducing Eligibility

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

14. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described previously. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

17. The Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth previously. The Bureau seeks comment on this proposal.

F. Information Relating to Auction Delay, Suspension, or Cancellation

18. For Auction No. 44, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

III. Bidding Procedures

A. Round Structure

19. The Commission will conduct Auction No. 44 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

20. In past auctions, the Bureau has used the timing of bids to select a high bidder when multiple bidders submit identical high bids on a license in a given round. Given that bidders will access the Internet at differing speeds, the Bureau will not use this procedure in Auction No. 44. For Auction No. 44, the Bureau proposes to use a random number generator to select a high bidder from among such bidders. As with prior auctions, remaining bidders will be able to submit higher bids in subsequent rounds.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

23. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 44. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

26. Specifically, for Auction No. 44, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$0.0250 * MHz * License Area Population with a minimum of $1,000 per license.

27. The specific minimum opening bid for each license available in Auction No. 44 is set forth in Attachment A of the *Auction No. 44 Comment Public Notice.* Comment is sought on this proposal.

28. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 698–746 MHz spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

29. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether, instead of applying the formula, the minimum opening bids should be the same for licenses of the same bandwidth. That is, the minimum opening bid would be the same for each of the A block and B block licenses, and the minimum opening bid would be the same for each of the D block and E block licenses.

C. Minimum Acceptable Bids and Bid Increments

30. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Auctions Bidding System interface will list the nine acceptable bid amounts for each license. Once there is a standing high bid on a license, the Auctions Bidding System will calculate a minimum acceptable bid for that license for the following round, as described further. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

31. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained further.

32. For Auction No. 44, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as the Bureau has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment,* not to be confused with the *bid increment,* for each license based on a weighted average of the activity received on that particular license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

33. In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

Equations

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$
I_{i+1} = smaller of $((1 + A_i) * N)$ and M
$X_{i+1} = I_{i+1} * Y_i$ where,
A_i = activity index for the current round (round i)
C = activity weight factor
B_i = number of bids in the current round (round i)
A_{i-1} = activity index from previous round (round $i-1$), A_0 is 0
I_{i+1} = percentage increment for the next round (round $i + 1$)
N = minimum percentage increment or percentage increment floor
M = maximum percentage increment or percentage increment ceiling
X_{i+1} = dollar amount associated with the percentage increment
Y_i = high bid from the current round

34. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$
I_2 = The smaller of $((1 + 1) * 0.1) = 0.2$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1,000,000 = \$200,000$

iii. Minimum acceptable bid for round 2 = $1,200,000.

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

A2 = (0.5 * 3) + (0.5 * 1) = 2

I3 = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I3):

X3 = 0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000.

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

A3 = (0.5 * 1) + (0.5 * 2) = 1.5

I4 = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I4):

X4 = 0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000.

35. As stated previously, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described previously, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded}—(minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

36. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

37. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Auctions Bidding System. The Bureau seeks comment on these proposals.

D. Information Regarding Bid Withdrawal and Bid Removal

38. For Auction No. 44, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998) the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 44 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

E. Stopping Rule

42. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 44, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 44:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds. The Bureau seeks comment on these proposals.

IV. Conclusion

45. Comments are due on or before February 6, 2002, and reply comments

are due on or before February 13, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction44@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe(®) Acrobat(®) (pdf) or Microsoft(®) Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

46. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

47. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–2699 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Certification of Compliance with Mandatory Bars to Employment.''

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to ''Certification of Compliance with Mandatory Bars to Employment.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Frequency of Response: On occasion.

Affected Public: Persons interested in being employed or providing services to the FDIC.

Estimated Number of Respondents: 200.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden: 66.6 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of January, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–2556 Filed 2–1–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita threshold for recommending cost share adjustments for disasters declared on or after January 1, 2002 through December 31, 2002.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: According to 44 CFR 206.47, FEMA will annually adjust the statewide per capita threshold that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Stafford Act. The adjustment to the threshold is based on the Consumer Price Index for All Urban Consumers published annually by the U. S. Department of Labor. For disasters declared on January 1, 2002 through December 31, 2002, the qualifying threshold is $102 per capita of State population.

We base the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.6 percent for the 12-month period ended in December 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.).

Joe M. Allbaugh,

Director.

[FR Doc. 02–2564 Filed 2–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $18,193,000 for section 8(a)(1), and $1,819,300 for Section 8(a)(2)(A).

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: H. Gabriel Dagen, Bureau of Competition, Office of Accounting and Financial Analysis, (202) 326–2573.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–2551 Filed 2–1–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payments in Excess of the Poverty Income Level from a Program Funded under Part A of title IV of the Social Security Act

OMB No.: 0970–0004.

Description: This information is collected to meet the statutory requirements of section 1124 of the Elementary and Secondary Education Act (as amended by Pub. L. 103–382). It is collected by DHHS from State public welfare agencies and turned over to the Department of Education which uses it to arrive at the formula for allocating Title I grant funds to State and local elementary and secondary schools for the purpose of providing assistance to disadvantaged children.

Respondents: State, Local, or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–4125	52	1	264	13,746

Estimated Total Annual Burden Hours: 13,746.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: January 28, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–2555 Filed 2–1–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Bearry) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Steven and Susan Bearry (Applicants) have applied for an incidental take permit (TE–051539–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and occupation of a single-family residence on approximately 0.5 acre of the 22.849-acre Tract 23 in the Cottletown Ranches Subdivision, Bastrop County, Texas.

DATES: Written comments on the application should be received within the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S.

Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–051539–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicants

Steven and Susan Bearry plan to construct a single-family residence, within 5 years, on approximately 0.5 acre of the 22.849-acre Tract 23 in the Cottletown Ranches Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acre or less of Houston toad habitat and result in indirect impacts within the lot. The Applicants propose to compensate for this incidental take of the Houston toad by providing $3,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Stuart Leon,

Acting Regional Director, Region 2.

[FR Doc. 02–2198 Filed 2–1–02; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Fund Availability (NOFA)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of fund availability—tribal courts and Courts of Indian Offenses.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing that $1.5 million is available for funding to tribal courts (including CFR courts) that assume responsibility of adjudicating matters under 25 CFR part 115. Under part 115, tribal courts are responsible for appointing guardians, determining competency, awarding child support from Indian Individual Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets. Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638.

DATES: Applications are due by March 6, 2002.

ADDRESSES: Send applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW, Washington, DC 20240; Fax No. (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION: The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, 25 U.S.C. 13, which authorizes appropriations for ''Indian judges'' (See *Tillett* v. *Hodel,* 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox,* 13 Sawy. 349, 35 F. 575 (D.Ore. 1888)), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

There are approximately 225 tribes that contract or compact with the Bureau of Indian Affairs to perform the Secretary's adjudicatory function and 23 Courts of Indian Offenses (also known as CFR courts). It is expected that 45 tribal entities will choose to assume this responsibility. The $1.5 million is earmarked to assist tribal courts to perform the increased responsibilities required by 25 CFR part 115. These funds will be distributed on the following formula:

Number of cases times ''X''.

''X'' equals $1.5 million divided by the Total of Cases that will be disposed of reported by Qualified Applicants.

Formula Example: The most recent data available shows there is a total universe of 33,217 Indian minor cases, and 1,667 non-compos mentis cases in the IIM system. The Office of Tribal Services, Division of Social Services, estimates that about 25 percent of these cases will require adjudication by a court of competent jurisdiction. *Example:* If it is expected there will be approximately 8,721 cases which require adjudication during FY 2002, applying the formula $172 per case is the result ($1.5 million divided by 8,721 = $172). If, for example, your court is expected to handle 35 cases in FY 2002, it is eligible to receive $6,020 ($172 × 35 = $6,020). This example assumes that all cases requiring adjudication will be disposed of. For FY 2002, only cases that a tribal court will ''dispose of'' will be considered in the case count for funding purposes.

Program Description

Qualified tribal applicants that assume responsibility over Supervised IIM Accounts under 25 CFR part 115 are eligible to receive funding under this NOFA. Applicants will consider the following sections of part 115 when responding to this NOFA:

115.001, 115.002, 115,100, 115.102, 115.104, 115.107, 115.400, 115.401, 115.413, 115.420, 115.421, 115.425, 115.430, 115.600, 115.601, 115.605, 115.701.

Note: An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg.*

Tribes seeking to apply will be responsible for (1) having codes or ordinances in place, and (2) appointing guardians, determining competency, awarding child support from Indian Individual Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets as prescribed in the sections cited above. Funds provided under this NOFA are specifically made available to tribal courts that assume additional responsibility under 25 CFR part 115 to adjudicate Supervised IIM Accounts and are not intended to be used as general operating funds for a judiciary.

Definitions

Qualified Applicant. A qualified applicant is a tribal government submitting an application for funding for a tribal court meeting the following threshold requirements:

(1) The tribal government has enacted the codes necessary for the tribal justice system to carry out its responsibility under 25 CFR part 115.

(2) The tribal court has adopted and made accessible the court rules setting forth the procedures to adjudicate these cases.

(3) Tribal court personnel have been trained to process these cases and the court is staffed to fulfill the tribal legislative mandate.

(4) The tribal justice system is one that serves as the judicial component of a tribal government which is federally recognized by the United States Government.

Case Disposed Of. A case in which a final decision is rendered by the court even though the court may retain jurisdiction to subsequently review the matter on submission of additional relevant facts by an interested party.

Tribal Courts. As used in this NOFA, reference to tribal courts includes Courts of Indian Offenses (CFR courts), established by the Department of the Interior under Title 25 part 11 (2001 edition) of the Code of Federal Regulations.

Application Process: (1) The tribal government will provide a certification as a response to Item #11 in SF–424 that the threshold requirements are met. (See form attached.)

(2) An SF–424 will be submitted with the number of Supervised IIM Accounts that will be *disposed of* during FY 2002 in Item #11.

(3) Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638 (25 U.S.C. 450h).

Application Form

Applications must be submitted on the form entitled ''Application For Federal Assistance,'' identified with the Office of Management and Budget (OMB) Approval No. 0348–0043 (Standard Form 424, Rev. 7–97). The form is attached to this notice. The form may also be downloaded from the Internet at *http://www.gsa.gov.*

Deadline

Mail applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW, Washington, DC 20240; or fax to (202) 208–5113.

Applications are due 30 calendar days after the publication date of this NOFA and must be postmarked by midnight on the deadline date. Applications will be considered as meeting the deadline if they are received on or before the deadline date; or, sent on or before the deadline date. Applicants may hand deliver applications to the address indicated above by close-of-business (5 p.m. EST) on the deadline date. Applications will be accepted by facsimile until the close-of-business (5 p.m. EST) on the deadline date, provided the original application is postmarked by midnight the day after the due date. No applications can be transmitted by e-mail (electronic mail). Applicants are responsible for ensuring proper delivery of the application and are encouraged to contact Ralph Gonzales at (202) 208–4401 to confirm its receipt.

Dated: January 22, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310–4J–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Preapplication ☐ **Construction** ☐ **Non-Construction**	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________________

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ____________________

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 02–2592 Filed 2–1–02; 8:45 am]

BILLING CODE 4310–4J–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 21, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food and Nutrition Service (N1–462–01–3, 1 item, 1 temporary item). Investigative case files pertaining to allegations of wrong doing involving the Food Stamp program. Records pertain to cases closed in fiscal year 1986 that did not attract media or congressional attention or result in substantive changes in agency policies and procedures.

2. Department of the Army, Agency-wide (N1–AU–00–31, 90 items, 90 temporary items). Short term records relating to military and civilian personnel management. Included are records relating to such matters as personnel procurement, the selection and classification of personnel, personnel processing, assignments, details, education, personnel evaluations, personnel absences, separations, and decorations, awards, and other honors. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–00–43, 20 items, 20 temporary items). Short term records relating to such matters as audit reporting, stock inventory reconciliations, installation property, and hospital linen inventories. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–01–09, 5 items, 5 temporary items). Short term records relating to safety liaison and awareness, target practice safety, system development management, and engineering safety. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–01–11, 28 items, 28 temporary items). Short term records

relating to religious activities, morale, welfare and recreation, schools, service organizations, manpower and equipment control, and force development. Included are such records as chapel registers, non-appropriated fund property inventories, recreational event planning files, academic training records, staffing surveys and reports, and materiel and supply estimates. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which previously were approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of the Army, Agency-wide (N1–AU–01–12, 47 items, 47 temporary items). Short term records relating to legal services, military police matters, and criminal investigations. Included are such records as applications and acceptance notices for the Army's legal education program, records of appearances of Army personnel as counsel or witnesses in civilian courts, court-martial records accumulated in offices below the level of Judge Advocate General, statistical and fiscal data on claims, requests for deviations from intellectual property contract clauses, automobile and traffic enforcement records, and identification card applications and registers, as well as reports, photographs, logs, evidence ledgers, polygraph examinations, and additional criminal investigation records other than those included in criminal investigation case files. Also included are records relating to overseeing of Army prisoners regarding such matters as mail, work assignments, appointment passes, and return to duty. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which previously were approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of the Army, Agency-wide (N1–AU–01–13, 46 items, 46 temporary items). Short term records relating to such matters as engineering projects, facilities, internal reviews, audits, energy conservation, housing, maintenance activities, the operation of cemeteries, and laundry services. Electronic copies of documents created using electronic mail and word processing are included. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of the Army, Agency-wide (N1–AU–01–18, 1 item, 1 temporary item). Master file of the Education Management Information System, an electronic information system pertaining to educational counseling and tuition assistance for military personnel. The system includes information concerning educational counseling actions, courses taken and grades attained, and tuition assistance committed and spent.

9. Department of the Army, Agency-wide (N1–AU–01–26, 9 items, 8 temporary items). Records relating to inspector general activities including investigative case files, inspection reports, inquiries, and electronic copies of documents created using electronic mail and word processing. This schedule increases the retention period of investigative case files and inquiries concerning allegations against personnel, which were previously approved for disposal, while it decreases the previously approved retention period for records that relate to matters that do not result in the establishment of a formal case file. Recordkeeping copies of case files and reports relating to significant investigations and inspections are proposed for permanent retention. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–00–5, 35 items, 27 temporary items). Records documenting geodetic field surveys and observational data such as points of latitude, longitude, height, scale, gravity, and orientation, and how these values change over time, across the United States. Included are field observations, abstracts of results, field party management files, instrument calibration files, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of historical astronomic observations, project reports and sketches, and adjusted electronic data derived from field observations.

11. Department of Defense, Joint Staff (N1–218–00–4, 65 items, 53 temporary items). Records relating to intelligence and security matters accumulated by the Joint Staff and combatant commands. Included are such records as directives, guides, correspondence, reports, studies, forms, and memorandums pertaining to general security administration, control of classified information, security audits and inspections, estimates of capabilities, and foreign national visits. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of records documenting security policy, intelligence planning and policy, investigations, information collection and dissemination, prisoners of war, and special access programs are proposed for permanent retention.

12. Department of the Interior, U.S. Geological Survey (N1–57–01–4, 18 items, 12 temporary items). Planning and administrative records, including such files as reference copies of documents pertaining to history projects, management improvement project case files, administrative management subject files and reports, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as organizational charts and reorganization studies, program policy and mission files, historical project case files, and the files of the Bureau Director.

13. Department of Labor, Employment Standards Administration (N1–448–02–1, 1 item, 1 temporary item). Schedules of daily activities accumulated by the Assistant Secretary for Employment Standards and members of his immediate office staff, 1980–1986. Records consist of brief notations concerning appointments, meetings, trips, speeches, and attendance at events.

14. Department of the Navy, U. S. Marine Corps (N1–127–01–1, 3 items, 3 temporary items). Student research papers prepared at such institutions as the Command and Staff College, the Amphibious Warfare School, the School of Advanced Warfighting, and the Command and Control System School. Also included are electronic copies of documents created using electronic mail and word processing.

15. Commodity Futures Trading Commission, Agency wide (N1–180–00–1, 100 items, 70 temporary items). Comprehensive records schedule covering all agency records. Records proposed for disposal include such file series as administrative files, recurring reports, congressional correspondence, applications for registration, registration fitness examinations, large trader report files, the exchange database system, reparations complaint files, training

records, press clippings, working papers, and routine litigation, investigation, and enforcement case files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as publications, reports to Congress, central files of the Chairman and the Commissioners, official minutes of Commission meetings, speeches, press releases, biography files, and historically significant case files relating to investigations, litigation, and enforcement actions.

16. Department of the Treasury, Financial Management Service (N1–425–02–1, 16 items, 16 temporary items). Records of the Agency Services Division including such materials as reference files, reimbursable client records, financial statements and other financial documents, facilities management records, marketing material, policy and procedure documentation, office subject files, status reports, Federal Managers Financial Integrity Act reports, and electronic accounting records. Also included are the electronic copies of documents created using electronic mail and word processing.

17. Pension Benefit Guaranty Corporation, Office of the Deputy Executive Director and Chief Operating Officer (N1–465–02–2, 9 items, 9 temporary items). Pension plan company files, working files used in processing terminated plans, and plan termination case files. Included are correspondence, printouts, medical files, personnel and payroll records, and electronic records, such as imaged documents, computer disks, magnetic tapes, and electronic copies of documents created using electronic mail and word processing.

Dated: January 28, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–2554 Filed 2–1–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, February 7, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Expand its Community Charter.
2. Requests from four (4) Federal Credit Unions to Convert to Community Charters.
3. Final Rule: Amendment to Section 701.21(c)(7)(ii)(C), NCUA's Rules and Regulations, Interest Rate Ceiling.
4. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
5. Wisconsin Member Business Loan Rule.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–2749 Filed 1–31–02; 3:07 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 2000, and ending September 30, 2001.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
Kenneth A. Bolles—Chief Counsel to Board Member
John F. Colwell—Chief Counsel to Board Member
Harold J. Datz—Chief Counsel to the Chairman
Yvonne T. Dixon—Director, Office of Appeals
John H. Ferguson—Associate General Counsel, Enforcement Litigation
Robert A. Giannasi—Chief Administrative Law Judge
Lester A. Heltzer—Deputy Executive Secretary
John E. Higgins—Deputy General Counsel
Peter B. Hoffman—Regional Director, Region 34
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Richard A. Siegel—Associate General Counsel, Operations-Management
Lafe E. Solomon—Director, Office of Representation Appeals
John J. Toner—Executive Secretary
Jeffrey D. Wedekind—Deputy Chief Counsel to Board Member

Dated: Washington, D.C., January 29, 2002.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 02–2570 Filed 2–1–02; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date and Time: Friday, February 15, 2002, 8 a.m. to 2 p.m. EST.

Place: Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, and on the Access Grid, Lucky Labrador Virtual Venue.

Type of Meeting: Open Meeting. The meeting will also involve the use of the Access Grid to interview witnesses. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass. Persons wishing to watch the proceedings through the use of the Access Grid are invited to join the meeting in the Lucky Labrador Virtual Venue.

Contact Person: Dr. Richard Hiderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov*

Purpose of Meeting: To obtain testimony from expert witnesses pertinent to the preparation of a report to the National Science Foundation concerning the broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

Agenda (all times are EST):

8 a.m.–12 p.m.—In-Person and Aaccess Grid Testimony (7 people)
12:00–12:30 p.m.—Lunch
12:30–2 p.m.—In-Person and Access Grid Testimony (3 people)

Dated: January 29, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–2560 Filed 2–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA N–71, ''Design Information Questionnaire.''
2. Current OMB approval number: 3150–0056.
3. How often the collection is required: It is estimated that this collection is required approximately 1 time per year.
4. Who is required or asked to report: Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360 hours.
7. Abstract: Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form), to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site *(http://www.nrc.gov/NRC/PUBLIC/OMB/index.html).* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2568 Filed 2–1–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45336; File No. SR–CBOE–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Extend Its Participation in the Interim Intermarket Linkage Program

January 25, 2002.

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 January 17, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to extend its participation in the interim intermarket linkage program to the earlier of January 31, 2003, or the complete implementation of the permanent intermarket linkage in the options market.[5]

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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 30, 2001, the Commission approved a rule change by the CBOE proposing to implement certain aspects of an intermarket options linkage on an interim basis.[6] The interim linkage was approved on a pilot basis until January 31, 2002. The Exchange now seeks to extend the interim linkage pilot until the earlier of: (a) January 31, 2003; or (b) the implementation of the ''full'' options linkage contemplated by the Linkage Plan.

As the CBOE and the other options exchanges continue to work towards the full implementation of the Linkage Plan, the Exchange believes it would be beneficial to continue to operate the interim linkage. The CBOE notes that the interim linkage uses existing market infrastructure to route orders between market makers on the participating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6). The CBOE requested that the Commission waive the rule's requirements of a 30-day operative delay and a five-day pre-filing notice.

[5] The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Linkage Plan'') in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[6] *See* Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001) (File No. SR-CBOE–00–58).

exchanges. Thus, the CBOE believes continuing the operation of the interim linkage would have no adverse effect on the implementation progress of the full linkage. Moreover, the CBOE believes the full benefits of the interim linkage are yet to be fully realized because only recently have all of the options exchanges begun participating in the interim linkage. The CBOE believes that as the list of option classes trading under the interim linkage program expands, the program will benefit a greater number of investors until the implementation of the full linkage.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b-4(f)(6) [10] thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) [11] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The CBOE has requested, in order to permit the uninterrupted operation of the interim linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).[12] The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.

A proposed rule change filed under Rule 19b-4(f)(6) [13] normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b-4(6)(iii) [14] permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change. The Commission has determined to waive the five-business-day pre-filing requirement.

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 CBOE. All submissions should refer to File Number SR-CBOE–2002–04 and should be submitted by February 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2557 Filed 2–1–02; 8:45 am]

BILLING CODE 8010–01–P

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6).

[11] 17 CFR 240.19b-4(f)(6).

[12] 17 CFR 240.19b-4(f)(6)(iii).

[13] 17 CFR 240.19b-4(f)(6).

[14] 17 CFR 240.19b-4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45345; File No. SR–CHX–2001–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 28, 2002.

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 December 28, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 CHX, pursuant to Rule 19b–4 of the Act, proposes to amend its membership dues and fees schedule (the ''Schedule''), effective January 1, 2001, to place a cap on the fees charged for

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

member branch offices and to discontinue the fees associated with the registration of member firm officers, partners, and salesmen. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule in two ways. First, the proposal places a cap on the number of member firm branch offices that are assessed a fee. The Exchange currently charges member firms a fee of $25 for each branch office that exists at the beginning of the year and an additional fee of $25 for each new office opened over the course of the year. This proposal limits the number of offices on which the annual fee would be assessed to 1,500.

Additionally, the proposal makes other changes to the Schedule by eliminating the fees charged for the registration of member firm officers, partners, and salesmen. The Exchange believes that the elimination of these fees is appropriate, given, among other things, its limited involvement in the registration process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) [3] of the Act, in general, and Section 6(b)(4) of the Act,[4] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) [5] of the Act and subparagraph (f)(2) of Rule 19b–4 [6] thereunder. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–34 and should be submitted by February 25, 2002.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2587 Filed 2–1–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3881]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, February 21, 2002 from 9:00 until 11:30 a.m. and 1:00 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street NW (entrance on 23rd Street), Washington, D.C. The purpose of the meeting is to discuss new technologies and successful methods for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Sandra Piech at 703/516–1968 before Thursday, February 14, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Sandra J. Piech 703/516–1968.

Dated: January 23, 2002.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 02–2607 Filed 2–1–02; 8:45 am]

BILLING CODE 4710–24–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the King County International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at King County International Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before February 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Cynthia Stewart, Airport Manager, at the following address: King County International Airport, 7233 Perimeter Rd. South, Seattle, Washington, 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the King County International Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2).

On January 17, 2001, the FAA determined that the request to release property at King County International Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 6, 2002.

The following is brief overview of the request: King County International Airport is proposing the release of approximately .9 acres of airport property to allow the Museum of Flight a transportation corridor, which will provide off-airport access for the occasional movement of large display aircraft to a new off-airport museum building, provide for required fire access lanes and in support of a museum building expansion. All building expansion is being done off airport property. The transfer is necessary to allow improvements on the aircraft tow route by the Museum. The property is being exchanged in-kind for Museum property of a similar value. All costs associated with the exchange will be born by the Museum. The exchange is advantageous to civil aviation for several reasons. One 20-year old hangar will be replaced with a new one. A second 20-year old hangar will be relocated and reconstructed using current building codes. All existing tenants will be accommodated in equal or better facilities. Approximately 35 new general aviation tie downs will be added to King County International Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at King County International Airport.

Issued in Renton, Washington on January 26, 2001.

U. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 02–2631 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held February 26–27, 2002, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- February 26:
- Working Group 1
- Progress of Change 1 to DO–267, *Minimum Aviation System Performance Standards (MASPS) for Flight Information Services-Broadcast (FIS–B) Data Link*
- Overview of National Convective Weather Forecast
- Opening Plenary Session (Welcome and Introductory Remarks, approval of Agenda, Approval of Minutes, Review of Action Items)
- Report from Working Group 1
- Discussion of FIS Registry of Products
- Discussion of Notices to Airmen (NOTAMS) and Digital Automatic Terminal Information Service (D–ATIS) Product Definition
- Review of Change 1 to DO–267
- February 27:
- Continued Plenary Session (Review of Change 1 to DO–267)
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 29, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–2628 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seat Certification Process Simplification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) to present its reviews and hear comments from the public concerning issues relating to simplification of the seat certification process in transport category airplanes.

DATES: The meeting will be held in Seattle, Washington, on March 7, 2002, beginning at 8:30 a.m.

REGISTRATION: Registration will begin at approximately 7:30 a.m. on Thursday, March 7, 2002. Persons planning to attend the meeting are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The meeting will be held at the Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, telephone (206) 246–8600. A block of guest rooms has been reserved for the meeting at the Doubletree Hotel at a group rate. This block of rooms will be held until February 15, 2002. Persons planning on attending the meeting should contact the hotel directly for reservations and identify themselves as participants in the FAA Public Technical Conference to receive the special room rate.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Regulations Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: Section 757 of Public Law 106–81, The Wendel H. Ford Aviation Investment and Reform Act for the 21st Century, required the FAA to establish a government-industry team to simplify the seat certification process in transport category airplanes. The FAA established this team and has been working for over a year to improve and simplify the process of seat certification in accordance with the Act.

The purpose of this meeting is to present information to the public regarding simplification of the seat certification process, and to hear comments and to solicit input from the general public.

Participation at the Meeting

If you wish to present any oral statements at the public meeting, you should submit your request to the FAA prior to February 15, 2002. Such requests should be submitted to the persons listed under the heading **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, as well as an estimate of time needed for the presentation. Requests received after February 15, 2002, will be considered and may be scheduled, time permitting, during the meeting. The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible in the time allotted.

Meeting Procedures

The following procedures are established to facilitate the meeting:

- Attendance is open to the public, but will be limited to the space available.
- There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.
- The meeting is designed to provide information to, and hear comments from, the public concerning issues related to seat certification process simplification. The meeting will be conducted in an informal and nonadversarial manner; however, the FAA may ask questions to clarify a statement and to ensure a complete and accurate record.
- Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.
- Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues and, unless stated as such, should not necessarily be construed as a position of the FAA.
- An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, additional time may be allotted.
- The FAA will try to accommodate all questions, time permitting. However, the FAA reserves the right to exclude some questions, if necessary, to present a balance of viewpoints and issues.
- The FAA will review and consider all material presented by participants at the meeting. Participants are requested to provide 10 copies of all presentation materials for distribution to the panel members. Other copies may be provided to the audience at the discretion of the participant.
- The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person interested in purchasing a copy of the transcript should contact the court reporter directly at the meeting.

Issued in Renton, WA, on January 28, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2632 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application # 02–06–C–00–JNU To Impose and Use the Revenue From a Passenger Facility Charge at Juneau International Airport, Juneau, AK

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 6, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Byron K. Huffman, Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan A. Heese, Airport Manager, Juneau International Airport, at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK 99513, (907) 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: the FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 22, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 25, 2002.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: May 1, 2005.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,171,559.

Brief description of proposed projects:

Impose Only

Construct snow removal equipment building; construct runway safety area phase II—mitigation and construction; develop Northwest Quadrant.

Impose and Use

Rehabilitate access road (Cessna Dr./Alex Holden Way); reconstruct parallel taxiway; conduct terminal expansion feasibility study/design, phase 1.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** located at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on January 25, 2002.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 02–2633 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Small Airplane Directorate Policy on Static Strength Substantiation of Composite Airplane Structure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: This document announces the issuance of a policy for static strength substantiation of composite airplane structure. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: The Small Airplane Directorate issued a proposed policy on July 30, 2001. On August 7, 2001, the Small Airplane Directorate published the proposed policy for public comments. We reopened the comment period with a notice published on September 26, 2001, and resolved the comments. The final policy becomes effective on the issue date, which is December 21, 2001.

ADDRESSES: Copies of the policy statement, PS–ACE100–2001–006, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The policy statement will also be available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/small__airplanes__advisory.html.*

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy Branch, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 316–946–4111; fax 316–946–4407; e-mail *Lester.Cheng@faa.gov.*

Issued in Kansas City, Missouri on January 14, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2629 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Crow Wing and Mille Lacs Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that the northern terminus for the environmental impact statement (EIS) being prepared for proposed highway improvements to Trunk Highway (TH) 169 in Crow Wing and Mille Lacs Counties, Minnesota, has been revised.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or James Hallgren, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2773, V (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: As indicated in the Notice of Intent published in the **Federal Register** on July 17, 2000, the FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT), is preparing an EIS on a proposal to expand TH 169 from a two-lane roadway to a four-lane facility. As a result of agency and public involvement during scoping, the alternatives to be studied in the EIS have been expanded, requiring a revision to the northern terminus for the project. The EIS will consider alternatives to improve TH 169 from the intersection of TH 27 north of Onamia, Minnesota to the intersection of TH 18 and TH 6 northwest of the City of Garrison, Minnesota, approximately 36.5 kilometers (22.7 miles).

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 26, 2001.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 02–2561 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maricopa County, Arizona

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project within Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Ave, Suite 330, Phoenix, AZ 85004, Telephone (602) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an EIS for a proposal to build improvements on Interstate 10 from Buckeye Road to Baseline Road in Maricopa County, Arizona. The proposed project will involve construction of facilities to provide safety, capacity, and operational improvements in the I–10 corridor within the study limits. The evaluation of alternatives will consider the social, economic, and environmental impacts to residential and commercial development, including Sky Harbor International Airport, cultural resources, historic roads and canals, Endangered Species, jurisdictional waters of the U.S., air and noise quality, and hazardous waste. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. A full range of reasonable alternatives will be considered including (1) no action; (2) alternative travel modes; (3) transportation system management improvements; (4) Collector-Distributor Road System and (5) mainline freeway improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies including the Environmental Protection Agency, U.S. Army Corps of Engineers, Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, Federal Aviation Agency, Arizona State Land Department, Arizona Game & Fish Department, City of Phoenix, City of Tempe, Maricopa County and Maricopa Association of Governments. Letters will also be sent to interested parties including, the South Mountain Village Planning Committee, Central City Village Planning Committee and appropriate Tempe neighborhood associations.

A series of public meetings will be held in the communities within the proposed study area. In addition, a public hearing will be held. Prior to the meetings and hearing, public notice will be provided advising of the time and place. A formal agency scoping meeting is planned between Federal, State, City, and County stakeholders.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on January 29, 2002.

Kenneth H. Davis,

District Engineer, Phoenix.

[FR Doc. 02–2565 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Morrison County, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that the southern terminus for the environmental impact statement (EIS) being prepared for the proposed reconstruction of Trunk Highway (TH) 371 in Morrison County, Minnesota, has been revised.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Roger Risser, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2482, V (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: As indicated in the Notice of Intent published in the **Federal Register** on September 22, 1999, the FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT), is preparing an EIS on a proposal to reconstruct and expand TH 371 from a two-lane roadway to a four-lane facility. The notice identified the southerly terminus of the project as County State Aid Highway (CSAH) 46 north of Little Falls. The correct southerly terminus is TH 10, approximately 3.2 kilometers (2.0 miles) south of CSAH 46. Therefore, the EIS will consider alternatives to improve TH 371 from TH 10 to 0.8 kilometer (0.5 mile) north of CSAH 48 in Morrison County, Minnesota, approximately 12.9 kilometers (8.0 miles).

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 26, 2001.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 02–2562 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–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 from certain requirements of its safety regulations. 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.

Norfolk Southern Corporation

[Docket Number FRA–2001–10515]

The Norfolk Southern Corporation (NS) seeks a waiver of compliance from certain provisions of the *Railroad Operating Practices* regulations, 49 CFR part 218, regarding blue signal protection of workers. Specifically, NS requests that FRA waive the provisions of §§ 218.22(c)(5), 218.22(h), and 221.16 that address inspection, placement and removal of rear end markers and/or end of train devices.

Section 218.22(c) states in part:

A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions: . . . (5) The utility employee is performing one or more of the following functions: . . . inspect, test, install remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

Section 218.22(h) states: ''Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.''

Section 221.16 states:

Inspection procedure. (a) Prior to operating the activation switch or covering the photoelectric cell when conducting this test, a non-train crew person shall determine that he is being protected against the unexpected movement of the train either under the procedures established in part 218 of this chapter or under the provisions of paragraph (b) of this section.

(b) In order to establish the alternative means of protection under this section, (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer or hostler and be advised by that person that they are occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspection has been completed.

Currently, the regulation requires that any railroad employee that installs or removes an end of train device or rear marker would have to establish blue signal protection, unless it is a train or yard crew member or utility employee performing the task on the equipment he/she is called to operate. Furthermore, FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this activity is a service and repair to the device. Therefore, the only way a utility employee, train or yard crew member can legally remove or replace the EOT battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

NS believes that if certain tasks are restricted and effective communication is established, it would be possible to sanction an alternative means of protection that is the functional equivalent of full compliance with the existing rule. NS's alternative protection methodology, which requires that the person occupying the cab compartment of the controlling locomotive to have an effective communication link to the inspector, assures the inspector that the train is secure against movement and will remain that way until the installation, removal, inspection, test or battery change has been completed. NS proposes to use the following alternative procedures for inspection, placement and removal of rear end markers or end of train devices, and to change the battery on those devices while on the train:

(1) Any person inspecting, testing, installing, or removing a rear end marking device or end of train device or replacing the battery on such device shall determine that he or she is being protected against the unexpected movement of the train either under the procedures established in 49 CFR sections 218.25, 218.27, and 218.29, or under the following provisions:

(a) Blue signal protection must be provided for any person who is not a member of the train or yard crew assigned to the train on which the device to be inspected or tested is installed when inspecting or testing the device except when:

(i) the rear end of the train is standing on a main track, or if on other than main track, access to that portion of the track on which the rear end of the train is standing is physically restricted by either: (1) Lining and locking the switch providing access to that portion of the track away from movement onto that portion of the track, or (2) positioning a locked derail on that portion of the track at least 50 feet from the rear of the train;

(ii) the inspection or testing task is limited to ascertaining that the device is in proper operating condition; and (iii) the person performing the inspection or testing procedure has communicated directly with the locomotive engineer prior to performing the task and has been advised by the locomotive engineer that the controlling locomotive is coupled onto that equipment, that he or she is occupying the cab of the controlling locomotive, and that the train is and will remain secure against movement until the locomotive engineer has been notified by the person performing the inspection that the task has been completed.

(b) Blue signal protection must be provided for any person who is not a member of the train or yard crew assigned to the train being serviced when installing or removing the device or

Replacing the batteries on the device except when: (i) The train on which the device is to be installed or removed or have the batteries replaced on is standing on a main track, or if on other than main track, access to that portion of the track on which the rear end of the train is standing is physically restricted by either: (1) Lining and locking the switch providing access to that portion of the track away from movement onto that portion of the track, or (2) Positioning a locked derail on that portion of the track at least 50 feet from the rear of the train; (ii) the locomotive engineer has made and maintains an automatic brake reduction sufficient to prevent the train from moving, but of not less than 10 pounds per square inch; and (iii) the person performing the task has communicated directly with the locomotive engineer assigned to the controlling locomotive of the train, prior to installing or removing the device or replacing the batteries, and been advised by the locomotive engineer that he or she is occupying the controlling locomotive and that the train is and will remain secure against movement until the locomotive engineer has been notified by the person performing the task that the task has been completed. (2) Procedures will be implemented over Norfolk Southern system as personnel are properly trained in the above procedures.

NS believes that this alternative procedure provides the non-train crew employee with protection equal to a member of a train crew performing the same operation. On main track the protections are basically the same as the protection for a train crew person. On yard track this method provides similar protection as a member of the train crew with additional protection on the end of the track where the inspection, test, or battery change is performed. These measures so minimize the risks of injury that it is appropriate to authorize the unit removal, installation, inspection, testing and battery change without full blue signal protection. NS also believes that granting this waiver will minimize train delays and improve efficiencies without compromising the safety of their employees.

This waiver petition raises issues that are subject to active rulemaking through the Railroad Safety Advisory Committee (RSAC). Although no formal resolution has been reached, FRA believes that the ramifications of affording the requested relief insofar as it pertains to train crews (including utility employees assigned to work with train crews) have been extensively discussed in the RSAC working group, permitting identification of issues and consideration of available information. Accordingly, FRA requests comment on the NS petition to the extent it applies to the circumstances under which train crew members and associated utility employees may perform the specific tasks. FRA would expect any relief extended under this docket to terminate upon adoption of a final rule in the expected, forthcoming rulemaking proceeding.

FRA notes that issues regarding providing further exceptions from blue signal protection with respect to non-operating employees (performing specified duties on main and other-than-main track) have not, in FRA's view, been adequately developed in the

RSAC. Nor did NS provide persuasive analysis in support of the petition that would permit issuance of relief in this regard. Train and engine employees, including yard operating personnel functioning as utility employees, are accustomed to working under the railroad operating rules and ensuring securement of equipment from movement without use of blue signal protection. They are accustomed to working as a unit, placing a premium on effective communication. Other employees involved in inspecting and testing equipment, by contrast, are accustomed to functioning with full blue signal protection, including, as a general matter, securement of switches providing access to the rolling stock on which they are working (see 49 U.S.C. 20131). It may be possible to disturb these patterns of work and allow additional flexibility in the application of the blue signal regulations. However, the dialogue among those most familiar with these issues it not yet sufficiently advanced for FRA to venture a judgment on that issue. Accordingly, FRA has denied the requested relief insofar as the request applies to the duties of non-operating employees, without prejudice to future consideration of this issue (including ongoing RSAC deliberations).

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 FRA–2001–10515) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 Seventh Street, SW, Room PL–401, Washington, DC 20590–0001. 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 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–2558 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 6, 2002, to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1739.

Form Number: IRS Forms 9460 and 9477.

Type of Review: Reinstatement.

Title: Tax Forms Inventory Report.

Description: The forms are designed to collect tax forms inventory information from post offices, libraries, and other entities that distribute Federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. This data is combined with shipment data for each account and used to establish forms distribution guidelines for the following year. Source code data is collected to verify that the different entities received tax forms with the correct code.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Respondent: 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,417 hours.

OMB Number: 1545–1750.

Form Number: IRS Form 8038–R.

Type of Review: Extension.

Title: Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

Description: Under Treasury Regulations section 1.148–3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038–R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hr., 44 min.
Learning about the law or the form	3 hr., 10 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 24 min.

Frequency of Response: On occasion.

Estimated Total Reporting and Recordkeeping Burden: 2,466 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–2595 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 28, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 6, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Extension.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120-SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—18 hr., 39 min.

Learning about the law or the form—2 hr., 43 min.

Preparing the form—5 hr., 0 min.

Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 26,920 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–7860.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–2596 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209060–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of final regulation, REG–209060–86 (TD 8851), Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes (section 1.6046–A).

DATES: Written comments should be received on or before April 5, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: REG–209060–86.

Abstract: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with significant interests in foreign partnerships to ensure the correct reporting of items with respect to these interests.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2623 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, C:AP:AS, 1099 14th Street, NW, Room 4200E Washington, DC 20005, Telephone No. (202) 694–1861, (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 02–2622 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 23
Monday, February 4, 2002

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–124–1]

Environmental Impact Statement; Genetically Engineered Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement relative to a proposed release into the environment of genetically engineered autocidal pink bollworms as part of an ongoing research effort in the pink bollworm sterile insect program. The environmental impact statement will examine the full range of potential effects the release could have on the environment. We invite the public to comment on what specific issues we should address in the environmental impact statement. Public hearings are planned.

DATES: We will consider all comments that we receive that are postmarked, delivered, or e-mailed by April 5, 2002. We will also consider comments made at public hearings in Riverdale, MD, and Phoenix, AZ. The exact dates, times, and locations for the hearings will be announced in a notice to be published in a future issue of the **Federal Register**.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/ commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–124–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–124–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–124–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Stephens, Biological Scientist, Environmental Services, PPD, APHIS, 4700 River Road Unit 152, Riverdale, MD 20737–1234; (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2001, the Animal and Plant Health Inspection Service (APHIS) received an application for a permit from APHIS's Plant Protection Center in Phoenix, AZ, to release genetically engineered pink bollworms (*Pectinophora gossypiella*) in confined on-site experimentation and field performance tests. The pink bollworms are genetically engineered to express an enhanced green fluorescent protein derived from the jellyfish *Aequora victoria*, which could aid in the monitoring of sterilized pink bollworms released in APHIS's ongoing pink bollworm sterile insect technique program. Data from these experiments and tests will be used to determine whether the fluorescent marker affects the behavior or performance of the pink bollworm.

On June 21, 2001, APHIS published in the **Federal Register** (66 FR 33226, Docket No. 01–024–1) a notice of availability of an environmental assessment for the study described above. The environmental assessment considered potential environmental effects that could result from conducting the study. APHIS has considered and responded to all comments received on the environmental assessment, and based on the findings of the environmental assessment, has determined that implementation of the study would not significantly impact the quality of the human environment. On January 11, 2002, APHIS published a notice in the **Federal Register** (67 FR 1434–1435, Docket No. 01–024–2) announcing the availability of the final environmental assessment and finding of no significant impact relative to the issuance of a permit for the confined field study.

Prior to the next phase of research, the Phoenix Plant Protection Center may apply for a permit for the field release of genetically engineered pink bollworm containing the enhanced green fluorescent protein marker gene and a temperature-sensitive lethal gene. The objective of such a release would be to provide an opportunity for evaluating the use of genetically engineered pink bollworm in an autocidal biological control system for area-wide management of pink bollworm.

APHIS plans to prepare an environmental impact statement (EIS) that examines potential environmental effects associated with the field release of genetically engineered pink bollworm containing the enhanced green fluorescent protein marker gene and a temperature-sensitive lethal gene, and other alternatives.

The EIS would analyze and compare the full range of available alternatives, including existing techniques and technologies (no action), as well as the unconfined release into the environment of genetically engineered pink bollworm as explained above. We invite the public to comment on what issues we should address in the EIS. Issues presently under consideration include:

- Potential genetic transformation affecting the environment;
- Persistence of the genetically modified pink bollworm versus wild-type pink bollworm;
- Physical and biological containment measures for the proposed study;
- Potential gene transfer to other insect species;
- Potential gene transfer to non-insect species;

• Potential impacts on humans, including specific population groups such as minorities, low income populations, and children;

• Potential effects of use of genetically engineered pink bollworm on chemical load in the environment; and

• Risk to non-target plants and animals, including threatened and endangered species.

Interested persons and organizations may also present comments on the scope of the EIS at public hearings to be held in Riverdale, MD, and Phoenix, AZ. The exact dates and times for the hearings and the specific locations of the hearings will be announced in a notice published in a future issue of the **Federal Register**.

This notice and any further notices or environmental analyses related to this subject are intended to fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). If we prepare a draft EIS for public review, we will publish a notice announcing its availability in an upcoming issue of the **Federal Register**. The notice would request comments on the draft EIS.

This notice is issued in accordance with: (1) NEPA, (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 29th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–2604 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: The Forest Counties Payments Committee is required to provide Congress with the information specified in section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. In order to develop its recommendations to Congress, the Committee requests comments from the general public.

DATES: Comments on this notice must be received by April 30, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments should be submitted to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, PO Box 34718, Washington, DC 20043–4713, (202) 208–6574 or electronically to the Committee's web site at *http://countypayments.gov/comments.html.*

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574; or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of Pub L. 106–393, ''Secure Rural Schools and Community Self-Determination Act of 2000.''

The Committee asks that respondents provide information in response to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?

2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?

3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?

4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?

5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?

6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?

7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?

8. What relationship, if any, should exist between federal revenue-sharing programs, and management activities on public lands?

9. What alternatives exist to provide equitable revenue-sharing to States and counties and to promote ''sustainable forestry?''

10. What has been your experience regarding implementation of Pub L. 106–393, The Secure Rural Schools and Community Self-Determination Act?

11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?

12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Dated: January 29, 2002.

Elizabeth Estill,

Deputy Chief, Programs and Legislation.

[FR Doc. 02–2586 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rogue/Umpqua Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Monday, February 11, 2002. The meeting is scheduled to begin at 10 a.m. and conclude at approximately 4 p.m. The meeting will be held at the La Quinta Inn, 243 NE Morgan Lane in Grants Pass. The tentative agenda includes (1) Review of Title II projects proposed by the Forest Service and (2) Public Forum. The Public Forum is scheduled to begin at 3 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the February 11th meeting by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3203.

Dated: January 28, 2002.

James Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–2566 Filed 2–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending the weighted–average margin for Pastificio Guido Ferrara S.r.l. (''Ferrara'') calculated for the July 1, 1999, through June 30, 2000, administrative review of this order. The revised weighted–average margin for Ferrara is 1.25 percent ad valorem.

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Young or Frank Thomson, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6397, or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department's'') regulations are to 19 CFR Part 351 (2000).

Amendment to Final Results

On January 3, 2002, the Department published the final results of administrative review of the antidumping duty order on certain pasta from Italy. See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy, 67 FR 300 (January 3, 2002) (''Final Results''). The review covers nine manufacturers/exporters. The period of review (''POR'') is July 1, 1999, through June 30, 2000.

On January 4, 2002, we received a timely clerical error submission from Ferrara. In its submission, Ferrara stated that the Department incorrectly applied a billing adjustment ratio to all U.S. sales. Ferrara maintained that the Department should have applied the billing adjustment ratio only to U.S. sales of the subject merchandise that contained billing adjustments.

We agree with Ferrara. The Department did err in applying the billing adjustment ratio to all U.S. sales of subject merchandise. However, because the U.S. sales that contained billing adjustments were not used in the calculation of the margin, the Department will set the billing adjustment ratio equal to zero. This issue is discussed more fully in the January 28, 2002 Calculation Memorandum to the File from the Team through James Terpstra (''Calculation Memorandum'').

In light of these findings, we are amending the weighted-average margin for Ferrara from 2.03 percent to 1.25 percent ad valorem.

Amended Final Results

We are amending the final results of the administrative review on certain pasta from Italy covering the period July 1, 1999, through June 30, 2000, pursuant to section 516A(e) of the Act. As a result of this redetermination, the recalculated final weighted–average margin for Ferrara is as follows:

Manufacturer/producer	Margin percentage
Ferrara	1.25

The cash deposit rate for Ferrara of 1.25 percent ad valorem is effective on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until publication of the final results of the next administrative review.

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from Ferrara during the period July 1, 1999 through June 30, 2000, in accordance with this amended final results.

This amended final results and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: January 28, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–2615 Filed 2–1–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: February 22, 2002.

Time: 9:00 a.m. to 12:15 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Room 3704.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on February 22, 2002, at the U.S. Department of Commerce.

ETTAC will hear briefings on the World Summit for Sustainable Development; the Trade Compliance Center's outreach program; the Agency for International Development's Global Development Alliance; and a status report on the U.S.-Asia Environmental Partnership. ETTAC will also be briefed on current World Trade Organization issues including an update on responses to the Office of Environmental Technologies Industries' (ETI) Survey of Non-Tariff Barriers to trade in environmental technologies. The meeting is open to the public.

ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002.

For further information phone Jane Siegel, ETI, International Trade

Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: January 29, 2002.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 02–2569 Filed 2–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Overseas Dependents' School National Advisory Panel (NAP) on the Education of Dependents with Disabilities

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, as amended, the Federal Advisory Committee Act, notice is hereby given that a meeting of the NAP on the Education of Dependents with Disabilities is scheduled to be held from 8:30 a.m. to 4 p.m. on April 16–18, 2002. The meeting is open to the public and will be held in the Holiday Inn Hotel conference room at 4610 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the meeting is to review the responses to the panel's recommendations from its May 8–10, 2001 meeting; review and comment on data and information provided by DoDEA; and review and comment on reports from subcommittees. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Ms. Diana Patton at (703) 696–4387 extension 1947.

Dated: January 28, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 02–2590 Filed 2–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On Friday, December 14, 2001 (66 FR 64810), the Department of Defense announced closed meeting of the Defense Science Board (DSB) Task Force on Defense Against Terrorists' Use of Biological Weapons. One of the announced meetings has been rescheduled from February 18–19, 2002, to February 19–20, 2002, due to the holiday. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: January 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2591 Filed 2–1–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Intent To Prepare a Sitewide Environmental Assessment for Sandia National Laboratories, California

AGENCY: Office of Kirtland Site Operations, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE), National Nuclear Security Administration (NNSA), Office of Kirtland Site Operations (OKSO), announces its intent to prepare a Site-Wide Environmental Assessment (SWEA) for its Sandia National Laboratories/California (SNL/CA), a DOE research and development laboratory located east of Livermore, California. The SWEA will address operations and activities that DOE foresees at SNL/CA for approximately the next 5 to 10 years. The purpose of this Notice of Intent (Notice) is to invite public participation in the SWEA scoping process and to encourage public dialogue on alternatives that should be considered.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 6, 2002. Public scoping meetings are scheduled to be held February 20, 2002.

ADDRESSES: Public scoping meetings are scheduled to be held as follows: February 20, 2002, 1 p.m.–4 p.m. and 6 p.m.–9 p.m., at Lawrence Livermore National Laboratory, Visitors Center Auditorium (T–6525) at the Eastgate entrance from Grennville Road.

The purpose of these meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between DOE and the public and will provide an opportunity for individuals to provide written or oral statements. The DOE will publish additional notices on the date, times, and location of the scoping meeting in local newspapers in advance of the scheduled meeting. Any necessary changes will be announced in the local media. In addition to providing oral comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the SNL/CA SWEA, or request to be placed on the SNL/CA SWEA mailing or document distribution list.

The DOE invites other Federal agencies, Native American tribes, State and local governments, and the general public to comment on the scope of this SWEA. DOE will consider all comments received or postmarked by that date in defining the scope of this SWEA. Comments received or postmarked after that date will be considered to the extent practicable.

Written comments or suggestions concerning the scope of the SNL/CA SWEA should be directed to: Ms. Susan D. Lacy, U.S. Department of Energy, National Nuclear Security Administration, Office of Kirtland Site Operations, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, by facsimile at (505) 845–4710, or email at *slacy@doeal.gov.* Please mark envelopes, faxes, and email: ''Sandia National Laboratories, California Site-Wide Environmental Assessment Comments.'' For express delivery services, the appropriate address is Pennsylvania and H Streets, Kirtland Air Force Base, Albuquerque, NM 87116.

FOR FURTHER INFORMATION CONTACT: Susan Lacy at the address and facsimile number listed above.

For Information On DOE's NEPA Process Contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Ms. Borgstrom can be reached at (202) 586–4600, by facsimile at (202) 586–7031.

SUPPLEMENTARY INFORMATION: Copies of all written comments and transcripts of all oral comments will be available at the following location:

Sandia National Laboratories, California, 7011 East Avenue, Visitor Entrance, Building 911 Lobby, Livermore, Califorina.

and

Livermore Public Library, 1000 South Livermore Avenue, Livermore, California.

SNL/CA's Mission

Sandia Corporation is a prime contractor to the Department of Energy (DOE). Sandia Corporation, a wholly owned subsidiary of Lockheed Martin Corporation, manages and operates Sandia National Laboratories (SNL), with principal facilities in Albuquerque, NM; Livermore, CA; Tonopah, NV; and Kauai, HI. As one of the United States' multipurpose national laboratories, SNL develops solutions to a wide range of problems facing the country. SNL's mission includes advanced military technology, energy and environmental research, arms control/nonproliferation, and advanced manufacturing technology. Operations at SNL's California facility in Livermore comprise four broad areas:

Vital Role in Weapons: This program involves work in support of our nation's nuclear weapons program. These activities include weapon systems, weapon components/subsystems (gas transfer, use control, and instrumentation), reliability assessments, engineering sciences, advanced computing/networking, and supporting research.

Integrated Systems and Technologies: This program applies strong systems engineering practices and selected Sandia technologies to providing solutions for evolving national security needs, as well as to contributing to our nation's economic competitiveness. Work includes detection, nonproliferation, and demilitarization of weapons of mass destruction; development of secure, distributed information systems; applied research and development on combustion systems and other energy-intensive industrial processes; and advances in microsystems and micro-fabrication. Partnering with industry is an important and integral aspect of many of these activities.

Strong Research Base: This program performs world-class science in key competencies such as materials and engineering sciences, chemical sciences, information sciences, and an emerging competency in biological sciences. The work builds on both modeling and experimentation to provide linkages to global science and to ensure a seamless transition to many applications within the Laboratories Weapons, and Integrated Systems and Technologies roles.

Exemplary Operations: This program partners with the three business areas described above to ensure an infrastructure that provides a competitive advantage in implementing the site strategy. Most of the site's support and operations services are included in this business area. The site operates under the scope of Federal, State, and local regulatory authorities and has obtained all applicable operating permits.

SNL/CA has an annual budget of approximately $130 million and employs approximately 1,080 people. It occupies 410 acres in Alameda County California adjacent to the City of Livermore.

In addition to SNL/CA, Lawrence Livermore National Laboratory, a DOE/NNSA Laboratory, is located in close proximity to SNL/CA. The environmental impacts of operations at both the DOE/NNSA laboratories will be included in the discussion of cumulative impacts in the SWEA. DOE welcomes comments on this approach.

Role of the SWEA in the DOE NEPA Compliance Strategy

The SWEA will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508) and the DOE NEPA regulations (10 CFR Part 1021). The DOE has a policy (10 CFR 1021.330) to prepare site-wide documents for certain large, multiple-facility sites, such as SNL/CA. The purpose of a SWEA is to provide DOE and its stakeholders with an analysis of the environmental impacts caused by ongoing and reasonably foreseeable new operations and facilities and reasonable alternatives at a DOE site, to provide a basis for site-wide decision making, and to improve and coordinate agency plans, functions, programs, and resource utilization. The SWEA provides an overall NEPA baseline so that the environmental effects of proposed future changes in programs and activities can be compared with the baseline. A SWEA also enables DOE to ''tier'' its NEPA documents at a site to eliminate repetitive discussion of the same issues in future project-specific NEPA studies, and to focus on the actual issues ready for decisions at each level of environmental review. The NEPA process allows for Federal, Native American, state and local government, and public participation in the environmental review process. The Final Environmental Impact Statement and Environmental Impact Report for Continued Operation of Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore [DOE/EIS–0157], August 1992, is the existing site-wide environmental document for SNL/CA.

Related NEPA Reviews

The following is a list of recent NEPA documentation that affects the scope of this SWEA. The summaries below are intended to familiarize the reader with the purpose of these other NEPA reviews and how SNL/CA is considered in them.

Programmatic NEPA Reviews

The Waste Management Programmatic Environmental Impact Statement (PEIS) (DOE/EIS–0200) analyzes the DOE plan to formulate and implement a national integrated waste management program. The Final PEIS was published in May 1997. The Nonnuclear Consolidation Environmental Assessment [DOE/EA–0792] was published in June, 1993. A Finding of No Significant Impact on the Consolidation of the Nonnuclear Component within the Nuclear Weapons Complex was signed on September 8, 1993. The Stockpile Stewardship and Management PEIS was published in 1996 [DOE/EIS–0236] and a Record of Decision (ROD) was signed by the Secretary of Energy on December 19, 1996. Inherent in the many decisions made in the ROD was to continue the operations of the three national weapons laboratories, SNL being one of the three. The ROD emphasized stockpile stewardship as an essential program to maintain the safety and reliability of the stockpile in the absence of underground nuclear testing, therefore requiring enhanced experimental capabilities in the future at the three national weapons laboratories.

Preliminary Alternatives

The scoping process is an opportunity for the public to assist the DOE in determining the alternatives and issues for analysis in the SWEA. DOE welcomes specific comments or suggestions on the content of the proposed preliminary alternatives, or on other alternatives that could be considered. DOE is proposing to continue current operations at SNL/CA. Two preliminary alternatives were identified during internal scoping: the No Action alternative and the Expanded Operations alternative. DOE also considered a Reduced Operations alternative. However, current activities at SNL/CA are at the minimum level of operations needed to protect the technical capability and competency to support the site's assigned missions. Therefore, the Department plans to include the Reduced Operations alternative in the SWEA as an alternative considered but eliminated from further analysis.

No Action. NEPA regulations require analysis of the No Action alternative to provide a benchmark for comparison with environmental effects of the other alternatives. The No Action alternative would continue current facility operations throughout SNL/CA in support of assigned missions, and for this SWEA, it is also the proposed action. With respect to the Defense Programs mission, the future role of SNL was defined at the programmatic level by the Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) Record of Decision (ROD) (61 FR 68014) (December 26, 1996).

Expanded Operations. This alternative would reflect an increase in facility operations to the highest levels that can be supported by current facilities. This could require construction projects to address safety, security and environmental compliance as well as to support reconfiguration of facility equipment and operations to optimize use of current facilities' capabilities. This alternative will set the bounding conditions for assessing the environmental impacts.

Preliminary Issues Identified by Internal Scoping

The issues listed below have been identified for analysis in this SWEA as being applicable to the operation of SNL/CA. The list is tentative and is intended to facilitate public comment on the scope of this SWEA. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The SWEA will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. In accordance with the Council on Environmental Quality Regulations (40 CFR 1500.4 and 1502.21), other documents, as appropriate, may be incorporated into the impacts analyses by reference, in whole or in part. DOE specifically welcomes suggestions and comments for the addition or deletion of items on the following list of potential effects:

—Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations and from reasonably postulated accidents;

—Potential effects on air and groundwater quality from normal operations and potential accidents;

—Potential cumulative effects of past, present, and future operations at SNL/CA (this SWEA will include effects of current and reasonably foreseeable federal actions including Lawrence Livermore National Laboratory);

—Effects on waste management practices and activities, including pollution prevention, waste minimization, and waste stream characterization; and

—Potential impacts of noise levels to the ambient environment and sensitive receptors.

Classified Material

DOE will review classified material while preparing this SWEA. Within the limits of classification, DOE will provide to the public as much information as possible. Any classified material required to explain the purpose and need for action, or the uses, materials, or impacts analyzed in this SWEA, will be segregated into a classified appendix or supplement.

Issued in Albuquerque, New Mexico on January 29, 2002.

Michael J. Zamorski,

Director, U.S. Department of Energy, Office of Kirtland Site Operations.

[FR Doc. 02–2700 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–15; Low Dose Radiation Research Program—Basic Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE) and the Office of Biological and Physical Research (OBPR), National Aeronautics and Space Administration (NASA), hereby announce their interest in receiving grant applications for well justified research that supports the DOE/OBER Low Dose Radiation Research Program, and that may include complementary research of direct interest to the NASA/OBPR Space Radiation Health Program that is of sufficient scientific merit to qualify for partial NASA support. These Programs use modern molecular tools to develop a better scientific basis for understanding exposures and risks to humans from low dose and low fluence radiation.

Research areas of particular programmatic interest include:

- Endogenous oxidative damage versus low dose radiation-induced damage
- Radio-adaptive responses
- Bystander effects
- Individual genetic susceptibility to low dose radiation exposure

Please review the Supplementary Information section below for further discussion of programmatic needs.

DATES: Preapplications (letters of intent) are strongly encouraged, but not mandatory. A response to preapplications discussing the potential program relevance of a formal application will be communicated within one week.

The deadline for receipt of formal applications is 4:30 P.M., E.S.T, April 16, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002 and Fiscal Year 2003.

ADDRESSES: One-page preapplications referencing Program Notice 02–15, should be sent by e-mail to *joanne.corcoran@science.doe.gov,* or by facsimile transmission to (301) 903–8521. Preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 02–15, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–15. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Noelle Metting for general scientific or technical questions, telephone: (301) 903–8309, e-mail: *noelle.metting@science.doe.gov,* Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. For specific information on NASA/OBPR interests, contact Dr. Walter Schimmerling, telephone: (202) 358–2205, e-mail: *wschimmerling@hq.nasa.gov,* NASA Headquarters, Mail Code UB, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: The DOE/OBER Low Dose Radiation Research Program is faced with the challenge of conducting research that can be used to inform the development of future national radiation risk policy for the public and the workplace. For the present solicitation, DOE/OBER is chiefly concerned with very low doses of low Linear Energy Transfer (LET) radiation (electrons, x- and gamma-rays). The focus of research should be on doses of low linear energy transfer radiation that are at or near current workplace exposure limits. In general, research in this program should focus on total radiation doses that are less than or equal to 10 rads. Some experiments will likely involve selected exposures to higher doses of radiation for comparisons with previous experiments or for determining the validity of extrapolation methods previously used to estimate the effects of low doses of radiation from observations made at high doses. Research projects utilizing the ''systems biology'' or ''discovery science'' approach, including the tools of comparative genomics and proteomics, are especially sought. Research projects that use experimental protocols or cell microenvironments that will lead to an understanding of radiobiological responses in intact human tissue are also strongly encouraged. This research program will be a success if the science it generates is useful to policy makers, standard setters, and the public. Successful applicants will be expected to effectively communicate research results whenever possible through education and outreach, so that current thinking and the public debate reflect sound science.

The NASA/OBPR Space Radiation Health Program is charged with providing input for the determination of health risks to humans visiting the space radiation environment. NASA is especially interested in human exposure to low fluences of high-energy particulate ionizing radiation (protons and heavy ions). Where possible, projects that address the interests of both DOE/OBER and NASA/OBPR are particularly encouraged. Applications whose principal focus is on low LET radiation are encouraged to include complementary research with high-energy particulate ionizing radiation that leverages progress, resources, and technology used for the low LET radiation research (*see* Specifics for NASA below). Investigators with currently funded low dose projects may also apply for supplementary funding to address closely related research of interest to NASA.

Not all research on the biological effects of low doses of radiation will be equally useful for the development of radiation risk policy, though the path from basic radiation biology research to radiation risk policy is admittedly not clear at this time. In the present context, the research considered to be most useful will focus on biological responses that:

- Are known to be induced at low doses of radiation,
- Have the potential to directly impact (i.e., increase or decrease) subsequent development of cancer or other harmful health impacts,
- Are potentially quantifiable,
- Could potentially be linked to the development of a biologically based model for radiation risk, and
- Could potentially lead to the development of biological predictors (biomarkers) of individual risk.

Alternatively, a biological response of interest could meet all of the above criteria only at high doses but may actually be absent (as opposed to simply undetectable) at low doses of radiation. Since the mechanisms of action may be different after high versus low doses of radiation, such studies would help define these mechanisms, and delimiting the unique doses where these mechanisms shift is important.

Endogenous oxidative damage in relation to low dose radiation induced damage—A key goal of this research program will remain the elucidation of similarities and differences between endogenous oxidative damage and damage induced by low levels of ionizing radiation, as well as understanding the health risks from both. This information will underpin our interpretation of the biological effects of exposure to low doses of ionizing radiation. Although qualitative descriptions of differences and/or similarities between the types of damage induced under both conditions will be useful in the design and interpretation of experiments in other parts of the program, there is a need for quantification of the levels of damage induced by normal oxidative processes and incremental increases due to low dose irradiation.

Living organisms are subject to a daily plethora of environmental insults. Carcinogenesis in an individual occurs as a function of all the forces and phenomena that go into the production of that individual's phenotype. These include (but are not limited to) individual genotype, as well as current and historical aspects of diet, physical exercise, and exposures to chemicals and radiation. To understand all factors responsible for individual responses to radiation, we are also soliciting research on key factors that influence the extent of metabolic, endogenously produced oxidative damage and, concomitantly, affect susceptibility to low doses of radiation.

Radio-Adaptive Response—The ability of a low dose of radiation to induce cellular changes that alter the level of subsequent radiation-induced or spontaneous damage. If low doses of radiation regularly and predictably induce a protective response in cells exposed to subsequent low doses of radiation or to spontaneous damage, this could have a substantial impact on estimates of adverse health risk from low dose radiation. The generality and the extent of the process of the induction itself need to be quantified, and the responsible genes and proteins discovered. By ''generality'' is meant quantification as a function of cell tissue type and species type; by ''extent'' is meant quantification as a function of priming dose, dose rate, and time constant of action.

Bystander effects—Biological responses observed in cells that are not directly traversed by radiation but are neighbors of an irradiated cell. Bystanders in cell monolayers have been shown to respond with gene induction and/or production of clastogenic changes. It is important for the DOE/OBER Low Dose program to determine if bystander effects can be induced by exposure to low LET radiation delivered at low total doses. A detrimental bystander effect, in essence, ''amplifies'' the biological effects (and the effective radiation dose) of a low dose exposure by effectively increasing the number of cells that experience adverse effects to a number greater than the number of cells directly exposed to radiation. Conversely, bystander cells may in some cases exert a protective effect on the irradiated cell or cells, although very few studies of this type of effect have been tried. More importantly, entirely different types or levels of bystander effects may be occurring in three-dimensional tissues and intact organisms. Hence, there is considerable interest in extending studies to tissues, or at least toward more complex tissue-like models, and priority consideration will be given to these projects. Research is sought to characterize and determine mechanisms of low LET radiation induced bystander effect, and to quantify its induction and extent as a function of dose. New research projects studying bystander effects in isolated cells or cell monolayers will be considered only in exceptionally well-justified or novel approach cases.

Individual genetic susceptibility to low dose radiation—The Low Dose Radiation Research Program is interested in determining if genetic differences exist that result in sensitive individuals or sub-populations that are at increased risk for radiation-induced cancer. For example, research could focus on genes involved in the recognition, repair, and processing of damage induced by ionizing radiation, or on genes involved in maintaining the normal degree of irreversibility of cell differentiation for a particular tissue. Of critical interest would be the identification of these genes, determining frequencies of their polymorphisms in the population, and determining the biological significance of these polymorphisms with respect to cancer and radiation sensitivity. Ingenious, high throughput approaches, that evaluate many endpoints or individuals experimentally using pooling schemes, are of particular interest. We are also interested in mouse models that speed the discovery or characterization of putative human susceptibility genes. New studies focused only on a single or a few genes will not be funded unless substantial evidence is provided that those genes play a significant role in individual susceptibility to radiation. A long-term goal is to identify any genetic polymorphisms that significantly impact individual and population-level sensitivity to radiation, and characterize their mechanism of action.

Background information on the Low Dose Radiation Research Program can be found in the research program plan at: *http://www.lowdose.org/index.html.* A list of currently funded projects can be found at: *http://lowdose.org/research.html.* The program is currently funding a number of projects to develop micro-irradiation devices capable of delivering low doses of low LET radiation to individual cells or to specific parts of individual cells. For links to currently funded ''microbeam'' projects see: *http://lowdose.org/99meeting/abstracts/tool.html*—projects 26, 28, 29 and also: *http://lowdose.org/99meeting/abstracts/response.html*—project 3. Investigators are encouraged to use these or similar irradiators, as appropriate, in the design and conduct of their research. Funds are available to assist in the collaborative use of these or comparable tools.

Other resource considerations—Research in the areas discussed above will strongly complement ongoing initiatives at the National Institutes of Health (NIH). DOE/OBER staff is working with staff at the NIH to ensure that research in the Low Dose Radiation Research Program is not duplicative of research funded by NIH programs.

A collaborative effort of five major centers, termed the International SNP Map Working Group, along with over 50 other contributing laboratories, are creating the largest publicly available catalog of single base-pair differences between two copies of the same gene (single nucleotide polymorphisms, or SNPs). The current catalog contains 1.4 million SNPs, each with their exact location mapped within the human genome. SNPs are the most common polymorphisms in the human genome, and some contribute to the traits that make us unique individuals. The catalog (*http://www.ncbi.nlm.nih.gov/SNP/index.html*) will be a boon for mapping complex traits such as cancer susceptibility and susceptibility to low dose radiation.

Inbred mouse strains and other model organisms with well-characterized differences in susceptibility to radiation-induced cancer are also important tools for identifying significant polymorphisms. Direct assessment of the biological significance of candidate ''susceptibility genes'' can also be undertaken using animal models such as knockout and knock-in mice, mice with specific genes removed or added.

Specifics for the Space Radiation Health Program—NASA

The primary area of emphasis of the NASA/OBPR Space Radiation Health Program is the development of mechanistic insights into biological effects of space radiation that account for radiation risks. Applications are required to be hypothesis-driven and are expected to obtain their data in ground-based experimental radiobiology studies with protons and high-energy heavy ion beams in the energy range corresponding to space radiation. This is mainly a ground-based program using accelerator facilities to simulate space radiation. In addition to the research topics already described above this includes research on non-phenomenological predictors of late cell and tissue effects and the control and modification of radiation effect mechanisms

A short description of the current Space Radiation Health Strategic Program may be found at: *http://spaceresearch.nasa.gov/common/docs/1998_radiation_strat_plan.pdf.* Activities of OBPR, including research opportunities, descriptions of previous tasks, and other relevant information can be found at: *http://SpaceResearch.nasa.gov/.* A description of the ground-based facilities and experimental program at Brookhaven National Laboratory can be found at: *http://www.bnl.gov/medical/NASA/NASA-home%20frame.htm.* The proton therapy facilities at Loma Linda University Medical Center are described at: *http://www.llu.edu/proton/patient/nasa1.html.* Finally, a description of the NASA Specialized Center of Research and Training at the Lawrence Berkeley National Laboratory may be found at: *http://www.lbl.gov/lifesciences/NSCORT.*

Scientists working in rapidly developing areas of biological sciences not necessarily associated with the study of radiation are particularly encouraged to consider the contributions that their field of study can make to Radiation Health. Applications are required to provide evidence for expertise in radiation, either by reference to the Principal Investigator's work or by inclusion of active collaborators expert in radiation research. Hypotheses should be substantiated by presentation of preliminary data wherever feasible, or by adequate references to the published literature. Experimental applications should include a clear discussion of the relevant aspects of the required radiation dosimetry and an estimate of the statistical power of the expected results.

Research applications to which NASA will assign high priority:

a. Studies that increase the confidence in the accuracy of extrapolating the probability of radiation-induced genetic alterations or carcinogenesis from rodents to humans.

b. Determination of carcinogenic risks following irradiation by protons and HZE particles.

c. Determination if exposure to heavy ions at the level that would occur in deep space poses a risk to the integrity and function of the central nervous system.

d. Studies likely to result in the development of biological countermeasures in humans that could lead to prevention or intervention (including genetic or pharmacological agents) against effects of radiation damage in space.

Research that can lead to future space flight investigations will be welcome, and should take into account the impact of gender, age, nutrition, stress, genetic predisposition, or sensitivity to other factors of importance in managing space radiation risks.

NASA envisions that the selected applications will be structured and operated in a manner that supports the country's educational initiatives and goals (including historically black colleges and universities and other minority universities), and in particular the need to promote scientific and technical education at all levels. NASA envisions that the selected applications will support the goals for public awareness and outreach to the general public. The selected investigators are invited to participate in NASA-funded educational programs.

The applications represent an opportunity to enhance and broaden the public's understanding and appreciation of radiation effects, as specified in the DOE Low Dose Program emphasis on communication of research results and the OBPR Policy for Education and Public Outreach. Therefore, all investigators are strongly encouraged to promote general scientific literacy and public understanding of radiation induced health risk research through formal and/or informal education opportunities. If appropriate, applications should include a clear and concise description of the education and outreach activities proposed. Examples include such items as involvement of students in the research activities, technology transfer plans, public information programs that will inform the general public of the benefits being gained from the research, and/or plans for incorporation of scientific results obtained into educational curricula consistent with educational standards.

Where appropriate, the supported institution will be required to produce, in collaboration with NASA, a plan for communicating to the public the value and importance of their work.

The particles of interest to the Space Radiation Health Program are protons with energies between 20 and 1000 MeV, and nuclei of He, C, N, O, Ne, Si, Ar, Ca, Mn, and Fe, with energies between 50 and 3000 MeV/nucleon. Fluencies of interest are of the order of 1–2 particles per cell; studies with higher fluencies will need to be justified by compelling arguments, including an explanation of how the results can be applied in the low fluency regime. NASA has developed facilities for use of protons at Loma Linda University Medical School and high-energy heavy ion beams at the Brookhaven National Laboratory Alternating Gradient Synchrotron (AGS). A dedicated irradiation facility, using the Booster Synchrotron at Brookhaven, is under construction and is expected to be operational in 2003. Applications should not budget for the use of beams at these facilities, which is paid by NASA. NASA will cooperate with DOE to expand the range of technical resources available for experimentation and analysis of experimental results at Brookhaven.

Program Funding

It is anticipated that up to $2.5 million will be available from DOE/OBER for new grant awards during Fiscal Year 2002, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of appropriated funds, progress of the research, and continuing program need. Applications whose principal focus is on low LET radiation can include complementary research on high-energy particulate ionizing radiation that leverages progress, resources and technology used for the low LET radiation research. Up to $0.5M will be available from NASA in the first year, with higher amounts projected for successive years, also contingent upon the availability of funds. Funds will be available from DOE to assist in the collaborative use of certain microbeam irradiators. NASA provides beam time at the Brookhaven AGS and the Loma Linda proton accelerator; investigators will not be required to pay for the beam time. It is expected that most awards will be from 1 to 3 years and will range from $200,000 to $500,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Applications found to be scientifically meritorious and programmatically relevant will be selected in consultation with DOE and NASA selecting officials depending upon availability of funds in each agency's budget. In the course of the selection process, projects will be identified as addressing DOE requirements, NASA requirements, or both. The selected projects will be required to acknowledge support by one or both agencies, as appropriate, in all public communications of the research results.

The Application

(Please Note Critical New Information Below on Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web: *http://www.science.doe.gov/production/grants/guide.html.* In particular, please note the instructions on Collaboration available via the World Wide Web: *http://www.science.doe.gov/production/grants/Colab.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage of providing more text in their applications by using small type. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½″ x 11″ (or metric A4, i.e., 210 mm x 297 mm). Applications must be written in English, with all budgets in U.S. dollars.

Applicants are expected to use the following ordered format, in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program.

Face Page (DOE F 4650.2 (10–91))

- *Project Abstract Page*—Single page only, should contain:
- Title
- PI name
- Abstract text should concisely describe the overall project goal in one sentence, and limit background/significance of project to one sentence.

Short descriptions of each individual aim should focus on what will actually be done

• *Relevance Statement*—Single page only, should identify DOE or NASA requirements that each specific aim is intended to address

• *Budgets*—for each year and a summary budget page for the entire project period (using DOE F 4620.1)

• *Budget Explanation*—Budgets and Budget explanation for each collaborative subproject, if any (again, see information at: *http://www.science.doe.gov/production/grants/Colab.html*)

• *Project Description*—(The Project Description must be 20 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 20 pages will be returned to applicants and will not be reviewed for scientific merit.*) The Project Description should contain the following five parts:

• Goals

• Background (concisely-stated, relevant)

• Experimental Approach

• Preliminary Studies (and Progress, if applicable)

• Statistical Design and Methodologies

• *Literature Cited*

• *Collaborative Arrangements* (if applicable)

• *Biographical Sketches* (limit 2 pages per senior investigator, consistent with NIH guidelines)

• *Facilities and Resources* description

• *Current and Pending Support* for each senior investigator

• *Letters of Intent* from collaborators (if applicable)

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna–apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE requirements for reporting, protection of human and animal subjects and related special matters can be found on the World Wide Web at: *http://www.science.doe.gov/production/grants/Welfare.html.*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 23, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2593 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–13; Genomes to Life

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) and the Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce their interest in receiving applications for research from large, well integrated, multidisciplinary research teams (*see* SUPPLEMENTARY INFORMATION below) that support the Genomes to Life research program (*http://www.doegenomestolife.org/*). A central theme of the entire Genomes to Life program is to develop the necessary experimental and computational capabilities to enable a predictive understanding of the behavior of microbes and microbial communities of interest to DOE. To this end, proposals that integrate strong experimental biology and computational science research components are strongly encouraged. In such proposals, the leadership role may rest either with experimentation or with computation.

DATES: Statements of intent to apply, including information on collaborators and areas of proposed research and technology development should be submitted by March 1, 2002. Research applications are due by 4:30 PM E.D.T. Tuesday May 7, 2002.

ADDRESSES: Statements of intent to apply should be sent to Ms. Joanne Corcoran by e-mail at *joanne.corcoran@science.doe.gov* with copies to Dr. David Thomassen at *david.thomassen@science.doe.gov* and Dr. Walter Polansky at *walt.polansky@science.doe.gov.* Formal applications, referencing Program Notice 02–13, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–13. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant. (For safety reasons, the Washington, DC area continues to experience delays in the processing of all U.S. Mail. Please check the Office of Science, Grants and Contacts Web site at: *www.sc.doe.gov/production/grants/grants.html* for the latest updates regarding the processing of U.S. Mail.)

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, e-mail: david.thomassen@science.doe.gov, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290 and Dr. Walter Polansky, telephone: (301) 903–5800, e-mail: *walt.polansky@science.doe.gov,* Office of Advanced Scientific Computing Research, SC–31, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

A complementary request for proposals from DOE national laboratory led teams has been issued *http://www.sc.doe.gov/production/grants/LAB02_13.html.*

SUPPLEMENTARY INFORMATION:

This solicitation will support the establishment of large, well integrated, multidisciplinary (e.g., biology, computer science, mathematics, computational science, engineering, informatics, biophysics, biochemistry) research teams. Applicants are invited to include, where appropriate, partners from multiple institutions, including DOE National Laboratories, universities, private research institutions, and companies. Successful applications will include a detailed management plan describing the responsibility of and relationship between all participating institutions and investigators, a strategy for maximizing communication and exchange of information between investigators, a data and information management plan, and project milestones.

Research partners at individual universities, private research institutions and companies, and DOE National Laboratories will be funded directly by DOE but will be reviewed as part of the overall research application submitted by the lead research institution. To facilitate funding of individual non-laboratory research partners beginning in FY 2002, each application should include a complete set of forms for each non-laboratory research institution as described in the instructions contained in the Grant Application Guide, the Guide and

Forms are available on the Web at: *http://www.sc.doe.gov/production/grants/grants.html.* This includes:

- Signed Face Page (DOE F 4650.2 (10–91))
- Budgets for each year, (using DOE F 4620.1)
- Budget Explanation
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator
- Other institutional forms as described

Research Focus

The Genomes to Life research program will cut across components of each of the goals described in the Genomes to Life program plan, available on the Web at: *http://www.doegenomestolife.org/.* Applicants should refer to the program plan for additional information on the overall organization of the Genomes to Life program. Individual applications should address one or more of the individual research elements described below.

Other useful Web sites include:
MCP Home Page—*http://microbialcellproject.org.*
Microbial Genome Program Home Page—*http://www.er.doe.gov/production/ober/microbial.html.*
DOE Joint Genome Institute Microbial Web *Page—http://www.jgi.doe.gov/JGI_microbial/html/.*
GenBank Home Page—*http://www.ncbi.nlm.nih.gov/.*
Human Genome Home Page—*http://www.ornl.gov/hgmis.*

Microbes of Interest to DOE

The initial focus of Genomes to Life should be on microbes (including fungi) directly relevant to DOE mission needs in energy (cleaner energy, biomass conversion, carbon sequestration), bioweapons defense (biothreat agents or their close relatives), or the environment (cleanup of metals and radionuclides at DOE sites). Research in Goals 1 and 2 should take advantage of and focus on microbes whose complete DNA sequence is already known. Research in Goal 3 should focus on microbes or microbial communities of interest to, directly relevant to, or that would contribute substantially to an ability to address DOE mission needs. Selected, well-justified research using yeast may also be appropriate as a means of quickly generating data that addresses the needs of this solicitation and of the Genomes to Life Program. However, the use of yeast as a long-term research focus is not encouraged.

Data and Other Results

Any data and results that are generated through the investigations into goals 1 through 4 that are appropriate to share with the broader community should be provided in timely, open, and machine-readable format where possible. Microbial DNA sequence data will be publicly released according to the ''Data Release Requirements: Microbial Genome Sequencing Projects'' (*http://www.sc.doe.gov/production/ober/EPR/data.html*). Plans should be included that describe the procedures and policies the teams will institute to make the data and results available and interoperable with other significant sources of relevant data. Any code development should be open source. Teams should be amenable to the adoption of open data standards and interoperability requirements, as they evolve and are specified by the Genomes to Life program.

Goal 1—Identify and Characterize the Molecular Machines of Life—the Multiprotein Complexes that Execute Cellular Functions and Govern Cell Form

Current structural genomics or proteomics efforts generally focus on individual proteins, either one at a time or at a genomic scale, or as pairs of interacting proteins. An initial focus of the Genomes to Life program will be to develop and implement research strategies and technologies that will enable the systematic identification, characterization, and, eventually, understanding of all the multi protein molecular machines in an organism. A research plan should be described that will lead, within five years, to the development of the capability to measure and characterize thousands of molecular machines per year. The initial focus of this research should be on microbial processes with application to DOE needs (see section on Microbes of Interest to DOE). The research plan should describe how the proposed research and technology and computational tool development will, within the next four to six years, enable at least 80% of the molecular machines in a single microbe to be identified and characterized within a single year.

An overarching goal of the Genomes to Life program is to develop computational tools, based on experimental data, that enable us to predict the functions and behaviors of complex biological systems beginning with genome sequence data. In the context of Goal 1, computational tools are needed to predict the inventory of molecular machines, and the functions of those machines, likely to be found in a microbe whose DNA sequence is known. This could include development of computational modeling tools, including high performance implementations of techniques analogous to Rosetta-type algorithms and threading programs to characterize the molecular machinery on the scale of complete microbial organisms. Significant effort should be devoted to the development of high-precision computational models able to identify the principal components and functions of characterized molecular machines. These computational approaches will also provide an important future interface with the projected increases in the rate of protein structure determination to understand the molecular details of protein interactions in molecular machines.

Milestones of progress and success should be included as part of the research plan. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Understanding the role that these molecular machines play within an organism will require information on both the interactions of molecular machines and on the physical and temporal location and behavior of molecular machines within cells. Research plans should be described that will lead to high-throughput strategies, technologies, and computational tools for achieving these goals. Investigators conducting research on these goals should describe how they will work in close collaboration with or maintain a detailed awareness of the progress of investigators who are developing high-throughput strategies for identifying molecular machines. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Experimental research is *not* being requested to determine the three-dimensional, high-resolution structure of individual proteins or multi protein molecular machines. As the number of high resolution protein structures in the Protein Data Bank increases dramatically over the next five years, that information will serve as an important starting point for characterizing the molecular details of protein-protein interactions within and between individual molecular machines.

Goal 2—Characterize Gene Regulatory Networks

Understanding the structure and function of an organism's molecular machines is a limited, though substantial, first step towards a predictive understanding of the organism's complex functions. This will only come by understanding the complex gene regulatory networks that govern the coordinated formation and behavior of molecular machines and their individual protein subunits. A goal of Genomes to Life is to develop large-scale research strategies, technologies, and computational tools needed to identify all the components of gene regulatory networks with an initial focus on cis-acting regulatory sequences. Although the principal focus should be on microbial processes with application to DOE needs (see section on Microbes of Interest to DOE), these studies will likely benefit from comparative genomics approaches that may cross species.

Again, an overarching goal of the Genomes to Life program is to develop computational tools, based on experimental data, that enable us to predict the functions and behaviors of complex biological systems beginning with genome sequence data. In the context of Goal 2, computational tools are needed to predict regulatory networks for the molecular machines and their component proteins identified in Goal 1. A major goal is to be able to predict and reconstruct regulatory networks for molecular machines, metabolic pathways, or entire organisms beginning with knowledge of the organism's DNA sequence. Determination and verification of regulatory interactions will be enabled by the development of the integrated computational approaches assembling many types of experimental information together with relevant computational algorithms.

These studies should be closely integrated with genome-scale proteomics efforts or efforts to identify all of an organisms's molecular machines and their dynamic behavior within cells. Pilot studies that test and compare several different research and technology strategies are encouraged along with a decision plan to choose and expand the most promising strategies.

Goal 3—Characterize the Functional Repertoire of Complex Microbial Communities in their Natural Environments at the Molecular Level

Understanding the structure and functional capabilities and diversity of complex microbial communities is key to using the diverse functions and capabilities of microbes to address DOE mission needs. However, the majority of microbes of importance and interest to DOE have not been isolated, purified, and cultured. An initial goal of Genomes to Life is to use high throughput DNA sequencing and computational approaches to determine the genetic and functional diversity of individual uncultured microorganisms and of microbial communities. It is anticipated that the majority of high throughput DNA sequencing required for this Goal will be conducted at the DOE Joint Genome Institute. An estimate of the amount of DNA sequencing that will be required should be included as part of the application. Funds for high throughput DNA sequencing should not be included as part of the budget request for individual applications as funds will be provided directly to the Joint Genome Institute for Genomes to Life sequencing needs.

The organisms and microbes chosen for sequencing should be chosen to help make an initial determination of:

- The extent and patterns of phylogenetic and genetic diversity in microbial communities from different environments.
- Whether microbial communities conserve metabolic function in spite of extensive individual phylogenetic diversity and whether a microbial community's metabolic functions correlate with the physical properties of its environmental niche.
- Improvements in the ability to infer the metabolic, physiologic, and behavioral characteristics of a microbe or microbial community from its DNA sequence (including improvements in the ability to infer gene function from DNA sequence).

Just as development of computational tools to predict the inventory, functions, and regulation of molecular machines from genome sequence data is a key part of Goals 1 and 2, development of computational tools to predict the metabolic, physiologic, and behavioral characteristics of microbial communities from community DNA sequence data is a key part of Goal 3. It is expected that some of the computational tools developed will be executed on existing computer resources with little need for additional computational power. However, special consideration will be given to the development of computational tools that can be ported across high-performance computing environments, including computing capabilities that are not yet available but are expected soon.

A scientific and experimentally based strategy for selecting the microbes and microbial communities proposed for analysis should be provided. Estimates of the number and diversity of uncultured microbes and microbial communities chosen for sequencing during the first three years of the project should be made. A strategy for estimating the degree of sequence coverage for DNA isolated from microbial communities should be provided.

Goal 4—Develop the Computational Methods and Capabilities to Advance Understanding of Complex Biological Systems and Predict Their Behavior

Computational capabilities, including data management, modeling of complex biological systems, and prediction of biological responses, underpin all of Genomes to Life. In particular, the needs include:

- Computational research on analysis and modeling of the structure and function of molecular machines, as integrated with the research to be conducted under Goal 1 above, with an emphasis on the interactions among the proteins and other molecules that make up these machines. This could also include investigations into prediction of functions of the molecular machines through the use of consensus groupings or proxies, such as analogs to ''Rosetta'' or threading-type methods used for predicting the structure of single proteins.
- Computational research on models and simulations of metabolic pathways, regulatory networks, and whole-cell functions, as integrated with the research to be conducted under Goal 2 above. This may include computational tools to integrate data from a wide variety of high-throughput experimental data, such as mass spectrometry, protein arrays, cross linking, and Nuclear Magnetic Resonance data with other biological data, such as genome annotation and experimental genetic data, such as results from knockout experiments.
- Computational research in support of sequencing environmental samples to be conducted under Goal 3 above. Computational tools will be needed to analyze the output of the simultaneous sequencing of multiple organisms. This will include a need to infer properties of the environmental sample, such as the presence or absence of both certain classes of organisms and certain functional capabilities, such as particular metabolic pathways.
- Computational research in support of biological databases and database tool development. Any applications for

subprojects to augment or develop databases will be judged primarily on the degree that they contribute to the successful completion of the team's research conducted as part of Goals 1, 2, and 3 above. The subprojects will also be judged on the predicted utility of the database and tools to the broader community and to the degree that the tools contribute to the broader goal of database interoperability.

- It is expected that some of the computational tools developed in Goal 4 will be executed on existing computer resources with little need for additional computational power. Other tools may require particularly compute-intensive resources. Special consideration will be given to the development of computational tools that can be ported across high-performance computing environments, including computing capabilities that are not yet available but are expected soon. Appropriate attention should be paid to attributes such as modularity, interoperability, and scalability.

Program Funding

Up to $15 million is available in FY 2002, contingent upon availability of appropriated funds. It is anticipated that individual research grants will be funded at a level of $1–4 million per year. Applications should also describe a scientifically justified scale-up plan to maximize technology development and research productivity.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

In addition, applications will be evaluated for the robustness of their organizational framework and coordination plan.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications

These large, multi investigator applications will be reviewed as individual research projects consisting of several individual subprojects. The research description (see description of Narrative below) for individual subprojects should be no more than 20 pages each, exclusive of attachments. The combined research descriptions for all individual subprojects for each application should be no more than 100 pages, exclusive of attachments. In addition, each application should contain a project overview, not to exceed 20 pages, that contains an overall project summary, research integration plan, management plan, data and information management plan, and a communication plan. Each research team should identify a single scientific coordinator or point of contact for its application.

Each subproject description must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, fax, and e-mail listed. Each subproject or project must include letters of intent from outside collaborators briefly describing the intended contribution of each to the research and short curriculum vitaes, consistent with National Institutes of Health (NIH) guidelines, for all principal investigators and any co-PIs.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web at *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitas consistent with NIH guidelines.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage, or by using small type, of providing more text in their applications. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½″ x 11″ (or metric A4, i.e., 210 mm x 297 mm).

Applicants are expected to use the following ordered format to prepare Applications in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program. Applications must be written in English, with all budgets in U.S. dollars.

- Face page (DOE F 4650.2 (10–91))
- Project abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget explanation
- Budgets and budget explanation for each collaborative subproject, if any
- Project description (includes goals, background, research plan, preliminary studies and progress, and research design and methodologies)
- Goals
- Background
- Research plan
- Preliminary studies and progress (if applicable)
- Research design and methodologies
- Literature cited
- Collaborative arrangements (if applicable)
- Biographical sketches (limit 2 pages per senior investigator)
- Description of facilities and resources
- Current and pending support for each senior investigator

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE policy requires that potential applicants adhere to 10 CFR part 745 ''Protection of Human Subjects'' (if applicable), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is

81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC January 28, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–2597 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge. 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: Wednesday, February 13, 2002—6 p.m.—9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Transuranic Waste

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting. The notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on January 29, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2602 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 27, 2002, 9 a.m. to 6 p.m.; Thursday, February 28, 2002, 9 a.m. to 12 noon.

ADDRESSES: The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The main purpose of this meeting is to brief the members of the committee on the preparations for and planning of the Fusion Energy Sciences Summer Workshop. The technical information developed at the workshop will be used by the Committee as input in completing its next charge from the Department of Energy (DOE).

Tentative Agenda

Wednesday, February 27, 2002

- DOE Perspective
- FY 2003 Fusion Budget
- Preparations and Plans for Summer Workshop
- Report from Basic Energy Sciences Advisory Committee Panel on Use of Performance Measures
- Discussion of Possible Joint Office of Fusion Energy Sciences-Mathematical, Information and Computational Sciences Effort on Integrated Modeling
- Presentation of the Results of the Recently Completed Review of the Diagnostics Program

Thursday, February 28, 2002

- Presentation on Status of International Thermonuclear Experimental Reactor (ITER) Negotiations
- Discussion of New Charges
- Public Comments

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2600 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Salmon Creek Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on the Salmon Creek Project, a proposal by the Confederated Tribes of the Colville Indian Reservation (CCT) and the Okanogan Irrigation District (OID) to enhance fish habitat and fish passage and increase instream flows in lower Salmon Creek, a tributary to the Okanogan River in Okanogan County, Washington. The goal of the project is to re-establish self-sustaining anadromous fish populations in the creek while maintaining OID's ability to continue water delivery to its irrigators and, therefore, helping maintain the economic viability of the agricultural community.

DATES: Written comments on the NEPA scoping process are due to the address below no later than March 6, 2002. Comments may also be made at EIS scoping meetings to be held on February 21 and 22, 2002, at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. You may also call BPA's toll-free comment line at 1–800–622–4519 and record your complete name, address, and comments. Comments may also be sent to the BPA Internet address: comment@bpa.gov. To be placed on the project mail list, call 1–800–622–4520. In all communications, please specify the Salmon Creek Project.

Comments may also be made at a public EIS scoping meeting to be held on Thursday, February 21, 2002, 6:30 p.m., at The Cedars Inn, lower-level ballroom, 1 Apple Way Road, Okanogan, Washington. A scoping meeting for staff of government agencies will be held on Friday, February 22, 10 a.m., at the Wenatchee Red Lion Hotel, 1225 N. Wenatchee Avenue, Wenatchee, Washington.

FOR FURTHER INFORMATION, CONTACT: Nancy Weintraub, Project Environmental Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–5373; fax number 503–230–5699; or e-mail *nhweintraub@bpa.gov.*

SUPPLEMENTARY INFORMATION: BPA's need in proposing to fund this project is to mitigate for the loss of anadromous fish and fish habitat due to the operation of the Federal Columbia River hydrosystem and to meet its responsibilities under the Endangered Species Act. The project is proposed to include the rehabilitation of stream channel geometry, revegetation of the streambanks, and provision of increased flows in the lower 4.3 miles of Salmon Creek between OID's diversion dam and the Okanogan River. The Northwest Power Planning Council (Council) has recommended this project to BPA for funding as one of the measures under the Council's program.

This action may involve floodplain and wetlands located in Okanogan County, Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

Proposed Action

BPA proposes to fund the rehabilitation of the lower 4.3 miles of Salmon Creek to achieve long-term channel stability, erosion control, and dependable water supply, thus allowing the passage of spring chinook and summer steelhead to the high-quality habitat existing upstream between Conconully Dam and the OID Diversion Dam on Salmon Creek. Proponents and participants in this action include BPA, CCT, OID, the Bureau of Reclamation (BOR), the Natural Resource Conservation Service, the Okanogan Conservation District, and the Washington Department of Ecology. BOR, CCT, and OID have been identified as cooperating agencies for this EIS process. The project proponents further propose to develop a long-term stream management plan to address daily reservoir operations, water management to meet the needs of the various life cycles of anadromous fish, adaptive management for the channel rehabilitation, and the repopulation of the stream with salmon and steelhead.

Anadromous fish species known to have historically occurred in Salmon Creek include spring chinook (*Oncorhynchus tshawytscha*) and summer steelhead (*Oncorhynchus mykiss*). Before the construction of Conconully Dam in 1910 and the OID diversion dam in 1916, these anadromous fish probably utilized a substantial portion of the watershed, which includes approximately 66 miles of perennial streams. Both of these species are listed as ''endangered'' under the Endangered Species Act. Spring chinook are thought to be extirpated from Salmon Creek, although steelhead are occasionally observed in the creek during high-water years.

Today, conditions in the lower reaches of Salmon Creek (downstream of the OID diversion dam) are inadequate for fish passage. For more than 80 years, the lower 4.3 miles of Salmon Creek have been dewatered under normal irrigation operations, except during high runoff years that result in uncontrolled spill at the reservoirs and diversion dam. The lack of streamflow below the diversion dam has significantly impaired fish access into the potentially productive upper reaches of Salmon Creek from the Okanogan River. Historical land uses on uplands have altered vegetation and increased sediment production. These changes, together with alterations of streambanks and riparian vegetation, have adversely affected the channel geometry, streambank stability, and riparian and aquatic habitat values of lower Salmon Creek. Despite these problems, the Council has identified Salmon Creek as having the best potential for improved fish habitat of all Okanogan River tributaries. Increased instream flows and rehabilitation of the stream channel in the lower reaches of Salmon Creek would allow the passage of spring chinook and summer steelhead to the suitable habitat upstream of the OID diversion dam and would substantially increase the available spawning and rearing habitat for these species in the United States' portion of the Okanogan River Basin.

Process to Date

The project proponents have assessed the feasibility of rehabilitating lower Salmon Creek, have preliminarily identified potential water supply sources for the stream channel and irrigation needs, have conducted field surveys along the affected stream reaches, and have developed a draft conceptual plan for rehabilitating lower Salmon Creek. The proponents have engaged in public outreach and consultation including the landowners within the affected stream reaches, the residents of the project area, and a variety of stakeholders in the stream rehabilitation process.

Alternatives Proposed for Consideration

The rehabilitation of Salmon Creek involves engineering/construction activities in the lower 4.3 miles of the stream channel, establishment of adequate water supply (to be achieved through a combination of measures) to maintain sufficient instream flow in the stream channel in future years while preserving irrigation water supply, and activities both now and in the future to facilitate the redevelopment of viable populations of spring chinook and summer steelhead. Salmon Creek rehabilitation will be accomplished through a combination of (1) stream channel reconstruction, (2) streambank revegetation, and (3) increased instream flows. Alternatives from each of these three areas will be combined in a preferred Salmon Creek rehabilitation program. The No Action alternative will also be considered. Alternatives currently under consideration in each of these areas include:

No Action Alternative

Under this alternative, no changes to the existing environment would occur, and migration of spring chinook and summer steelhead into the upper reaches of Salmon Creek would not be facilitated.

Water Supply Alternatives

Previous studies have determined that, in order to continue full water supply delivery to OID and provide adequate water supply to meet the various life cycle requirements of anadromous fish in Salmon Creek, 7,122 to 9,737 acre-feet of water would be required in addition to the existing supply. The following alternatives, identified in earlier studies, will be considered in the EIS. A combination of these alternatives, in conjunction with existing water conservation efforts, would satisfy irrigation and fish requirements:

• *Replace Salmon Lake feeder canal.* Under this alternative, the existing feeder canal diverting water from North Fork Salmon Creek to Salmon Lake (the upper reservoir) would be repaired and resized to allow OID to capture additional water for storage in Salmon Lake.

• *Construct new pump station.* Under this alternative, a new pump station on the Okanogan River would be built along with a new water supply pipeline from the pump station to OID Diversion 2. Under this alternative, the Okanogan River would replace the Conconully reservoirs as the major source of irrigation water supply. The reservoirs would provide year-round instream flows for Salmon Creek and partial water supply to OID.

• *Upgrade existing pump station.* Under this alternative, the existing pump station on the Okanogan River would be upgraded and the pipeline resized to allow transfer of water to OID Diversion 4. The Conconully reservoirs would supply partial water supply to the irrigation district and year round instream flows in Salmon Creek.

• *Raise Salmon Lake Dam.* Under this alternative, Salmon Lake Dam would be raised 2 feet, and OID would dedicate a third foot of Salmon Lake storage for instream flows for Salmon Creek.

• *Water rights acquisition.* Under this alternative, stored water in Conconully would be taken out of permanent supply to the irrigation district, and would be dedicated to instream flows for fish. Partial water rights acquisition may also be considered. Water rights acquisition might reduce the need for pumping water out of the Okanogan River.

• *Long-term water lease.* Under this alternative, existing water rights would be leased and might provide instream flows for one or more phases of anadromous fish life-cycle requirements.

Stream Channel Alternatives

These alternatives provide for reconstruction of stable stream channel geometry in lower Salmon Creek and will be developed during ongoing engineering studies.

Streambank Revegetation Alternatives

These alternatives provide for erosion control and streambank stabilization in lower Salmon Creek by the recovery or reestablishment of riparian vegetation. They will be developed during ongong engineering studies.

Public Participation and Identification of Environmental Issues

At the informal meetings, a brief opening presentation will be made to introduce the proposal, followed by an open house where people can circulate among information stations to discuss specific issues and have questions answered by members of the project team. Nancy Weintraub of BPA will be available to discuss BPA's purpose and need for the proposed action and the overall EIS process. Hilary Lyman of CCT will discuss the project history, the participants in project planning to date, and the overall project goals. Tom Sullivan of OID will describe the role of OID in project development and the alternatives currently under review for water availability within lower Salmon Creek. Woody Trihey of ENTRIX Environmental Consultants will present the conceptual plan for stream rehabilitation in the lower 4.3 miles of Salmon Creek. Written information will also be available, and BPA and project staff will answer questions and accept oral and written comments.

BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings on the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS.

Environmental issues identified to date include: socioeconomic impacts, fish and wildlife impacts and benefits, water use, water quality, flood control/safety, land use, recreational use, and cultural resources.

Maps and further information about the project are available from BPA at the address above.

Issued in Portland, Oregon, on January 22, 2002.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–2598 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice for 2002 State Energy Program Special Projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 2002, the Office of Energy Efficiency and Renewable Energy of the Department of Energy (DOE) is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. Financial assistance will be awarded to the States separately for each special project, with the activities to be carried out in conjunction with their efforts under SEP. The special projects funding and activities are

tracked separately so that the sector programs may follow the progress of their projects.

DATES: The program announcement was issued on December 20, 2001. Applications must be received by March 15, 2002.

ADDRESSES: The 2002 State Energy Program Special Projects Announcement contains complete information about this program and is available to view and/or access at the following Web site: *http://www.eren.doe.gov/buildings/state_energy/pdfs/special_projects_02.pdf.*

FOR FURTHER INFORMATION CONTACT: For referral to the appropriate DOE Regional Office or State Office, you may contact Mr. Eric W. Thomas, (202) 586–2242, or Ms. Faith Lambert, (202) 586–2319, at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The projects must meet the relevant requirements of the program providing the funding, as well as of SEP, as specified in the 2002 Special Projects Announcement. Among the goals of the special projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

Fiscal year 2002 is the seventh year special project activities have been funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 2002 Funds

With this publication, DOE is announcing the availability of an estimated $18.5 million in financial assistance funds for fiscal year 2002. The awards will be made through a competitive process. The sector programs that are participating in the SEP Special Projects for fiscal year 2002, with the estimated amount of funding available for each, are as follows:

- *Clean Cities/Alternative Fuels:* Accelerating the introduction and increasing the use of alternative fuels and alternative fuel vehicles through the development of infrastructure, niche markets, and clean corridors, and by promoting the use of advanced transportation technologies ($4,500,000)
- *Industrial Technologies:* Implementing Industries of the Future at the State level by building partnerships among State government agencies, industry, universities and research institutions: to develop new technologies tied to Industries of the Future road maps and visions; and to utilize best practices which can improve energy efficiency, environmental performance and productivity ($3,000,000).
- *Codes and Standards:* Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($1,800,000).
- *Rebuild America:* Helping community and regional partnerships achieve their objectives through energy efficiency and energy technology solutions in buildings for K–12 schools, colleges/universities, state/local governments, commercial and multifamily housing ($2,500,000).
- *Building America:* Applying systems engineering approaches to the development of advanced residential buildings, including production techniques, products, and technologies that result in higher quality, energy-efficient housing. ($300,000)
- *Federal Energy Management Program:* Working to reduce the cost and environmental impact of government by advancing energy efficiency and water conservation, promoting the use of distributed and renewable energy, and improving utility management decisions at Federal sites. ($500,000)
- *Uninterrupted Power Source (UPS):* Collaborating with the States and Territories in the siting and development of hydrogen fuel cells of 1 to 5 kilowatts in size to better understand the performance, maintenance, operation, and economic viability of these systems as uninterruptable power source systems. ($200,000)
- *Power Park:* Determining if the Power Park concept of hydrogen production from natural gas or municipal solid waste reforming (continental U.S.) or renewable resources for islands, villages, and remote areas is economically viable as a clean technology that can co-produce hydrogen fuel for stationary hydrogen fuel cells and reciprocating engines for hydrogen fuel cell cars. ($450,000)
- *Hydrogen Compressors, Storage, and Dispensers:* Testing the ability of a hydrogen generation system to fuel buses and/or light and heavy duty vehicle storage tanks. ($350,000)
- *Solar Powered Security:* Developing photovoltaic-powered application hardware for protecting our power delivery systems (*e.g.* pipelines, and national grid). ($200,000)
- *Solar Schools Demonstration and Educational Outreach:* Incorporating new solar energy generation into the schools energy mix and incorporating learning about solar and renewables into the State educational curriculum for schools. ($300,000)
- *Zero Energy Homes:* Designing, building and/or showcasing one or more currently marketable Zero Energy Homes in conjunction with local partners such as homebuilders, universities, and utilities. ($200,000)
- *Million Solar Roofs Initiative—Small Grant Program for State Partnerships:* Assisting the Million Solar Roofs Initiative (MSR) State Partnerships in developing and implementing programs to further the use of solar energy on buildings. ($500,000)
- *State Wind Energy Support:* Proposals from States are sought for (1) wind resource assessment efforts to enable producing more accurate and detailed state wind maps, (2) wind resource data collection using existing tall towers (100 meters or taller preferred), and (3) activities to overcome barriers to use of small wind systems. ($770,000)
- *Distributed Energy Resources Electrical Interconnection:* Developing education and/or training materials (video tapes with hard copy manuals), on the process of interconnecting new Distributed Generation systems with the electrical grid (distribution and transmission levels), and permitting such installations. ($55,000)
- *Distributed Energy Resources Technologies:* Undertaking distributed generation projects that will support Regional and/or State restructuring activities as well as accelerating the installation of new distributed generation facilities. ($1,240,000)
- *Superconductivity Program Information Dissemination and Outreach Activities to State Agencies:* Encouraging activities to broaden the national effort and deliver the accomplishments of the Superconductivity Program to the State and local level. ($435,000)
- *State Geothermal Energy Support:* Proposals from States are sought for (1) projects that involve case studies of the benefits and costs of deployment of geothermal direct use or electric generation projects in the Western U.S.; (2) projects that involve providing public access to information about geothermal energy resources,

technologies, and economics, and (3) projects that involve the creation of expert teams to conduct ''trade missions'' designed to inform community leaders of the potential for geothermal development in their area of the state. ($475,000)

• *Energy Storage for Transmission Congestion Relief, Price Response, and System Security:* Evaluating the feasibility and potential economic advantages of deferring power transmission system upgrades and relieving transmission congestion using modern electricity storage technologies. ($125,000)

• *Biofuels for Power Generation:* Assessing the feasibility of site-specific power projects using biofuels and/or implementing actual site-specific biopower projects. ($600,000)

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, and any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants. The Catalog of Federal Domestic Assistance number assigned to the State Energy Program Special Projects is 81.119. Requirements for cost sharing contributions are addressed in the December 20, 2001 program announcement for each special project activity, as appropriate. (*See http://www.eren.doe.gov/buildings/state_energy/pdfs/special_projects_02.pdf*). Cost sharing contributions beyond any required percentage are desirable. Any application must be signed by an authorized State official, in accordance with the program announcement.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. The end-use sector offices select projects for funding. The Office of Building Technology Assistance then recommends project allocations to the Assistant Secretary for Energy Efficiency and Renewable Energy for final determination. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

Issued in Washington, DC, on January 29, 2002.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 02–2599 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: February 28, 2002 from 8 am to 5:30 pm, and March 1, 2002 from 8:30 am to 5 pm.

PLACE: The Madison Hotel, Fifteenth and M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda

- STEAB Committee updates
- STEAB Annual Report Kickoff
- EERE State Success Stories
- Homeland and Energy Security Discussion
- Open Discussion with the Office of Energy Efficiency and Renewable Energy, USDOE
- Update on Current Energy Legislation
- STEAB Budget Committee Meeting
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–2601 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–17–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 24, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to become effective January 24 2002:

Fourth Revised Sheet No. 36A
Eleventh Revised Sheet No. 37
Seventh Revised Sheet No. 241
Seventh Revised Sheet No. 245
Seventh Revised Sheet No. 247
Seventh Revised Sheet No. 248
Ninth Revised Sheet No. 940
Seventh Revised Sheet No. 942

Algonquin asserts that the purpose of this filing is to include the Phelps Dodge Lateral in its Rate Schedule AFT–CL and AFT–CL Form of Service Agreement, and to include the applicable rates on the rate sheets, in compliance with the Commission's order issued April 27, 2001 in Docket No. CP01–17–000, authorizing Algonquin to provide firm lateral transportation service to Phelps Dodge Copper Products Company under Rate Schedule AFT–CL.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions, as well as all parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2572 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–645–001]

American Transmission Company, LLC; Notice of Filing

January 29, 2002.

Take notice that on January 16, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Letter of Clarification related to its December 28, 2001 filing of OATT revisions to accommodate retail access in Michigan, for which ATCLLC requested an effective date of January 1, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: February 6, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2573 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–043]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

January 29, 2002.

Take notice that on January 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of February 1, 2002:

Fifth Revised Sheet No. 20
Fourth Revised Sheet No. 20A
Fourth Revised Sheet No. 20B

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's October 24, 2001 orders approving negotiated rate agreements in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2579 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–45–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

January 29, 2002.

Take notice that on January 18, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Thirteenth Revised Sheet No. 7, proposed to be effective January 1, 2002.

Great Lakes states that the tariff sheet described above corrects an oversight made in its November 9, 2001 filing to reflect the revised funding surcharges for the Gas Research Institute for the year 2002. Specifically, the November 9 filing failed to update the GRI amounts shown in Footnote 3 of Thirteenth Revised Sheet No. 7. The November 9, 2001 filing was accepted by the Commission in its December 14, 2001 Letter Order under Docket No. RP02–45–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2581 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–151–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

January 29, 2002.

Take notice that on January 24, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective February 25, 2002:

First Revised Sheet No. 305
Second Revised Sheet No. 306
Original Sheet No. 307
Sheets 308–399 Reserved

Gulf South and its No Notice Service (NNS) customers have developed several contractual provisions that allocate certain market and regulatory risks. Gulf South is filing tariff sheets to allow its NNS Customers the ability to include some or all of these provisions in their NNS service agreements.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2584 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–519–004]

Northern Natural Gas Company; Notice of Amendment

January 29, 2002.

Take notice that on January 18, 2002, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–519–004, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, requesting an amendment to the Commission's order issued April 17, 1997 in Docket No. CP95–519–000 and the order on rehearing issued May 31, 2001, which authorized the abandonment and sale of Northern's interest in certain offshore and onshore facilities located in Texas, known as the Matagorda Offshore Pipeline System (MOPS), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Northern states that the amendment proposes to abandon the MOPS facilities by sale for $13 million to Williams Field Services-Gulf Coast Company, L.P. (Williams), with the exception of the MOPS compression facilities on the platform located in Matagorda Island Block 686 (MAT 686). Northern plans to replace approximately 70 feet of 4-inch piping on the platform located in MAT 686. This piping is necessary to allow for the pigging of the MOPS facilities. Concurrently, Northern states that it proposes to abandon and remove two 3,300 HP compressor units and appurtenant natural gas facilities on the platform located in MAT 686. The MOPS compression has not operated since late 1996. This compression is no longer needed as the gas reserves connected to MOPS have depleted to the extent that the units are no longer required to produce the natural gas connected to the MOPS system. Further, Northern states that the abandonment of the MAT 686 facilities will not result in the abandonment of service to any MOPS shipper. Northern intends to utilize this equipment in the future at other locations on its system as necessary or salvage this equipment as appropriate.

Williams Field Services-Matagorda Offshore Company, LLC (WFS–MOC) has concurrently filed an application in Docket Nos. CP02–70–000, CP02–71–000, and CP02–72–000 to acquire and operate the jurisdictional portion of the MOPS facilities. Williams will operate the non-jurisdictional facilities.

Any questions concerning this application may be directed to Keith L. Petersen, Director, Certificates and Reporting, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or fax (402) 398–7592 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2571 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–116–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 23, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2002:

Substitute Eighth Revised Sheet No. 6
Substitute Fifteenth Revised Sheet No. 14
Substitute Second Revised Sheet No. 115
Substitute Second Revised Sheet No. 116
Substitute Third Revised Sheet No. 117
Substitute Second Revised Sheet No. 118
Substitute Eighth Revised Sheet No. 231
Seventh Revised Sheet No. 231–A
Third Revised Sheet No. 231–B
Substitute Original Sheet No. 359
Substitute Third Revised Sheet No. 360

Northwest states that the purpose of this filing is to provide explanations and tariff revisions, as needed, to address the issues raised by the Commission in its order dated January 2, 2002 pertaining to Northwest's new Rate Schedule DEX–1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2582 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–395–004, and RP96–348–012 (Not Consolidated)]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

January 29, 2002.

Take notice that on January 18, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to be effective February 1, 2002:

Sub Fifth Revised Sheet No. 252
Original Sheet No. 252A
Sub Third Revised Sheet No. 255A
Sub Fourth Revised Sheet No. 283

Panhandle asserts that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order on Compliance Filing issued on December 19, 2001 in the above referenced proceedings. 97 FERC ¶ 61,285 (2001). Specifically, the revised tariff sheets reflect clarifications regarding changes to primary and secondary points in Sections 10.5(c), (d) and (e) and 11.9(d), (e) and (f) of the General Terms and Conditions. Additionally, the replacement shipper's right to reserve primary point capacity is clarified in Section 15.7(b) of the General Terms and Conditions.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2580 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–150–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 29, 2002.

Take notice that on January 23, 2002, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective February 1, 2002:

Sixteenth Revised Sheet No. 73

Transwestern states that the above tariff sheet is being filed in compliance with the Commission's Regulations to update the specific contact person referenced in Transwestern's tariff for Order No. 497 compliance.

Transwestern further states that copies of the filing have been mailed to each of its 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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2583 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–322–001, et al.]

CinCap Madison, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 28, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. CinCap Madison, LLC

[Docket Nos. ER02–322–001 and ER01–1784–003]

Take notice that on January 23, 2002, CinCap Madison, LLC (CinCap Madison) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its notice of change in status and an amendment to the market-based rate tariff and code of conduct.

Comment Date: February 13, 2002.

2. CH Resources, Inc.

[Docket No. ER99–1001–002]

Take notice that on January 23, 2002, WPS Power Development, Inc. (PDI) on behalf of CH Resources, Inc. (CH Resources) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of change in status under CH Resources' market-based rate authority to reflect PDI's acquisition of CH Resources from Central Hudson Energy Services, Inc.

Comment Date: February 13, 2002.

3. Public Service Company of New Mexico

[Docket No. EC02–43–000]

Take notice that on January 22, 2002, Public Service Company of New Mexico (PNM) submitted for filing an application under section 203 of the Federal Power Act for approval of the reacquisition by PNM of legal title to a portion of the Eastern Interconnection Project, a 216 mile, 345 kV transmission line currently leased by PNM pursuant to a sale and lease-back transaction through the acquisition by PNM of all of the outstanding shares of the entity that owns the facilities, and the termination of a non-jurisdictional lease associated with that portion of the facilities.

Comment Date: February 12, 2002.

4. Central Hudson Energy Services, Inc., CH Resources, Inc., WPS Power Development

[Docket No. EC02–44–000]

Take notice that on January 23, 2002, Central Hudson Energy Services, Inc. (CHES), CH Resources, Inc. (CH Resources) and WPS Power Development, Inc. (PDI), filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to transfer by sale 100% of the outstanding securities of CH Resources from CHES to PDI. The Applicants have requested Commission approval of the proposed transaction to permit the Applicants to close after March 22, 2002 after the receipt of all necessary regulatory approvals and satisfaction of other closing conditions.

Comment Date: February 13, 2002.

5. Westcoast Power Holdings Inc.

[Docket No. EG02–69–000]

Take notice that on January 23, 2002, Westcoast Power Holdings Inc. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulation.

The applicant states that it is a Canadian company who is engaged directly and exclusively in developing, owning, and operating a gas-fired 110 MW combined cycle power plant in Ontario, Canada, which will be an eligible facility.

Comment Date: February 19, 2002.

6. Shanghai WEI-Gang Energy Company Ltd.

[Docket No. EG02–70–000]

Take notice that on January 23, 2002, Shanghai WEI-Gang Energy Company Ltd. filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 365 of the Commission's regulations.

The applicant states that it is a Sino-foreign cooperative joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 50 MW simple cycle power plant in Shanghai, China, which will be an eligible facility.

Comment Date: February 19, 2002.

7. McMahon Project Joint Venture

[Docket No. EG02–71–000]

Take notice that on January 23, 2002, the McMahon Project Joint Venture filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant states that it is a joint venture that is engaged directly and exclusively in developing, owning, and operating a gas-fired 117 MW combined cycle power plant in British Columbia, Canada, which is an eligible facility.

Comment Date: February 19, 2002.

8. Capital District Energy Center Cogeneration Associates

[Docket No. EG02–72–000]

Take notice that on January 23, 2002, Capital District Energy Center Cogeneration Associates (CDECCA), a Connecticut general partnership with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CDECCA describes the facts as follows: It owns and operates an approximate 56–MW natural gas-fired, combined-cycle, independent power production facility in Hartford, Connecticut (the Facility); and electric energy produced by the Facility will be sold by CDECCA to the wholesale power market operated by ISO-New England and any successor organization(s).

Comment Date: February 19, 2002.

9. Bayside Power L.P.

[Docket No. EG02–73–000]

Take notice that on January 23, 2002, Bayside Power L.P. (Bayside), a limited partnership organized under the laws of the Province of New Brunswick, Canada and with its principal place of business at 509 Bayside Drive, Saint John, New Brunswick, Canada, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Bayside states that it owns and/or leases and operates a 280-MW combined cycle, natural gas-fired electric generation facility located at the site of New Brunswick Power Corporation's Courtenay Bay Generating Station in Saint John, New Brunswick, Canada and that all sales by Bayside of power from the facility will be exclusively at wholesale.

Comment Date: February 19, 2002.

10. LG&E Capital Trimble County LLC

[Docket No. EG02–74–000]

Take notice that on January 24, 2002, LG&E Capital Trimble County LLC (Applicant), a Delaware limited liability company with its principal place of business at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant proposes to construct, own and operate two 152 MW (summer rating) combustion turbine electric generating units in Trimble County, Kentucky. The units are expected to be in service by May 2002. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment Date: February 19, 2002.

11. Thoroughbred Generating Company, LLC

[Docket No. EG02–75–000]

Take notice that on January 23, 2002, Thoroughbred Generating Company, LLC (Thoroughbred) with a principle place of business at 701 Market Street, Suite 900, St. Louis, MO 63101, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Thoroughbred states that it is a wholly owned subsidiary of Peabody Energy Corporation, a private-sector coal company. Thoroughbred filed its Application in conjunction with the proposed construction of two 750 MW ''mine-mouth'' pulverized coal generating units to be located in Muhlenberg County, Kentucky.

Comment Date: February 19, 2002.

12. Ameren Energy Generating Company

[Docket No. EG02–76–000]

Take notice that on January 25, 2002, Ameren Energy Generating Company (AEG) One Ameren Plaza, 1901 Chouteau Plaza, P. O. Box 66149, St. Louis, Missouri, 63166–6149, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 381.801 of the Commission's regulations, 18 CFR 381.801.

AEG states that it repowered the Grand Tower, Illinois Unit 2/4, as further detailed in the application. The unit is now a 270 MW Natural gas-fired combustion turbine unit, which began commercial operations on December 6, 2001. AEG also submits certain information intended to correct a minor error contained in an earlier application. AEG states that all of the electric energy from the affected units will be sold at wholesale.

Comment Date: February 19, 2002.

13. San Diego Gas & Electric Company

[Docket No. EL02–54–000]

Take notice that on January 22, 2002, San Diego Gas & Electric Company filed a Petition for a Declaratory Order in the above-captioned proceeding.

Comment Date: February 19, 2002.

14. CinCap VII, LLC

[Docket Nos. ER02–319–001 and ER00–1831–003]

Take notice that on January 23, 2002, CinCap VII, LLC tendered for filing an amendment to its notice of change in status and an amendment to the market-based rate tariff and code of conduct.

Comment Date: February 23, 2002.

15. American Ref-Fuel Company of Delaware Valley, L.P.; American Ref-Fuel Company of Niagara, L.P.; Bridgeport Energy, LLC.; Casco Bay Energy Company, LLC; Duke Energy Hinds, LLC; Duke Energy Lee, LLC; Duke Energy Moapa, LLC; Duke Energy Mohave, LLC; Duke Energy Morro Bay, LLC; Duke Energy Moss Landing, LLC; Duke Energy Oakland LLC; Duke Energy Power Marketing, LLC; Duke Energy St. Francis, LLC; Duke Energy St. Lucie, LLC; Duke Energy South Bay LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Trenton, LLC; Duke Energy Vermillion, LLC; Duke Energy Washoe, LLC; Duke/Louis Dreyfus L.L.C.; DukeSolutions, Inc.; Griffith Energy, LLC; New Albany Power I, LLC;

[Docket Nos. ER00–2677–001; ER01–1302–002; ER98–2783–004; ER99–2482–001; ER99–3822–001; ER01–691–002; ER01–545–002; ER01–1208–002; ER01–1619–003; ER98–2681–003; ER98–2680–003; ER98–2682–003; ER01–1129–002; ER99–3118–001; ER00–2225–001; ER99–1785–002; ER97–3858–001; ER99–2930–001; ER00–1113–001; ER00–1782–002; ER00–1783002; ER01–241–001; ER96–108–021; ER98–3813–008; ER00–3696–002; and ER01–2746–002]

Take notice that on January 23, 2002, the above noted affiliates of Duke Energy Corporation (the Duke Affiliates) filed a notice of status change with the Federal Energy Regulatory Commission in connection with the pending change in upstream control of Engage Energy America LLC and Frederickson Power L.P. resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc.

Copies of the filing were served upon all parties on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Comment Date: February 13, 2002.

16. Delmarva Power & Light Company

[Docket No. ER02–797–000]

Take notice that on January 23, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing an Interconnection Agreement between Delmarva and Conectiv Delmarva Generation, Inc. (CDG). The Interconnection Agreement provides for the interconnection of CDG's Hay Road 5, Hay Road 6, Hay Road 7, and Hay Road 8 generating facilities with the Delmarva transmission system.

Delmarva respectfully requests that the Interconnection Agreement become effective on January 23, 2002.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public

Service Commission and the Virginia State Corporation Commission.

Comment Date: February 13, 2002.

17. Thoroughbred Generating Company, LLC

[Docket No. ER02–814–000]

Take notice that on January 23, 2002, Thoroughbred Generating Company, LLC (Thoroughbred), an wholly owned subsidiary of Peabody Energy Corporation, tendered for filing a Petition seeking the Commission's approval of Thoroughbred Rate Schedule FERC No. 1, a rate schedule to engage in sales at market-based rates, and seeking the waiver of certain Commission regulations.

Comment Date: February 13, 2002.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–816–000]

Take notice that on January 23, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Serve Agreements and Network Transmission Service and Operating Agreements held by Cinergy Services, Inc.

Copies of this filing were sent to all applicable customers under the Cinergy Open Access Transmission Tariff.

Comment Date: February 13, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–817–000]

Take notice that on January 23, 2002, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Entergy Services and Entergy-Koch Trading, LP.

Comment Date: February 13, 2002.

20. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–833–000]

Take notice that on January 23, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 155 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of December 31, 2001 to Old Dominion Electric Cooperative.

Copies of the filing have been provided to the Maryland Public Service Commission, the Virginia State Corporation Commission, and all parties of record.

Comment Date: February 13, 2002.

21. Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC, Troy Energy, LLC

[Docket No. ER02–835–000, ER02–836–000, ER02–837–000]

Take notice that on January 23, 2002, Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC and Troy Energy, LLC filed Service Agreements with Virginia Electric and Power Company. It is requested that the effective date of these Service Agreements will be January 24, 2002.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Ohio Public Utilities Commission and the Pennsylvania Public Utility Commission.

Comment Date: February 13, 2002.

22. American Electric Power Service Corporation

[Docket No. ER02–838–000]

Take notice that on January 23, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing twelve (12) non-redacted, confidential copies and eleven (11) redacted, non-confidential copies of Service Agreements for the sale of power by AEPSC which are greater than one year in length. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies).

AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to January 1, 2002. A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: February 13, 2002.

23. Entergy Services, Inc.

[Docket No. ER02–405–001]

Take notice that on January 23, 2002, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (Entergy Mississippi) tendered for filing an amendment to Entergy Services' November 26, 2001, filing of an unexecuted amended Interconnection and Operating Agreement (Amended Interconnection Agreement) between Entergy Mississippi and Duke Energy Hinds, LLC (Duke). The amendment supplies additional information supporting the classifications of the Optional System upgrades identified in the appendices of the Amended Interconnection Agreement and the Interconnection Facilities identified in the original executed Interconnection and Operating Agreement between Entergy Mississippi and Duke

Comment Date: February 13, 2002.

24. New England Power Company

[Docket No. ER96–237–003]

Take notice that on January 23, 2002, New England Power Company (NEP) submitted for filing a Refund Report along with supporting documents. The refunds were made in compliance with an order issued in the above-referenced docket.

NEP states that copies of the Refund Report have been served on the persons listed on the official service list for this proceeding, the Massachusetts Department of Telecommunications and Energy, Massachusetts Municipal Wholesale Electric Company and Norwood Municipal Light Department.

Comment Date: February 13, 2002.

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.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2559 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2694–002]

Nantahala Power and Light, a Division of Duke Engineering Company; Notice of Availability of Final Environmental Assessment

January 29, 2002.

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 application for a new license for the existing and operating Queens Creek Hydroelectric Project FERC No. 2694–002, located on Queens Creek, in Macon County, North Carolina and has prepared a Final Environmental Assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA 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).

For further information, contact Steve Kartalia at (202) 219–2942.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2575 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

January 29, 2002.

a. *Type of Filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 2146.

c. *Date Filed:* November 19, 2001.

d. *Submitted By:* Alabama Power Company—current licensee.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* On the Coosa River in Calhoun, Cherokee, Chilton, Coosa, Elmore, Etowah, Shelby, St. Clair, and Talladega Counties, Alabama, and in Floyd County, Georgia. The project occupies federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Jim Crew, JFCREW@southernco.com, (205) 257–4265, or Barry Lovett, *BKLOVETT@southernco.com,* (205) 257–1268.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* August 1, 1957.

k. *Expiration date of current license:* July 31, 2007.

l. *Description of the Project:* The project consists of the following five developments:

The Weiss Development consists of the following existing facilities: (1) The 392-foot-long Weiss Dam consisting of: (a) A 263-foot-long concrete spillway section equipped with five 40-foot-wide by 38-foot-high Taintor gates and one 16-foot-wide by 22-foot-high Taintor trash gate; (b) a 7,000-foot-long east embankment; (c) a 4,800-foot-long west embankment; (2) the 30,200-acre Weiss Lake with a normal water surface elevation of 564 feet msl; (3) a 7,000-foot-long intake canal leading to; (4) a 8,900-foot-long east embankment and a 9,800-foot-long west embankment; (5) a powerhouse containing three generating units with a total installed capacity of 87.75 MW, (6) a 1,300-foot-long tailrace; (7) two 115-kV transmission lines; and (8) other appurtenances.

The Henry Development consists of the following existing facilities: (1) The 858-foot-long Henry Dam consisting of: (a) A 305-foot-long concrete spillway section equipped with six 40-foot-wide by 29-foot-high Taintor gates; (b) a 300-foot-long intake section; (c) an 850-foot-long east embankment; (d) a 3,200-foot-long west embankment; (2) the 11,235-acre Henry Lake with a normal water surface elevation of 508 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 72.9 MW; (4) two 115-kV transmission lines; and (5) other appurtenances.

The Logan Martin Development consists of the following existing facilities: (1) The 702-foot-long Logan Martin Dam consisting of: (a) A 327-foot-long concrete spillway section equipped with six 40-foot-wide by 38-foot-high Taintor gates and one 17.5-foot-wide by 21.0-foot-high trash gate; (b) a 4,650-foot-long east embankment; (c) a 870-foot-long west embankment; (2) the 15,263-acre Logan Martin Lake with a normal water surface elevation of 465 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 128.25 MW; (4) four 115-kV transmission lines; and (5) other appurtenances.

The Lay Development consists of the following existing facilities: (1) The Lay Dam consisting of: (a) A 194-foot-long concrete bulkhead; (b) a 304-foot-long concrete intake section; (c) a 930-foot-long concrete spillway section equipped with twenty-six 30-foot-wide by 17-foot-high vertical lift gates; (d) a 180-foot-long concrete bulkhead; (e) a 512-foot-long embankment; (2) the 12,000-acre Lay Lake with a normal water surface elevation of 396 feet msl; (3) a powerhouse containing six generating units with a total installed capacity of 177.0 MW; (4) two 44-kV transmission lines and four 115-kV transmission lines; and (5) other appurtenances.

The Bouldin Development consists of the following existing facilities: (1) The Bouldin Dam consisting of: (a) A 2,200-foot-long embankment; (b) a 228-foot-long concrete intake section; (c) a 7,000-foot-long embankment; (2) the 920-acre Bouldin Lake with a normal water surface elevation of 252 feet msl; (3) a powerhouse containing three generating units with a total installed capacity of 255.0 MW; (4) a 5-mile-long tailrace canal; (5) four 115-kV transmission lines; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

n. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

C. B. Spencer,

Acting Secretary.

[FR Doc. 02–2574 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 4204–024.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* City of Batesville (City).

e. *Name of Project:* White River Lock and Dam No. 1 Hydroelectric Project.

f. *Location:* The project is located on the White River, in the Town of Batesville, Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street NW., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: *janet.hutzel@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4204–024) on any comments or motions filed. Comments, motions to intervene, 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 (http://www.ferc.gov) under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Amendment: The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). The City of Batesville now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. The City thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed 25 kV transmission line would extend along the north side of the White River westward 9.6 miles from Lock and Dam No. 1 to the proposed substation. Underground transmission line is proposed for the first 3000 ft from Lock and Dam No. 1, while the remaining line would use single pole structures.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4204–024) 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 City of Batesville specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2576 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of License.

b. *Project No.:* 4659–026.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* Independence County.

e. *Name of Project:* White River Lock and Dam No. 3 Hydroelectric Project.

f. *Location:* The project is located on the White River, in Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street N.W., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: *janet.hutzel@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4659–026) on any comments or motions filed. Comments, motions to intervene, 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). Independence County now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. Independence County thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed transmission line would extend along the north side of the White River eastward nine miles from Lock and Dam No. 3 to the proposed substation. Single pole structures would be used to construct the 25 kV transmission line.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket ι'' 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. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4659–026) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of Independence County specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2577 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 4660–028.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* Independence County.

e. *Name of Project:* White River Lock and Dam No. 2 Hydroelectric Project.

f. *Location:* The project is located on the White River, in Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street N.W., Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or E-mail address: dhclarke@GKRSE-law.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or E-mail address: janet.hutzel@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene, and protests: March 6, 2002.*

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4660–028) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Amendment:* The license, issued November 8, 1985, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). Independence County now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. Independence County thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed transmission line would extend along the north side of the White River eastward two miles from Lock and Dam No. 2 to the proposed substation. Single pole structures would be used to construct the 25 kV transmission line.

The proposed substation would be located approximately two miles east of

White River Lock and Dam No. 2, on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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, .211, .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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4660–028) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of Independence County specified in item h, above.

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 representative listed in item h, above.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–2578 Filed 2–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 28, 2002, 67 FR 3894.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 30, 2002 10 a.m.

CHANGE IN THE MEETING: The following Docket No. has been added to Item E–42 on the Commission Meeting of January 30, 2002.

Item No., Docket No., and Company

E–42—ER02–788–000, Gulf Power Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–2716 Filed 1–31–02; 2:07 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Final Allocation of the Post-2004 Resource Pool-Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Salt Lake City Area Integrated Projects (SLCA/IP) Post-2004 Resource Pool Final Allocation of Power developed under the requirements of Subpart C-Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. This notice also includes Western's responses to comments on proposed allocations published June 13, 2001.

Final allocations are published to indicate Western's decisions prior to beginning the contractual phase of the process. Firm electric service contracts, negotiated between Western and allottees in this notice, will permit delivery of the allotted power from the October 2004 billing period through the September 2024 billing period.

DATES: The Post-2004 Resource Pool Final Allocation of Power will become effective March 6, 2002, and will remain in effect through September 30, 2024.

ADDRESSES: All documents developed or retained by Western in developing the final allocations are available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (64 FR 48825, September 8, 1999) to implement Subpart C-Power Marketing Initiative of the Program's Final Rule (10 CFR part 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers.

Proposed allocations were published in the **Federal Register** (66 FR 31910, June 13, 2001). Public information/comment forums concerning the proposed allocations were held August 10, 15, 16, 21, and October 4, 2001. The public comment period closed October 11, 2001.

The Procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4844, February 7, 1986), establish the framework for allocating power from the SLCA/IP Post-2004 Power Pool.

I. Comments and Responses

Comment: Headgate Rock Dam generation should not be considered as an offset to Federal power when calculating the allocation for the Colorado River Indian Tribes (CRIT).

Response: Western has researched the authorizing legislation for Headgate Rock Dam and electric generation facilities and agrees with this comment. The dam was built as an Indian project by the Department of the Interior for the benefit of the CRIT under the Snyder Act (25 U.S.C. 13) and will not be considered a Federal power resource.

Comment: The marketing area of the SLCA/IP was limited to Arizona, Colorado, New Mexico, Utah, and Wyoming, and parts of Nevada. Some tribes have portions of their reservations in California. These should have been considered in making allocations.

Response: Originally, the marketing area for the Colorado River Storage Project included all of the drainage area of the Colorado River. The Post-1989 Marketing Plan reduced the marketing area to Arizona, Colorado, New Mexico, Utah, Wyoming, and portions of

Nevada. The current action is an extension of that marketing plan. Therefore, Western is not able to consider expanding the marketing area at this time. Any expansion of the marketing area to include portions of reservations in California is outside the scope of this effort. The portions of reservations in California are within the Parker-Davis Project marketing area. Power resource pools from these projects will be allocated effective upon expiration of existing contracts on September 30, 2008. Tribes with reservation lands and eligible loads in California may be able to participate in that process.

Comment: Allocations were not proposed for the Indian Pueblos of San Ildefonso, Santo Domingo, and Taos because their applications were not complete. They should be allowed to complete the application process and receive allocations.

Response: Western's mandate is to ensure the most widespread use of the Federal resources. Consistent with this, Western's goal was to achieve 100 percent participation by the eligible Indian tribes within the SLCA/IP marketing area. These three Pueblos along with the Moapa Band of Paiute Indians had not completed the application process and were not included in the proposed allocations. The Pueblos have now completed the application process. Allocations for these tribes are included in this notice. The Moapa Band of Paiutes has not indicated any further interest in Federal power and will not receive an allocation.

Comment: Western should closely review data submitted by tribes. The proposed allocations were based on Indian-owned loads on the reservations. Some ineligible loads may have been used in determining allocations.

Response: Western has conducted a reasonable review and verification of the Applicant Profile Data submitted by the tribes. Western believes that the tribes submitted their data in good faith and complied with the criteria. Tribes were asked to divide their commercial loads into Indian and non-Indian owned.

The allocation proposed for the Yavapai Prescott Tribe was based on a large amount of non-Indian owned commercial load on the Yavapai Prescott reservation. This was correctly identified by the Yavapai Prescott Tribe but incorrectly included by Western in determining the proposed allocation. The Tribe's allocation has been revised to base it only on allowed loads and to make it consistent with other tribes' allocations.

Comment: Because Tri-State Generation and Transmission Association (Tri-State) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) merged (in addition to the 7 percent withdrawal for the Post-2004 Power Pool), an additional 7,000 kilowatts (kW) and associated energy will be withdrawn from Tri-State. Some tribes commented that these 7,000 kW and the energy should be placed in the SLCA/IP Power Pool and allocated to the tribes.

Response: As stated in the June 13, 2001, **Federal Register** notice, Western's intent in withdrawing additional resources from Tri-State was to provide an allocation for Navopache Electric Cooperative (Navopache). Navopache was a member of Plains and received the benefit of Federal power through this membership. However, in the merger, Navopache chose not to become a member of Tri-State, thus losing access to Federal power. Western's intent in withdrawing an additional 7,000 kW from Tri-State was to provide an allocation to Navopache. This will enable Navopache to again receive Federal power after the merger of Tri-State and Plains eliminated its Federal power benefit. Navopache will be allocated 7,000 kW in both of the Summer and Winter seasons. It will receive 15,350,991 kilowatthours (kWh) of energy in the Summer season and 14,660,861 kWh in the Winter season.

Comment: Western should not consider the benefits of Federal power from current tribal service providers when making allocations to the tribes. In the event of the formation of a tribal utility, that power would be inaccessible to the tribes.

Response: The intent of the Program is to provide the benefits of Federal hydropower directly to individual tribes. Allocations listed in this notice will be made directly to the tribes. Any indirect Western hydroelectric benefits recognized in the calculation method were used by Western to determine a fair share for tribes at the time of allocation with no intent to create any commitment to transfer those benefits to the tribes. Any indirect Western hydroelectric benefits received by the tribes are due to contractual commitments between Western and the existing customers.

The White Mountain Apache Tribe (White Mountain) argued that since Navopache does not currently receive Federal power, indirect Federal benefits should not be considered in proposing a power allocation for White Mountain. However, Navopache will receive an allocation of SLCA/IP power at the same time that White Mountain is eligible to receive service under this proposal. Since White Mountain and its members receive electric service from Navopache, they will at that time receive indirect Federal benefits through Navopache. They were also receiving the indirect benefit of Federal power during the base year established by Western for determination of the allocations. Consistent with the methodology used for all tribes, these indirect benefits have been accounted for in the proposed allocation for White Mountain.

Comment: Several tribes commented that energy not contracted for tribes should be used to increase other tribes' allocations to reach the target of 65 percent of eligible load. On the other hand, current customers commented that energy not contractually committed to tribes should be returned to the current customers.

Response: Western's intent is to enter into contracts with all tribes and/or nations receiving an allocation prior to October 1, 2004. In the event that a contract with a tribe for its allocation is not consummated prior to this date, such tribe's allocation will be held until a contract is completed or arrangement to take delivery of the power or the benefits of the power are made. Western stated in the criteria that energy not contracted for by new customers would be returned to current customers. It is now evident that the quantity of energy not contractually committed will be so small that reallocating it would not be administratively effective. The energy will not be reallocated to other tribes or existing customers but will be made available for the use of all customers through standard terms of the firm electric service contracts.

Comment: Western's current customers commented that the firm electric service contracts with the tribes should be the same as the contracts with current customers. However, some Indian representatives commented that certain changes should be made to the General Power Contract Provisions that take into account tribal sovereignty. Underlying reserve contracts should be offered to tribes to reserve the power allocation for each tribe and would allow changes to the method of implementation. Western's Integrated Resource Planning (IRP) requirements should be useful but not burdensome to the tribes.

Response: Entering into contractual arrangements with the tribes is the next step of the resource pool allocation process. However, contractual arrangements will not begin until final allocations are completed. Contractual provisions will be consistent with Section IV of the Procedures.

Comment: Several comments were submitted concerning delivery points for Federal power.

Response: Delivery issues will be addressed after the allocation is final. Contracts for transmission service will be developed between the tribes and transmission providers. The tribes are ultimately responsible for transmission and delivery arrangements beyond the SLCA/IP Federal delivery points. However, Western will assist tribes in securing the necessary transmission or other arrangements that are necessary to ensure that they will receive the benefits of SLCA/IP power.

Comment: If changes to the proposed allocations are made, Western should publish revised proposed allocations and provide time for public review and comment.

Response: Western has made changes to the proposed allocations. However, all of the changes are the result of better information about applicants' loads and not the result of changes in criteria or policy. Western has consistently applied the criteria to all applicants in making the allocations. Allowing further public review and comment would delay further the implementation of the program and delay the offer of contracts to the tribes.

II. Amount of Pool Resources

Western will allocate to the tribes 7 percent of the SLCA/IP long-term firm hydroelectric resource available as of October 1, 2004, as firm power. Current hydrologic studies indicate that 203,251,178 kWh of energy and 93,679 kW of capacity will be available for the Summer season. In the Winter season, 217,281,509 kWh of energy and 93,680 kW of capacity will be available. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long-term firm power electric service contracts.

Based on the applications submitted by the Northern Arapaho and the Eastern Shoshone tribes, Western could not differentiate between each tribe's load. The data from each tribe were used to arrive at a final allocation for the Wind River Reservation (Reservation) instead of each tribe. The final SLCA/IP allocation for the Reservation considers, in addition to the hydroelectric benefit from Western through the reservation's serving utility, the proposed allocation from Western's Loveland Area Projects resource pool.

III. Final Power Allocation

The following final power allocations are made in accordance with the Procedures. All of the allocations are subject to the execution of a contract in accordance with the Procedures.

The final allocations for Indian tribes and organizations are shown in this table.

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS

Indian Tribes or Organizations	Summer Energy (kWh)	Winter Energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Alamo Navajo Chapter	408,790	480,748	188	207
Canoncito Navajo Chapter	299,506	355,370	138	153
Cocopah Indian Tribe	2,806,867	2,523,150	1,294	1,088
Colorado River Indian Tribes	13,197,379	8,305,968	6,083	3,581
Confederated Tribes of the Goshute Reservation	86,101	149,588	40	64
Duckwater Shoshone Tribe	151,243	161,901	70	70
Ely Shoshone Tribe	170,672	310,489	79	134
Fort Mojave Indian Tribe	680,593	775,099	314	334
Ft. McDowell Mojave-Apache Indian Community	5,142,570	5,418,248	2,370	2,336
Gila River Indian Community	30,506,505	31,786,232	14,061	13,704
Havasupai Tribe	437,268	565,997	202	244
Hopi Tribe	5,951,066	6,698,757	2,743	2,888
Hualapai Tribe	1,372,287	1,455,714	632	628
Jicarilla Apache Tribe	1,285,957	1,806,153	593	779
Kiabab Band of Paiute Indians	0	4,515	0	2
Las Vegas Paiute Tribe	1,578,851	1,246,804	728	538
Mescalero Apache Tribe	2,164,024	2,432,979	997	1,049
Nambe Pueblo	129,837	160,606	60	69
Navajo Tribal Utility Authority	45,923,355	59,159,156	21,166	25,506
Paiute Indian Tribe of Utah	348,269	371,538	161	160
Pascua Yaqui Tribe	2,896,605	2,468,394	1,335	1,064
Picuris Pueblo	167,980	54,273	77	23
Pueblo De Cochiti	405,413	535,074	187	231
Pueblo of Acoma	931,658	1,007,712	429	434
Pueblo of Isleta	2,405,246	2,644,248	1,109	1,140
Pueblo of Jemez	474,564	650,399	219	280
Pueblo of Laguna	1,646,121	1,850,708	759	798
Pueblo of Pojoaque	461,500	666,340	213	287
Pueblo of San Felipe	718,673	1,004,843	331	433
Pueblo of San Ildefonso	139,859	157,241	64	68
Pueblo of San Juan	661,979	745,095	305	321
Pueblo of Sandia	2,065,478	1,947,417	952	840
Pueblo of Santa Clara	474,377	650,190	219	280
Pueblo of Santo Domingo	989,749	1,044,975	456	451
Pueblo of Taos	491,193	835,116	226	360
Pueblo of Tesuque	1,375,087	1,426,471	634	615
Pueblo of Zia	151,801	208,061	70	90
Pueblo of Zuni	2,261,793	2,913,662	1,042	1,256
Quechan Indian Tribe	1,106,528	1,738,295	510	749
Ramah Navajo Chapter	665,272	1,012,039	307	436
Salt River Pima-Maricopa Indian Community	35,393,766	31,944,155	16,313	13,773
San Carlos Apache Tribe	8,175,836	8,147,557	3,768	3,513

SALT LAKE CITY AREA PROJECTS POST-2004 POWER POOL FINAL ALLOCATIONS—Continued

Indian Tribes or Organizations	Summer Energy (kWh)	Winter Energy (kWh)	Summer CROD (kW)	Winter CROD (kW)
Santa Ana Pueblo	1,007,669	977,463	464	421
Skull Valley Band of Goshute Indians	33,427	35,292	15	15
Southern Ute Indian Tribe	2,489,955	2,886,844	1,148	1,245
Tohono O'Odham Utility Authority	1,263,833	1,814,028	583	782
Tonto Apache Tribe	837,790	832,681	386	359
Ute Indian Tribe	1,013,717	1,692,229	467	730
Ute Mountain Ute Tribe	1,057,428	1,248,391	487	538
White Mountain Apache Tribe	12,786,934	14,387,553	5,894	6,203
Wind River Reservation	1,074,186	1,207,269	495	521
Yavapai Apache Nation	4,147,563	3,493,615	1,912	1,506
Yavapai Prescott Indian Tribe	768,247	812,225	354	350
Yomba Shoshone Tribe	68,806	72,645	32	31
Total	203,251,178	217,281,509	93,679	93,680

The tribes' SLCA/IP allocations, combined with existing and future Western hydropower benefits, total approximately 55.7 percent of eligible load in the Summer season and 58.8 percent in the Winter season based on the adjusted seasonal energy data submitted by each tribe. The allocation process considered the current Western hydroelectric benefits received through serving utilities and future Western hydroelectric benefits that will be received by serving utilities as a result of this allocation process. The final allocations of power shown in the table are based on the SLCA/IP marketable resource currently available. If the SLCA/IP marketable resource is adjusted in the future, all allocations will be adjusted accordingly.

IV. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

V. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, this notice requires no clearance by the Office of Management and Budget.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: January 17, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–2594 Filed 2–1–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–5]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement providing for rulemaking to amend regulations issued pursuant to section 112(d) of the Clean Air Act.

SUMMARY: EPA hereby gives notice of a proposed settlement agreement in the cases entitled *American Crop Prot. Ass'n* v. *EPA*, No. 99–1332 and *BASF Corp.* v. *EPA*, No 99–1334 (D.C. Cir.). EPA issues this notice in accordance with section 113(g) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(g),which requires EPA to give notice and provide an opportunity for public comment on proposed settlement agreements.

The litigation challenges EPA's promulgation of the final rule entitled National Emissions Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production ("PAI NESHAP" or the "rule"). 64 FR 33550 (June 23, 1999). Petitioners the American Crop Protection Association and BASF Corp. filed petitions for review of the rule under section 307(b) of the Act, 42 U.S.C. 7607(b).

The proposed Settlement Agreement provides that EPA will undertake a rulemaking to amend the PAI NESHAP. Among the rulemaking commitments, the Settlement Agreement calls for EPA to clarify applicability of the rule to "reconstructed" sources, make technical corrections to performance testing requirements, and amend standards and applicability provisions related to wastewater units and storage tanks covered by the rule. A copy of the proposed Settlement Agreement is available from Phyllis Cochran, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–5566.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments regarding the proposed Settlement Agreement from persons who are not named as parties or intervenors to this litigation. Written comments should be sent to Paul R. Cort, at the above address and must be submitted on or before March 6, 2002.

EPA or the Department of Justice may withhold or withdraw consent to the proposed Settlement Agreement if the comments disclose facts or circumstances that indicate the agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice makes such a determination following the comment period, EPA will take the actions set forth in the Settlement Agreement.

Dated: January 29, 2002.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–2609 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–1]

''Mobile Source Outreach Assistance Competition Fiscal Year 2002: Solicitation Notice''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's Notice announces the availability of funding and solicits proposals from state, local, multi-state and tribal air pollution control agencies for mobile source-related public education and outreach projects. The funding will be allocated by EPA's Office of Transportation and Air Quality (OTAQ) through the competitive process described in this notice.

DATES: The deadline for submitting Final Proposals is Monday, April 15, 2002. To allow for efficient management of the competitive process, OTAQ is requesting agencies to submit an informal Intent to Apply by Friday, February 22, 2002. (Instructions for submitting final proposals and Intents to Apply are found in Section X. below.)

ADDRESSES: This proposal can also be found in two places on the Office of Transportation and Air Quality Web Page: ''*www.epa.gov/OTAQ/*'' click on ''What's New'' or ''*www.epa.gov/OTAQ/rfp.htm*''. Addresses for submitting final proposals can be found in Section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach, USEPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue NW., (mail code 6406J), Washington, DC, 20460. Telephone (202) 564–9856; Fax (202) 565–2085. Or email ''*bullard.susan@epa.gov*''.

SUPPLEMENTARY INFORMATION:

Contents by Section

Deadline for Informal Intent To Apply—Friday, February 22, 2002

Deadline for Final Proposal—Monday, April 15, 2002

This proposal can also be found on the Office of Transportation and Air Quality Web Page: ''*www.epa.gov/otaq/* Click on ''What's New'' or *www.epa.gov/OTAQ/rfp.htm*''.

Mobile Source Outreach Assistance Agreements 2002: Request for Proposals

Section I. Overview and Deadlines

A. Overview

Over the past five years, EPA's Office of Transportation and Air Quality (OTAQ) has entered into agreements and established partnerships with a number of organizations to (1) provide national support for community-based mobile source public education efforts supporting implementation of the Clean Air Act and the Transportation Equity Act for the 21st Century, (2) encourage responsible choices for organizational and individual actions through public education. Current OTAQ/Section 105-Funded Outreach Projects are listed on the OTAQ web site ''*www.epa.gov/otaq/whatsnew*'' and emphasize transportation choices to reduce vehicle miles traveled; education of vehicle owners and drivers of the future; alternative fuels; car care and the role of the automotive technician; outreach to ethnic populations; environmental justice; and, related projects such as ozone mapping and small engines. EPA's Office of Transportation and Air Quality receives set-aside funds from the State and Tribal Assistance Grants (STAG) account to provide support to community-based mobile source-related outreach projects. This Notice solicits proposals for public education and outreach projects which directly support state and local air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from state, local, tribal and multi-state air management agencies which are identified as such under section 302(b) of the Clean Air Act. Interested persons can also obtain copies of this solicitation at no charge by accessing the OTAQ Web site at ''*www.epa.gov/otaq/*'' Click on ''What's New'' or ''*www.epa.gov/OTAQ/rfp.htm*''.

B. What Are the Deadlines for This Competition?

In order to efficiently manage the selection process, the Office of Transportation and Air Quality requests that an informal ''Intent to Apply'' be submitted by Friday, February 22, 2002. (Please provide project title or subject and email address for project contact). An ''Intent to Apply'' simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. Submitting an ''Intent to Apply'' does not commit an organization to submit a final proposal. Those not submitting an Intent to Apply may still apply by the deadline. *The deadline for final proposals (original and six copies) is midnight on Monday, April 15, 2002.* The Office of Transportation and Air Quality expects to complete the Evaluation/Selection process in May, 2002.

Section II. Eligible Organizations

C. Who Is Eligible To Submit Proposals?

According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under section 302(b) of the Clean Air Act, (for projects to be undertaken which will have replicability to other communities nationally), as well as multi-state organizations supporting section 302(b) agencies. OTAQ has no discretion over this requirement.

Interested air management, non-governmental or related organizations which are *not* air pollution control agencies as defined under section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

D. What Is the Amount of Available Funding?

A minimum of $550K.

E. How Will Funds Be Allocated?

The competition process will be managed by OTAQ and selected cooperative agreements will be awarded by EPA's Regional offices and funded through Section 105 authority (state and local air pollution control agencies), except in the case of *multi-state organizations as defined by law*, which must be funded under Section 103. OTAQ has no discretion over this requirement.

F. How Many Agreements Will Be Awarded?

Approximately eight agreements will be awarded, none to exceed $100,000 for the entire project.

G. Are Matching Funds Required?

Possibly. Clean Air Act section 105 mandates that eligible agencies provide matching funds of at least 40%. Therefore, an air pollution control agency which submits a proposal must include a statement in their proposal indicating that the match could and would be met if their proposal is selected. Organizations unable to meet a required match must be considered ineligible. (By statute, this requirement does not apply to multi state organizations.) Organizations which are unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator (see Section XII below).

H. Can Funding Be Used To Acquire Services or Fund Partnerships?

Yes—subgrants and other procurement services are allowed. Because the method used to fund subgrants is not a federal matter, procedures governing your organization's procurement practices must be followed. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis

This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches) rather than grow ongoing projects.

I. Program Emphasis

—Voluntary Measures
—Commuter Choice initiatives
—Transportation choices
—Environmental Justice
—Car care (testing, repair, maintenance)
—On Board Diagnostics (OBD)
—Alternative fuels
—Involving youth in mobile source issues/environmental education
—Other mobile source issues (including but not limited to: diesel, particulate matter, heavy duty engines; nonroad engines; air quality index; and ozone mapping/forecasting.)

Section V. Selection Criteria

J. Primary Criteria

—Clearly addresses environmental goals of improved air quality from mobile sources
—Demonstrates national or regional applicability/transferability
—Indicates some level of funding for replication and transfer to other communities
—Links actions, air quality and public health
—Demonstrates effectiveness of delivery mechanism to reach targeted audience
—Exhibits clearly-stated and appropriate levels of funding
—Includes effective evaluation methods
—Reflects potential for sustainability

K. Other Factors To Be Considered

—Innovation
—Effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project
—Integration with existing programs
—Willingness to coordinate with other OTAQ-funded outreach activities
—Demonstrated capability of candidate organization to accomplish the goals presented

L. Presentation Criteria

—Proposal must address each of the components outlined in Section VII (N)
—Action-oriented
—Clearly-stated goals and objectives
—Reasonable time frames and budget

Section VI. Evaluation and Selection

M. The Evaluation Team is chosen to represent a full range of mobile source and EPA program expertise. In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation solely on the criteria referenced in this Notice. Completed evaluations will be forwarded for further consideration to a Selection Committee representing OTAQ senior managers and Regional representatives who are responsible for final selection. To ensure equity and objectivity throughout the process, the OTAQ Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

N. What Must Be Included in the Proposal?

Proposals should be approximately 5–7 pages in length (*please do not include binders or spiral binding*) and must include the following. [It is recommended that the proposal conform to the outline below to ensure that all components are addressed.] *A copy of the cover letter should be attached to each copy to be submitted.*

(1) Project contact(s) (*must provide name, organization, phone, fax, and e-mail*) An email address is essential in order to ensure OTAQ's ability to quickly reach all applicants with important information.

(2) Clear statement of amount being requested. (No project will be funded in an amount to exceed $100,000 *for the entire project*.)

(3) Brief statement that the candidate organization is defined as an air pollution control agency under section 302(b) of the Clean Air Act.

(4) Statement that any required match will be met.

(5) Statement of project background/objectives highlighting relationship to improving air quality from mobile sources.

(6) Detailed project summary—description of specific actions to be undertaken.

(7) Projected time frame for project from initiation through completion.

(8) Associated deliverables to be developed and funded through the agreement.

(9) Explanation of project benefits.

(10) Detailed explanation of how project outcomes will be designed and funded for replication in other communities.

(11) Description of collaborative activities and partnerships with other stakeholders.

(12) Detailed budget estimate (clearly explain how funds will be used, including estimated cost for each task.) (Note: Budget estimates should include funding for participation in the annual 3-day ''Communities in Motion'' Outreach and Partnerships Workshop typically held in Washington, DC in late October.)

O. Will 2-Year Proposals Be Considered?

Yes. If a proposal with a 2-year project period is submitted, OTAQ requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years.The total for the project is not to exceed $100,000.

P. May an Eligible Organization Submit More Than One Proposal?

An organization may submit more than one proposal *only* if the proposals are for different projects.

Q. May an Eligible Organization Resubmit a Proposal Which Was Previously Submitted to the Mobile Source Outreach Assistance Competition, but Was Not Selected?

Yes. The proposals received by OTAQ in previous competitions were generally of very high quality. Clearly, all proposals of merit could not be selected due to limited resources available.

R. May an Eligible Organization Submit a Proposal for This Fiscal Year, Even if It Were Previously Awarded Funding Under This Program?

Yes. Applicants awarded funding in previous competitions may submit new proposals to fund a different project. This program is intended to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches).

S. Does This Funding Expire at the End of FY 02 (September 2002)?

No. The statute states that State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended (''no-year money'').

T. Ineligible Proposals.

Proposals will be determined to be ineligible if: (1) The candidate organization is not currently defined as an air pollution control agency under section 302(b) of the Clean Air Act; (2) a required match could not be met; (3) the proposal is incomplete (proposals must address each and every component outlined in Section VII (N); or (4) the proposal is postmarked after the deadline.

Section VIII. Current OTAQ/Section 105 Funded Outreach Projects

U. Since this program is designed to fund new projects (rather than simply duplicating or growing existing programs), potential candidate organizations are recommended to visit the OTAQ web site to identify representative projects already being funded. The item, entitled ''Current OTAQ/Section 105 Funded Outreach Projects,'' can be found at ''*www.epa.gov/otaq/*'' Click on ''What's New''—Added November 2001 to find a brief sketch of projects funded to date through the Office of Transportation and Air Quality, either with Section 105 funding (indicated by year of funding) or projects that are intended to be national in scope, supported by OTAQ program funding (indicated by an asterisk ''*''). (**Note:** Some web sites listed by funded organizations provide helpful information on a variety of air quality efforts being undertaken by the funded organization.)

Section IX. Other Items of Interest

V. Is There Other Information I Should Have Before Applying?

Yes.

—Submission of an Intent to Apply or a final proposal does not guarantee funding.
—Supplementary information, including letters of recommendation, will not be reviewed by the evaluators.
—Only those organizations *selected* will be required to submit a complete ''Application for Federal Assistance and Budget Information'' (SF 424 and SF 424A) to the appropriate EPA Regional Office.

Section X. How To Apply

W. How Do I Apply?

Informal ''Intents to Apply'' may take the form of email, fax or phone call to the EPA Program Contact listed below. Include organization, contact, phone, email and project title/subject.

Please submit informal ''Intents to Apply'' by Friday, February 22, 2002.

To be considered eligible, Completed Proposals must be date stamped (postmarked or dated by overnight express) on or before midnight, Monday, April 15, 2002 (original + 6, including cover letters on copies—no binders, spiral binding or supplemental materials please!)

Please pay special attention to the distinction in addresses for regular mail and in-person delivery.

Via regular mail to: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 1200 Pennsylvania Avenue NW, Mail Code 6406J, Washington, DC 20460.

Express mail which is to be delivered in-person (FedEx, UPS, Airborne, etc) must leave the sender and be dated by no later than midnight on Monday, April 15, 2002 at the following address: Susan Bullard, Director of Outreach, US EPA Office of Transportation and Air Quality, 501 Third Street NW Room 5304D, Washington, DC 20001, (202) 564–9856, (202) 564–8991 (backup number for expressed proposals only).

Note: Proposals e-mailed or faxed *will serve only as a placeholder,* and *must* be followed by a hard copy original and 6 copies postmarked no later than the deadline. If no original is received which meets the deadline, the proposal will not be considered.

Deadline for Completed Final Proposals

Date stamped (postmarked or express mail dated) no later than midnight on Monday, April 15, 2002.

Section XI. EPA Regional Section 105 Grant Coordinators

Region 1 (Boston), Paul Bryan, 617–918–1673.
Region 2 (New York), Marlon Gonzales, 212–637–3769.
Region 3 (Philadelphia), Russ Bowen, 215–814–2057.
Region 4 (Atlanta), Todd Rinck, 404–562–9062.
Region 5 (Chicago), Robert Miller, 312–353–0396; Pamela Blakley, 312–886–4447.
Region 6 (Dallas), Rexene Hanes, 214–665–2726; Javier Balli, 214–665–7261.
Region 7 (Kansas City), Wayne Leidwanger, 913–551–7607.
Region 8 (Denver), Marisa Mcphilliamy, 303–312–6965.
Region 9 (San Francisco), Jack Colbourn, 415–744–1239; Valerie Cooper, 415–744–1237.
Region 10 (Seattle), David Debruyn, 206–553–4218.

Section XII. OTAQ Program Contact

Susan Bullard, Director of Outreach, EPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue NW (Mail Code 6406J), Washington, DC 20460, (Phone) 202/564–9856, (Fax) 202/565–2085, ''*bullard.susan@epa.gov*''.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02–2610 Filed 2–1–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–2]

Notice of Request for Proposals for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the Clean Water Act (CWA) interested in applying for Federal assistance for Water Quality Cooperative Agreements under the CWA Section 104(b)(3) in the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Region 6 EPA will award an estimated $1 million to eligible applicants through assistance agreements ranging in size from $50,000

up to $200,000 for innovative projects/demonstrations/studies that can be used as models relating to the prevention, reduction, and elimination of water pollution. A Request for Proposals for Tribal governments will be issued under a separate notice.

DATES: EPA will consider all proposals received on or before 5 p.m. Central Standard Time March 21, 2002. Proposals received after the due date will not be considered for funding.

ADDRESSES: Proposals can be submitted either electronically via e-mail or mailed through the postal service or other means. If e-mailed, proposals should be sent to *mendiola.teresita@epa.gov.* If mailed, proposals should be sent to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Request for Proposals?

EPA Region 6's Water Quality Protection Division is requesting proposals from State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, i.e., storm water, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. Innovative studies leading to the development of Total Maximum Daily Loads (TMDL) is another priority on which these funds could be focused.

An organization whose proposal is selected for Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, *see* 40 CFR 30.12 & 31.10).

Has EPA Region 6 Identified High Priority Areas for Consideration?

EPA Region 6 has identified several project areas for priority consideration to the extent they are for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution:

Concentrated Animal Feeding Operations

Alternative markets for excess manure
Voluntary Comprehensive Nutrient Management Plans for Animal Feeding
Operations with 300 to 500 animal units

Wet Weather (Sanitary Sewer Overflows (SSOs), Storm Water)

Integration of SSO and storm water requirements
Measuring the effectiveness of storm water Best Management Practices (BMPs)
Trends analysis of load reductions due to implementation of storm water BMPs
Storm water monitoring techniques
Estimating quantified benefits of enhanced sewer performance (*e.g.*, reduced backups)
Quantifying the impacts of sewage overflows
Evaluation of impacts of peak wet weather flows on Publicly Owned Treatment Works (POTW)
Capacity, Management, Operations and Maintenance (CMOM) of POTWs
Inflow/Infiltration reduction
Sewer rehabilitation methods
Municipal Stormwater Inspection Training Modules

NPDES Programs

Stakeholder watershed approaches
Nutrient trading
Watershed integration of NPDES programs
Innovative Permit Writing Tools
Strategy to effectively manage Permit Backlog

Pretreatment

Performance measures
Facilitation of innovative technology transfer
Pretreatment on the Mexican Border

Environmental Management System (EMS)

Benefits and impacts of EMS
EMS adoption by public agencies

Cooling Water Intake Structures (CWA, Section 316(b))

Innovative technologies that reduce impingement and entrainment of aquatic organisms into cooling water intakes
Ecological effects of cooling water intake structures on aquatic environments
Effectiveness of ecological restoration activities in reducing the impact of cooling water intake structures on the aquatic environment

Infrastructure Funding related to:

Asset Management
Operations and Maintenance (O&M) issues for small communities

Biosolids

Demonstrations of regional biosolids approaches
Food crop applications on biosolids and/or reclaimed water (assessments, research, demonstrations analyses)

Onsite/Decentralized Systems

State-level adoption of EPA management guidelines
Overcoming institutional, regulatory and funding barriers to implementation of decentralized options
Development of tools to assist communities with conducting comprehensive, watershed-wide assessments of risks associated with decentralized wastewater systems

TMDL

Innovative studies leading to TMDL development on a watershed basis for multiple pollutants including but not limited to nutrients, sediments, turbidity, metals, toxics, pesticides, bacteria, and unknown toxicity impacted by point sources as well as non-point sources. The innovative studies should be based on credible research on the physical, chemical, and biological processes governing the stochastic properties of pollutants in the environment. The innovative studies should lead to the development of scientific methods and/or statistical tools to identify the water quality problems and the extent of contamination but should not include TMDL modeling calculations.

Water Quality Standards Program

Innovative projects or studies that will lead to the development and refinement of water quality standards and associated water quality monitoring and assessment methods or procedures that result in improved decisions about the status of waterbodies relative to the goals of the CWA. The projects may include, but are not limited to, refinement of waterbody classification systems and associated designated uses, refinement or development of narrative or numeric criteria, development of sampling schemes for improved integration of risk assessment in use attainment decisions, improved methods to identify emerging environmental problems, development of methods to assess attainment of numeric criteria using indicators that integrate conditions over time, and GIS based land use analyses for targeting monitoring and assessment resources.

Statutory Authority, Applicable Regulations, and Funding Level

Funding is authorized under the provisions of the CWA Sec.104(b)(3), 33U.S.C.1254(b)(3).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR part 31 (for States, local governments, and interstate agencies).

Total funding available for award by Region 6 is dependent on EPA's appropriation for Fiscal Year 2002; however, it is estimated that $1 million will be available for funding approved projects. A minimum match of five percent will be required for all approved projects and should be included in the total funding requested for each proposal submitted.

Proposal Format and Contents

Proposals should be no more than three pages in Wordperfect or Word with a minimum font size of 10 pitch. Failure to follow the format or to include all requested information could result in proposal not being considered for funding. Full application packages should not be submitted at this time. The following format should be used for all proposals:

Name of Project:

Point of Contact: (Individual and Agency/Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Federal Amount:

Proposed Non-Federal Match (minimum of 5%):

The match is based on the total project cost not the Federal amount. To determine a proposed minimum match of 5%, use the following example:

Federal amount = $25,000

Total Project Cost = T

The Federal amount is 95 % of T, therefore:

$25,000 = T x 0.95

$25,000 / 0.95 = T

$26,316 = T (round the decimal)

If the total project cost is $26,316, then:

$26,316 x 0.05 = $1,316 non-Federal match

Proposed Total Award Amount:

Description of General Budget Proposed To Support Project:

Project Description: (Should not exceed two pages of single-spaced text)

Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA Proposal Evaluation Criteria

EPA will consider proposals based on the following criteria:

• The relationship of the proposed project to the priorities identified in this notice.

• How well the project furthers the goals of the CWA to prevent, reduce, and eliminate water pollution.

• Innovation of project proposal.

• Cost effectiveness of the proposal.

• Applicant's past performance, if applicable.

• Compliance with directions for submittal contained in this notice.

Eligible Applicants

For the purpose of this notice, eligible applicants for assistance agreements under section 104(b)(3) of the CWA are State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA. This solicitation is limited to applicants within EPA Region 6 which includes the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Proposals received for projects outside of Region 6 will not be considered.

Application Procedure

If mailed, please send three copies of the proposal.

Schedule of Activities

This is the estimated schedule of activities for review of proposals and notification of selections:

March 21, 2002—Proposals due to EPA.

May 20, 2002—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

Dated: January 24, 2002.

Larry Wright,

Acting Director, Water Quality Protection Division.

[FR Doc. 02–2608 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7137–3]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held February 27–March 1, 2002 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Wednesday, February 27, Science/Regulatory Work Group, the Schools Work Group, and the Data Needs Workgroup will meet; plenary sessions Thursday, February 28 and Friday, March 1, 2002.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet February 27, from 9 a.m. to 5:30 p.m. The Schools Work Group, and the Data Needs Workgroup will meet on February 27 from 10 a.m. to 4 p.m The plenary CHPAC will meet on Thursday, February 28, from 9 a.m. to 5:30 p.m., with a public comment period at 5 p.m., and on Friday, March 1 from 9 a.m. to 12:30 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a reports from the Schools Work Group, the Data Needs Work Group, and the Science and Regulator Work Group. Other potential agenda items include an informational panel on smart growth and the built environment and it's potential effect on children's health.

FOR FURTHER INFORMATION CONTACT: Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

Dated: January 29, 2002.

Joanne K. Rodman,

Designated Federal Official.

[FR Doc. 02–2614 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 01–344; FCC 01–359]

Kevin David Mitnick

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC starts a hearing proceeding regarding the application of Kevin David Mitnick for renewal of his Amateur Radio Station License and General Class Amateur Radio Operator License N6NHG. The hearing gives the Commission an opportunity to ascertain whether Mr. Mitnick's felony convictions render him unqualified to hold such license.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Hearing Designation Order*, DA 01–359, adopted on December 11, 2001 and released on December 19, 2001. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. By this Order, we commence a hearing proceeding before an FCC Administrative Law Judge to determine, ultimately, whether the application of Kevin David Mitnick for renewal of Amateur Radio Station and General Class Operator License N6NHG should be granted. As discussed below, Mr. Mitnick is a convicted felon whose illegal activities have included the interception of electronic communications, computer fraud, wire fraud, and causing damage to computers. Based on the information before us, we believe that Mr. Mitnick's criminal behavior raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Because we are unable to make a determination that grant of Mr. Mitnick's application would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by section 309(e) of the Communications Act of 1934, as amended.

A. Ordering Clauses

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 309(e), the captioned application *is designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

3. (a) To determine the effect of the criminal convictions of Kevin David Mitnick on his qualifications to be and remain a Commission licensee.

4. (b) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Kevin David Mitnick is qualified to be and remain a Commission licensee.

5. (c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Kevin David Mitnick should be granted.

6. Pursuant to section 4(i) and section 1.221(c) of the Commission's Rules, in order to avail himself of the opportunity to be heard, Mr. Mitnick, in person or by his attorney, *shall file* with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

7. Pursuant to section 1.221(c) of the Commission's Rules, if Mr. Mitnick fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administration Law Judge *shall dismiss* the captioned application with prejudice for failure to prosecute.

8. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden or proof with respect to all of the issues specified above *shall be* on Mr. Mitnick.

9. This *Hearing Designation Order* contains the statements required by scetion 1.221(a)(1), 1.221(a)(2), 1.221(a)(3), and 1.221(a)(4) of the Commission's Rules.

10. The Commission's Reference Operations Division of the Consumer Information Bureau *shall send* a copy of this Order, via Certified Mail—Return Receipt Requested, to Kevin David Mitnick at the address specified by him in his captioned application: 7113 W. Gowan Road, Las Vegas, Nevada 89129.

11. The Secretary of the Commission *shall cause* to have this *Hearing Designation Order* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2553 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 01–352; FCC 01–392]

Herbert L. Schoenbohm

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC starts a hearing proceeding regarding whether the application of Herbert L. Schoenbohm for a new Amateur Radio Service Station License and Amateur Radio Service Operator License should be granted. The hearing gives the Commission an opportunity determine whether Mr. Schoenbohm, a convicted felon who the Commission previously deemed unqualified to hold such licenses, is currently qualified to do so.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm., Wireless Telecommunications Bureau, at (202) 418–0860.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, DA 01–392, adopted on December 31, 2001 and released on January 9, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. By this *Order,* we commence a hearing proceeding before an FCC Administrative Law Judge to determine whether the applications of Herbert L. Schoenbohm for a new Amateur Radio Service Station License and new General Class Amateur Radio Service Operator License should be granted. Mr.

Schoenbohm's former Amateur Radio Service Station License, call sign KV4FZ, and Amateur Radio Service Operator License were not renewed after it was determined, after an August 8, 1995, hearing before an administrative law judge, that Mr. Schoenbohm's previous criminal behavior, misrepresentation and lack of candor warranted denial of his renewal application. Mr. Schoenbohm is a convicted felon and was found to have misrepresented facts and lacked candor in his testimony in that hearing.

2. The facts leading to Mr. Schoenbohm's disqualification are *res judicata;* they have been thoroughly explored and the determination was made that, at the time of hearing, Mr. Schoenbohm was not qualified to be a Commission licensee. We may not revisit that determination here. However, in evaluating Mr. Schoenbohm's instant application, we must determine if, since the time of his disqualifying behavior in 1982–89 and 1995, Mr. Schoenbohm has been sufficiently rehabilitated that the Commission could be confident that he could be relied upon to observe our rules and policies and deal with the Commission in an honest and forthright manner. There are no facts now before us that would support a finding of rehabilitation. Hence, because we are unable to make a determination that grant of Mr. Schoenbohm's applications would serve the public interest, convenience, and necessity, we hereby designate the applications for hearing, as required by section 309(e) of the Communications Act of 1934, as amended.

A. Ordering Clauses

3. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i); 309(e), the above captioned applications *are designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order,* upon the following issues:

a. To determine whether Herbert Schoenbohm possesses the requisite character qualifications to be a Commission licensee.

b. To determine in light of the evidence adduced under issue (a), whether the captioned applications should be granted.

4. Pursuant to section 4(i) of the Communications Act of 1934, as amended, and section 1.221(c) of our rules, in order to avail himself of the opportunity to be heard, Mr. Schoenbohm, in person or by his attorney, *shall file* with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issue specified herein.

5. Pursuant to section 1.221(c) of our rules, if Mr. Schoenbohm fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the presiding Administrative Law Judge *shall dismiss* the captioned applications with prejudice for failure to prosecute.

6. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above *shall be* on Mr. Schoenbohm.

7. The Commission's Reference Operations Division of the Consumer Information Bureau *shall send* a copy of this *Order,* via Certified Mail—Return Receipt Requested, to Herbert L. Schoenbohm, at the address shown in his captioned applications: Post Office Box 4419, Kingshill, Virgin Islands, 00851.

8. The Secretary of the Commission *shall cause* to have this *Hearing Designation Order* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2552 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–44–A (Auction No. 44); DA 02–200]

Auction No. 44 Fixed, Mobile, and Broadcasting Services Auction Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses in fixed, mobile, and broadcast services to commence on June 19, 2002, and seeks comment on auction procedural issues.

DATES: Comments are due on or before February 6, 2002 and reply comments are due on or before February 13, 2002.

ADDRESSES: The Wireless Telecommunications Bureau (''Bureau'') requires that all comments and reply comments be sent by electronic mail to the following address: *auction44@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as ADOBE® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Legal questions: Howard Davenport (202) 418-0660 or e-mail *hdavenpo@fcc.gov.* For general auction questions: Craig Bomberger (202) 418–0660 or e-mail *cbomberg@fcc.gov* or Kathy Garland (717) 338–2888 or e-mail *kgarland@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 44 Comment Public Notice* released January 24, 2002. The complete text of the *Auction No. 44 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 44 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 44 Comment Public Notice,* the Bureau announces the auction of licenses for Fixed, Mobile, and Broadcasting services in the 698–746 MHz (''Lower 700 MHz'') band scheduled to commence on June 19, 2002 (''Auction No. 44''). The Lower 700 MHz band consists of 758 licenses. Two 12-megahertz blocks consisting of a pair of 6 megahertz segments and two 6-megahertz blocks of contiguous, unpaired spectrum will be offered in each of six regions known as the 700 MHz band economic area groupings (700 MHz band EAGs). Additionally, one 12-megahertz block consisting of a pair of 6 megahertz segments will be offered in each of 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs''). The

Commission adopted the MSA and RSA definitions originally adopted for the cellular radiotelephone service, with the following modifications: (i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* FCC 01–364, paragraph 90, note 258 (rel. January 18, 2002). A complete list of licenses available for Auction No. 44 and their descriptions is included as Attachment A of the *Auction No. 44 Comment Public Notice.*

2. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *. .'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 44.

II. Auction Structure

A. Auction Inventory

3. The Bureau offers two options for grouping the 758 licenses in the Lower 700 MHz band. The Bureau seeks comment on the following:

i. Group all 758 licenses together in Auction No. 44, which the Bureau proposes to structure as a simultaneous multiple round (SMR) auction as described further.

ii. Include only the 734 MSA/RSA Lower 700 MHz band licenses in Auction No. 44 and group the 24 licenses based on 700 MHz EAGs with the 12 licenses in the 747–762 and 777–792 MHz bands (''Upper 700 MHz'' bands) currently scheduled to be auctioned in Auction No. 31. Should we group according to this option, the 36 700 MHz EAG licenses from the Upper and Lower bands would be auctioned according to the procedures established for Auction No. 31, including any modifications to the procedures that the Bureau may establish before the auction begins.

B. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureau proposes to award all licenses included in Auction No. 44 in a single, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

C. Upfront Payments and Initial Maximum Eligibility

5. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 44, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$0.0125 * MHz * License Area Population with a minimum of $1,000 per license.

6. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 44 Comment Public Notice.* The Bureau seeks comment on this proposal.

7. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 44 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

8. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether, instead of applying the formula, the upfront payments should be the same for licenses of the same bandwidth. That is, each of the A block and B block licenses would have the same upfront payment amount and associated number of bidding units, and each of the D block and E block licenses would have the same upfront payment amount and associated number of bidding units.

D. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. For Auction No. 44, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

12. The Bureau seeks comment on these proposals. If commenters believe that these activity rules should be changed, they should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

E. Activity Rule Waivers and Reducing Eligibility

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

14. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described previously. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

17. The Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth previously. The Bureau seeks comment on this proposal.

F. Information Relating to Auction Delay, Suspension, or Cancellation

18. For Auction No. 44, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

III. Bidding Procedures

A. Round Structure

19. The Commission will conduct Auction No. 44 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

20. In past auctions, the Bureau has used the timing of bids to select a high bidder when multiple bidders submit identical high bids on a license in a given round. Given that bidders will access the Internet at differing speeds, the Bureau will not use this procedure in Auction No. 44. For Auction No. 44, the Bureau proposes to use a random number generator to select a high bidder from among such bidders. As with prior auctions, remaining bidders will be able to submit higher bids in subsequent rounds.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

23. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 44. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

26. Specifically, for Auction No. 44, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$0.0250 * MHz * License Area Population with a minimum of $1,000 per license.

27. The specific minimum opening bid for each license available in Auction No. 44 is set forth in Attachment A of the *Auction No. 44 Comment Public Notice.* Comment is sought on this proposal.

28. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 698–746 MHz spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

29. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether, instead of applying the formula, the minimum opening bids should be the same for licenses of the same bandwidth. That is, the minimum opening bid would be the same for each of the A block and B block licenses, and the minimum opening bid would be the same for each of the D block and E block licenses.

C. Minimum Acceptable Bids and Bid Increments

30. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Auctions Bidding System interface will list the nine acceptable bid amounts for each license. Once there is a standing high bid on a license, the Auctions Bidding System will calculate a minimum acceptable bid for that license for the following round, as described further. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

31. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained further.

32. For Auction No. 44, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as the Bureau has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment,* not to be confused with the *bid increment,* for each license based on a weighted average of the activity received on that particular license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

33. In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

Equations

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M

$X_{i+1} = I_{i+1} * Y_i$ where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round $i-1$), A_0 is 0

I_{i+1} = percentage increment for the next round (round $i+1$)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

X_{i+1} = dollar amount associated with the percentage increment

Y_i = high bid from the current round

34. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of $((1 + 1) * 0.1) = 0.2$ or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * \$1{,}000{,}000 = \$200{,}000$

iii. Minimum acceptable bid for round 2 = $1,200,000.

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

A2 = (0.5 * 3) + (0.5 * 1) = 2

I3 = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I3):

X3 = 0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000.

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

A3 = (0.5 * 1) + (0.5 * 2) = 1.5

I4 = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I4):

X4 = 0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000.

35. As stated previously, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described previously, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded}—(minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

36. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

37. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Auctions Bidding System. The Bureau seeks comment on these proposals.

D. Information Regarding Bid Withdrawal and Bid Removal

38. For Auction No. 44, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998) the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 44 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

E. Stopping Rule

42. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 44, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 44:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds. The Bureau seeks comment on these proposals.

IV. Conclusion

45. Comments are due on or before February 6, 2002, and reply comments

are due on or before February 13, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction44@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe(®) Acrobat(®) (pdf) or Microsoft(®) Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

46. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

47. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–2699 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Certification of Compliance with Mandatory Bars to Employment.''

DATES: Comments must be submitted on or before April 5, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to ''Certification of Compliance with Mandatory Bars to Employment.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Frequency of Response: On occasion.

Affected Public: Persons interested in being employed or providing services to the FDIC.

Estimated Number of Respondents: 200.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden: 66.6 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of January, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–2556 Filed 2–1–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita threshold for recommending cost share adjustments for disasters declared on or after January 1, 2002 through December 31, 2002.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: According to 44 CFR 206.47, FEMA will annually adjust the statewide per capita threshold that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Stafford Act. The adjustment to the threshold is based on the Consumer Price Index for All Urban Consumers published annually by the U. S. Department of Labor. For disasters declared on January 1, 2002 through December 31, 2002, the qualifying threshold is $102 per capita of State population.

We base the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.6 percent for the 12-month period ended in December 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 16, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.).

Joe M. Allbaugh,

Director.

[FR Doc. 02–2564 Filed 2–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $18,193,000 for section 8(a)(1), and $1,819,300 for Section 8(a)(2)(A).

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: H. Gabriel Dagen, Bureau of Competition, Office of Accounting and Financial Analysis, (202) 326–2573.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–2551 Filed 2–1–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payments in Excess of the Poverty Income Level from a Program Funded under Part A of title IV of the Social Security Act

OMB No.: 0970–0004.

Description: This information is collected to meet the statutory requirements of section 1124 of the Elementary and Secondary Education Act (as amended by Pub. L. 103–382). It is collected by DHHS from State public welfare agencies and turned over to the Department of Education which uses it to arrive at the formula for allocating Title I grant funds to State and local elementary and secondary schools for the purpose of providing assistance to disadvantaged children.

Respondents: State, Local, or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–4125	52	1	264	13,746

Estimated Total Annual Burden Hours: 13,746.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: January 28, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–2555 Filed 2–1–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Bearry) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Steven and Susan Bearry (Applicants) have applied for an incidental take permit (TE–051539–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and occupation of a single-family residence on approximately 0.5 acre of the 22.849-acre Tract 23 in the Cottletown Ranches Subdivision, Bastrop County, Texas.

DATES: Written comments on the application should be received within the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S.

Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–051539–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicants

Steven and Susan Bearry plan to construct a single-family residence, within 5 years, on approximately 0.5 acre of the 22.849-acre Tract 23 in the Cottletown Ranches Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acre or less of Houston toad habitat and result in indirect impacts within the lot. The Applicants propose to compensate for this incidental take of the Houston toad by providing $3,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Stuart Leon,

Acting Regional Director, Region 2.

[FR Doc. 02–2198 Filed 2–1–02; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Fund Availability (NOFA)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of fund availability—tribal courts and Courts of Indian Offenses.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing that $1.5 million is available for funding to tribal courts (including CFR courts) that assume responsibility of adjudicating matters under 25 CFR part 115. Under part 115, tribal courts are responsible for appointing guardians, determining competency, awarding child support from Indian Individual Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets. Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638.

DATES: Applications are due by March 6, 2002.

ADDRESSES: Send applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW, Washington, DC 20240; Fax No. (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION: The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, 25 U.S.C. 13, which authorizes appropriations for ''Indian judges'' (See *Tillett* v. *Hodel,* 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox,* 13 Sawy. 349, 35 F. 575 (D.Ore. 1888)), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

There are approximately 225 tribes that contract or compact with the Bureau of Indian Affairs to perform the Secretary's adjudicatory function and 23 Courts of Indian Offenses (also known as CFR courts). It is expected that 45 tribal entities will choose to assume this responsibility. The $1.5 million is earmarked to assist tribal courts to perform the increased responsibilities required by 25 CFR part 115. These funds will be distributed on the following formula:

Number of cases times ''X''.

''X'' equals $1.5 million divided by the Total of Cases that will be disposed of reported by Qualified Applicants.

Formula Example: The most recent data available shows there is a total universe of 33,217 Indian minor cases, and 1,667 non-compos mentis cases in the IIM system. The Office of Tribal Services, Division of Social Services, estimates that about 25 percent of these cases will require adjudication by a court of competent jurisdiction. *Example:* If it is expected there will be approximately 8,721 cases which require adjudication during FY 2002, applying the formula $172 per case is the result ($1.5 million divided by 8,721 = $172). If, for example, your court is expected to handle 35 cases in FY 2002, it is eligible to receive $6,020 ($172 × 35 = $6,020). This example assumes that all cases requiring adjudication will be disposed of. For FY 2002, only cases that a tribal court will ''dispose of'' will be considered in the case count for funding purposes.

Program Description

Qualified tribal applicants that assume responsibility over Supervised IIM Accounts under 25 CFR part 115 are eligible to receive funding under this NOFA. Applicants will consider the following sections of part 115 when responding to this NOFA:

115.001, 115.002, 115,100, 115.102, 115.104, 115.107, 115.400, 115.401, 115.413, 115.420, 115.421, 115.425, 115.430, 115.600, 115.601, 115.605, 115.701.

Note: An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg.*

Tribes seeking to apply will be responsible for (1) having codes or ordinances in place, and (2) appointing guardians, determining competency, awarding child support from Indian Individual Money (IIM) accounts, determining paternity, sanctioning adoptions, marriages, and divorces, making presumptions of death, and adjudicating claims involving trust assets as prescribed in the sections cited above. Funds provided under this NOFA are specifically made available to tribal courts that assume additional responsibility under 25 CFR part 115 to adjudicate Supervised IIM Accounts and are not intended to be used as general operating funds for a judiciary.

Definitions

Qualified Applicant. A qualified applicant is a tribal government submitting an application for funding for a tribal court meeting the following threshold requirements:

(1) The tribal government has enacted the codes necessary for the tribal justice system to carry out its responsibility under 25 CFR part 115.

(2) The tribal court has adopted and made accessible the court rules setting forth the procedures to adjudicate these cases.

(3) Tribal court personnel have been trained to process these cases and the court is staffed to fulfill the tribal legislative mandate.

(4) The tribal justice system is one that serves as the judicial component of a tribal government which is federally recognized by the United States Government.

Case Disposed Of. A case in which a final decision is rendered by the court even though the court may retain jurisdiction to subsequently review the matter on submission of additional relevant facts by an interested party.

Tribal Courts. As used in this NOFA, reference to tribal courts includes Courts of Indian Offenses (CFR courts), established by the Department of the Interior under Title 25 part 11 (2001 edition) of the Code of Federal Regulations.

Application Process: (1) The tribal government will provide a certification as a response to Item #11 in SF–424 that the threshold requirements are met. (See form attached.)

(2) An SF–424 will be submitted with the number of Supervised IIM Accounts that will be *disposed of* during FY 2002 in Item #11.

(3) Funds will be awarded under the discretionary authority of section 103 of Public Law 93–638 (25 U.S.C. 450h).

Application Form

Applications must be submitted on the form entitled ''Application For Federal Assistance,'' identified with the Office of Management and Budget (OMB) Approval No. 0348–0043 (Standard Form 424, Rev. 7–97). The form is attached to this notice. The form may also be downloaded from the Internet at *http://www.gsa.gov.*

Deadline

Mail applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW, Washington, DC 20240; or fax to (202) 208–5113.

Applications are due 30 calendar days after the publication date of this NOFA and must be postmarked by midnight on the deadline date. Applications will be considered as meeting the deadline if they are received on or before the deadline date; or, sent on or before the deadline date. Applicants may hand deliver applications to the address indicated above by close-of-business (5 p.m. EST) on the deadline date. Applications will be accepted by facsimile until the close-of-business (5 p.m. EST) on the deadline date, provided the original application is postmarked by midnight the day after the due date. No applications can be transmitted by e-mail (electronic mail). Applicants are responsible for ensuring proper delivery of the application and are encouraged to contact Ralph Gonzales at (202) 208–4401 to confirm its receipt.

Dated: January 22, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310–4J–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Preapplication ☐ **Construction** ☐ **Non-Construction**	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________________

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ____________________

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 02–2592 Filed 2–1–02; 8:45 am]
BILLING CODE 4310–4J–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 21, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food and Nutrition Service (N1–462–01–3, 1 item, 1 temporary item). Investigative case files pertaining to allegations of wrong doing involving the Food Stamp program. Records pertain to cases closed in fiscal year 1986 that did not attract media or congressional attention or result in substantive changes in agency policies and procedures.

2. Department of the Army, Agency-wide (N1–AU–00–31, 90 items, 90 temporary items). Short term records relating to military and civilian personnel management. Included are records relating to such matters as personnel procurement, the selection and classification of personnel, personnel processing, assignments, details, education, personnel evaluations, personnel absences, separations, and decorations, awards, and other honors. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–00–43, 20 items, 20 temporary items). Short term records relating to such matters as audit reporting, stock inventory reconciliations, installation property, and hospital linen inventories. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–01–09, 5 items, 5 temporary items). Short term records relating to safety liaison and awareness, target practice safety, system development management, and engineering safety. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–01–11, 28 items, 28 temporary items). Short term records

relating to religious activities, morale, welfare and recreation, schools, service organizations, manpower and equipment control, and force development. Included are such records as chapel registers, non-appropriated fund property inventories, recreational event planning files, academic training records, staffing surveys and reports, and materiel and supply estimates. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which previously were approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of the Army, Agency-wide (N1–AU–01–12, 47 items, 47 temporary items). Short term records relating to legal services, military police matters, and criminal investigations. Included are such records as applications and acceptance notices for the Army's legal education program, records of appearances of Army personnel as counsel or witnesses in civilian courts, court-martial records accumulated in offices below the level of Judge Advocate General, statistical and fiscal data on claims, requests for deviations from intellectual property contract clauses, automobile and traffic enforcement records, and identification card applications and registers, as well as reports, photographs, logs, evidence ledgers, polygraph examinations, and additional criminal investigation records other than those included in criminal investigation case files. Also included are records relating to overseeing of Army prisoners regarding such matters as mail, work assignments, appointment passes, and return to duty. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which previously were approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of the Army, Agency-wide (N1–AU–01–13, 46 items, 46 temporary items). Short term records relating to such matters as engineering projects, facilities, internal reviews, audits, energy conservation, housing, maintenance activities, the operation of cemeteries, and laundry services. Electronic copies of documents created using electronic mail and word processing are included. This schedule allows the agency to expedite disposal of these records, which were previously approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of the Army, Agency-wide (N1–AU–01–18, 1 item, 1 temporary item). Master file of the Education Management Information System, an electronic information system pertaining to educational counseling and tuition assistance for military personnel. The system includes information concerning educational counseling actions, courses taken and grades attained, and tuition assistance committed and spent.

9. Department of the Army, Agency-wide (N1–AU–01–26, 9 items, 8 temporary items). Records relating to inspector general activities including investigative case files, inspection reports, inquiries, and electronic copies of documents created using electronic mail and word processing. This schedule increases the retention period of investigative case files and inquiries concerning allegations against personnel, which were previously approved for disposal, while it decreases the previously approved retention period for records that relate to matters that do not result in the establishment of a formal case file. Recordkeeping copies of case files and reports relating to significant investigations and inspections are proposed for permanent retention. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–00–5, 35 items, 27 temporary items). Records documenting geodetic field surveys and observational data such as points of latitude, longitude, height, scale, gravity, and orientation, and how these values change over time, across the United States. Included are field observations, abstracts of results, field party management files, instrument calibration files, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of historical astronomic observations, project reports and sketches, and adjusted electronic data derived from field observations.

11. Department of Defense, Joint Staff (N1–218–00–4, 65 items, 53 temporary items). Records relating to intelligence and security matters accumulated by the Joint Staff and combatant commands. Included are such records as directives, guides, correspondence, reports, studies, forms, and memorandums pertaining to general security administration, control of classified information, security audits and inspections, estimates of capabilities, and foreign national visits. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of records documenting security policy, intelligence planning and policy, investigations, information collection and dissemination, prisoners of war, and special access programs are proposed for permanent retention.

12. Department of the Interior, U.S. Geological Survey (N1–57–01–4, 18 items, 12 temporary items). Planning and administrative records, including such files as reference copies of documents pertaining to history projects, management improvement project case files, administrative management subject files and reports, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as organizational charts and reorganization studies, program policy and mission files, historical project case files, and the files of the Bureau Director.

13. Department of Labor, Employment Standards Administration (N1–448–02–1, 1 item, 1 temporary item). Schedules of daily activities accumulated by the Assistant Secretary for Employment Standards and members of his immediate office staff, 1980–1986. Records consist of brief notations concerning appointments, meetings, trips, speeches, and attendance at events.

14. Department of the Navy, U. S. Marine Corps (N1–127–01–1, 3 items, 3 temporary items). Student research papers prepared at such institutions as the Command and Staff College, the Amphibious Warfare School, the School of Advanced Warfighting, and the Command and Control System School. Also included are electronic copies of documents created using electronic mail and word processing.

15. Commodity Futures Trading Commission, Agency wide (N1–180–00–1, 100 items, 70 temporary items). Comprehensive records schedule covering all agency records. Records proposed for disposal include such file series as administrative files, recurring reports, congressional correspondence, applications for registration, registration fitness examinations, large trader report files, the exchange database system, reparations complaint files, training

records, press clippings, working papers, and routine litigation, investigation, and enforcement case files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as publications, reports to Congress, central files of the Chairman and the Commissioners, official minutes of Commission meetings, speeches, press releases, biography files, and historically significant case files relating to investigations, litigation, and enforcement actions.

16. Department of the Treasury, Financial Management Service (N1–425–02–1, 16 items, 16 temporary items). Records of the Agency Services Division including such materials as reference files, reimbursable client records, financial statements and other financial documents, facilities management records, marketing material, policy and procedure documentation, office subject files, status reports, Federal Managers Financial Integrity Act reports, and electronic accounting records. Also included are the electronic copies of documents created using electronic mail and word processing.

17. Pension Benefit Guaranty Corporation, Office of the Deputy Executive Director and Chief Operating Officer (N1–465–02–2, 9 items, 9 temporary items). Pension plan company files, working files used in processing terminated plans, and plan termination case files. Included are correspondence, printouts, medical files, personnel and payroll records, and electronic records, such as imaged documents, computer disks, magnetic tapes, and electronic copies of documents created using electronic mail and word processing.

Dated: January 28, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–2554 Filed 2–1–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, February 7, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Expand its Community Charter.
2. Requests from four (4) Federal Credit Unions to Convert to Community Charters.
3. Final Rule: Amendment to Section 701.21(c)(7)(ii)(C), NCUA's Rules and Regulations, Interest Rate Ceiling.
4. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
5. Wisconsin Member Business Loan Rule.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–2749 Filed 1–31–02; 3:07 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 2000, and ending September 30, 2001.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
Kenneth A. Bolles—Chief Counsel to Board Member
John F. Colwell—Chief Counsel to Board Member
Harold J. Datz—Chief Counsel to the Chairman
Yvonne T. Dixon—Director, Office of Appeals
John H. Ferguson—Associate General Counsel, Enforcement Litigation
Robert A. Giannasi—Chief Administrative Law Judge
Lester A. Heltzer—Deputy Executive Secretary
John E. Higgins—Deputy General Counsel
Peter B. Hoffman—Regional Director, Region 34
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Richard A. Siegel—Associate General Counsel, Operations-Management
Lafe E. Solomon—Director, Office of Representation Appeals
John J. Toner—Executive Secretary
Jeffrey D. Wedekind—Deputy Chief Counsel to Board Member

Dated: Washington, D.C., January 29, 2002.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 02–2570 Filed 2–1–02; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (#10719).

Date and Time: Friday, February 15, 2002, 8 a.m. to 2 p.m. EST.

Place: Room 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, and on the Access Grid, Lucky Labrador Virtual Venue.

Type of Meeting: Open Meeting. The meeting will also involve the use of the Access Grid to interview witnesses. Persons wishing to attend the meeting at NSF should contact Richard Hilderbrandt to arrange for a visitor's pass. Persons wishing to watch the proceedings through the use of the Access Grid are invited to join the meeting in the Lucky Labrador Virtual Venue.

Contact Person: Dr. Richard Hiderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–7093, e-mail: *rhilderb@nsf.gov*

Purpose of Meeting: To obtain testimony from expert witnesses pertinent to the preparation of a report to the National Science Foundation concerning the broad topic of advanced cyberinfrastructure and the evaluation of the existing Partnerships for Advanced Computational Infrastructure.

Agenda (all times are EST):

8 a.m.–12 p.m.—In-Person and Aaccess Grid Testimony (7 people)
12:00–12:30 p.m.—Lunch
12:30–2 p.m.—In-Person and Access Grid Testimony (3 people)

Dated: January 29, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–2560 Filed 2–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA N–71, ''Design Information Questionnaire.''
2. Current OMB approval number: 3150–0056.
3. How often the collection is required: It is estimated that this collection is required approximately 1 time per year.
4. Who is required or asked to report: Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360 hours.
7. Abstract: Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form), to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit, by April 15, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site *(http://www.nrc.gov/NRC/PUBLIC/OMB/index.html).* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2568 Filed 2–1–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45336; File No. SR–CBOE–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Extend Its Participation in the Interim Intermarket Linkage Program

January 25, 2002.

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 January 17, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to extend its participation in the interim intermarket linkage program to the earlier of January 31, 2003, or the complete implementation of the permanent intermarket linkage in the options market.[5]

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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 30, 2001, the Commission approved a rule change by the CBOE proposing to implement certain aspects of an intermarket options linkage on an interim basis.[6] The interim linkage was approved on a pilot basis until January 31, 2002. The Exchange now seeks to extend the interim linkage pilot until the earlier of: (a) January 31, 2003; or (b) the implementation of the ''full'' options linkage contemplated by the Linkage Plan.

As the CBOE and the other options exchanges continue to work towards the full implementation of the Linkage Plan, the Exchange believes it would be beneficial to continue to operate the interim linkage. The CBOE notes that the interim linkage uses existing market infrastructure to route orders between market makers on the participating

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6). The CBOE requested that the Commission waive the rule's requirements of a 30-day operative delay and a five-day pre-filing notice.

[5] The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Linkage Plan'') in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[6] *See* Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001) (File No. SR-CBOE–00–58).

exchanges. Thus, the CBOE believes continuing the operation of the interim linkage would have no adverse effect on the implementation progress of the full linkage. Moreover, the CBOE believes the full benefits of the interim linkage are yet to be fully realized because only recently have all of the options exchanges begun participating in the interim linkage. The CBOE believes that as the list of option classes trading under the interim linkage program expands, the program will benefit a greater number of investors until the implementation of the full linkage.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[11] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The CBOE has requested, in order to permit the uninterrupted operation of the interim linkage, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).[12] The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and, therefore, has determined to make the proposed rule change operative as of the date of this notice.

A proposed rule change filed under Rule 19b-4(f)(6)[13] normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b-4(6)(iii)[14] permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change. The Commission has determined to waive the five-business-day pre-filing requirement.

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 CBOE. All submissions should refer to File Number SR-CBOE–2002–04 and should be submitted by February 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2557 Filed 2–1–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6).

[11] 17 CFR 240.19b-4(f)(6).

[12] 17 CFR 240.19b-4(f)(6)(iii).

[13] 17 CFR 240.19b-4(f)(6).

[14] 17 CFR 240.19b-4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45345; File No. SR–CHX–2001–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 28, 2002.

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 December 28, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 CHX, pursuant to Rule 19b–4 of the Act, proposes to amend its membership dues and fees schedule (the ''Schedule''), effective January 1, 2001, to place a cap on the fees charged for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

member branch offices and to discontinue the fees associated with the registration of member firm officers, partners, and salesmen. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend the Schedule in two ways. First, the proposal places a cap on the number of member firm branch offices that are assessed a fee. The Exchange currently charges member firms a fee of $25 for each branch office that exists at the beginning of the year and an additional fee of $25 for each new office opened over the course of the year. This proposal limits the number of offices on which the annual fee would be assessed to 1,500.

Additionally, the proposal makes other changes to the Schedule by eliminating the fees charged for the registration of member firm officers, partners, and salesmen. The Exchange believes that the elimination of these fees is appropriate, given, among other things, its limited involvement in the registration process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) [3] of the Act, in general, and Section 6(b)(4) of the Act,[4] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) [5] of the Act and subparagraph (f)(2) of Rule 19b–4 [6] thereunder. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–34 and should be submitted by February 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2587 Filed 2–1–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice #3881]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, February 21, 2002 from 9:00 until 11:30 a.m. and 1:00 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street NW (entrance on 23rd Street), Washington, D.C. The purpose of the meeting is to discuss new technologies and successful methods for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Sandra Piech at 703/516–1968 before Thursday, February 14, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Sandra J. Piech 703/516–1968.

Dated: January 23, 2002.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 02–2607 Filed 2–1–02; 8:45 am]

BILLING CODE 4710–24–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the King County International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at King County International Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before February 25, 2002.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Cynthia Stewart, Airport Manager, at the following address: King County International Airport, 7233 Perimeter Rd. South, Seattle, Washington, 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the King County International Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2).

On January 17, 2001, the FAA determined that the request to release property at King County International Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 6, 2002.

The following is brief overview of the request: King County International Airport is proposing the release of approximately .9 acres of airport property to allow the Museum of Flight a transportation corridor, which will provide off-airport access for the occasional movement of large display aircraft to a new off-airport museum building, provide for required fire access lanes and in support of a museum building expansion. All building expansion is being done off airport property. The transfer is necessary to allow improvements on the aircraft tow route by the Museum. The property is being exchanged in-kind for Museum property of a similar value. All costs associated with the exchange will be born by the Museum. The exchange is advantageous to civil aviation for several reasons. One 20-year old hangar will be replaced with a new one. A second 20-year old hangar will be relocated and reconstructed using current building codes. All existing tenants will be accommodated in equal or better facilities. Approximately 35 new general aviation tie downs will be added to King County International Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at King County International Airport.

Issued in Renton, Washington on January 26, 2001.

U. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 02–2631 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held February 26–27, 2002, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- February 26:
- Working Group 1
- Progress of Change 1 to DO–267, *Minimum Aviation System Performance Standards (MASPS) for Flight Information Services-Broadcast (FIS–B) Data Link*
- Overview of National Convective Weather Forecast
- Opening Plenary Session (Welcome and Introductory Remarks, approval of Agenda, Approval of Minutes, Review of Action Items)
- Report from Working Group 1
- Discussion of FIS Registry of Products
- Discussion of Notices to Airmen (NOTAMS) and Digital Automatic Terminal Information Service (D–ATIS) Product Definition
- Review of Change 1 to DO–267
- February 27:
- Continued Plenary Session (Review of Change 1 to DO–267)
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 29, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–2628 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seat Certification Process Simplification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) to present its reviews and hear comments from the public concerning issues relating to simplification of the seat certification process in transport category airplanes.

DATES: The meeting will be held in Seattle, Washington, on March 7, 2002, beginning at 8:30 a.m.

REGISTRATION: Registration will begin at approximately 7:30 a.m. on Thursday, March 7, 2002. Persons planning to attend the meeting are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The meeting will be held at the Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, telephone (206) 246–8600. A block of guest rooms has been reserved for the meeting at the Doubletree Hotel at a group rate. This block of rooms will be held until February 15, 2002. Persons planning on attending the meeting should contact the hotel directly for reservations and identify themselves as participants in the FAA Public Technical Conference to receive the special room rate.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Regulations Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: Section 757 of Public Law 106–81, The Wendel H. Ford Aviation Investment and Reform Act for the 21st Century, required the FAA to establish a government-industry team to simplify the seat certification process in transport category airplanes. The FAA established this team and has been working for over a year to improve and simplify the process of seat certification in accordance with the Act.

The purpose of this meeting is to present information to the public regarding simplification of the seat certification process, and to hear comments and to solicit input from the general public.

Participation at the Meeting

If you wish to present any oral statements at the public meeting, you should submit your request to the FAA prior to February 15, 2002. Such requests should be submitted to the persons listed under the heading **FOR FURTHER INFORMATION CONTACT** and should include a written summary of oral remarks to be presented, as well as an estimate of time needed for the presentation. Requests received after February 15, 2002, will be considered and may be scheduled, time permitting, during the meeting. The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible in the time allotted.

Meeting Procedures

The following procedures are established to facilitate the meeting:

- Attendance is open to the public, but will be limited to the space available.
- There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.
- The meeting is designed to provide information to, and hear comments from, the public concerning issues related to seat certification process simplification. The meeting will be conducted in an informal and nonadversarial manner; however, the FAA may ask questions to clarify a statement and to ensure a complete and accurate record.
- Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.
- Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues and, unless stated as such, should not necessarily be construed as a position of the FAA.
- An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, additional time may be allotted.
- The FAA will try to accommodate all questions, time permitting. However, the FAA reserves the right to exclude some questions, if necessary, to present a balance of viewpoints and issues.
- The FAA will review and consider all material presented by participants at the meeting. Participants are requested to provide 10 copies of all presentation materials for distribution to the panel members. Other copies may be provided to the audience at the discretion of the participant.
- The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person interested in purchasing a copy of the transcript should contact the court reporter directly at the meeting.

Issued in Renton, WA, on January 28, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2632 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application # 02–06–C–00–JNU To Impose and Use the Revenue From a Passenger Facility Charge at Juneau International Airport, Juneau, AK

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 6, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Byron K. Huffman, Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan A. Heese, Airport Manager, Juneau International Airport, at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK 99513, (907) 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: the FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 22, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 25, 2002.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: May 1, 2005.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,171,559.

Brief description of proposed projects:

Impose Only

Construct snow removal equipment building; construct runway safety area phase II—mitigation and construction; develop Northwest Quadrant.

Impose and Use

Rehabilitate access road (Cessna Dr./Alex Holden Way); reconstruct parallel taxiway; conduct terminal expansion feasibility study/design, phase 1.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** located at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on January 25, 2002.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 02–2633 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Small Airplane Directorate Policy on Static Strength Substantiation of Composite Airplane Structure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: This document announces the issuance of a policy for static strength substantiation of composite airplane structure. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: The Small Airplane Directorate issued a proposed policy on July 30, 2001. On August 7, 2001, the Small Airplane Directorate published the proposed policy for public comments. We reopened the comment period with a notice published on September 26, 2001, and resolved the comments. The final policy becomes effective on the issue date, which is December 21, 2001.

ADDRESSES: Copies of the policy statement, PS–ACE100–2001–006, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The policy statement will also be available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/small__airplanes__advisory.html.*

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy Branch, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 316–946–4111; fax 316–946–4407; e-mail *Lester.Cheng@faa.gov.*

Issued in Kansas City, Missouri on January 14, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–2629 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Crow Wing and Mille Lacs Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that the northern terminus for the environmental impact statement (EIS) being prepared for proposed highway improvements to Trunk Highway (TH) 169 in Crow Wing and Mille Lacs Counties, Minnesota, has been revised.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or James Hallgren, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2773, V (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: As indicated in the Notice of Intent published in the **Federal Register** on July 17, 2000, the FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT), is preparing an EIS on a proposal to expand TH 169 from a two-lane roadway to a four-lane facility. As a result of agency and public involvement during scoping, the alternatives to be studied in the EIS have been expanded, requiring a revision to the northern terminus for the project. The EIS will consider alternatives to improve TH 169 from the intersection of TH 27 north of Onamia, Minnesota to the intersection of TH 18 and TH 6 northwest of the City of Garrison, Minnesota, approximately 36.5 kilometers (22.7 miles).

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 26, 2001.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 02–2561 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maricopa County, Arizona

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project within Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Ave, Suite 330, Phoenix, AZ 85004, Telephone (602) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an EIS for a proposal to build improvements on Interstate 10 from Buckeye Road to Baseline Road in Maricopa County, Arizona. The proposed project will involve construction of facilities to provide safety, capacity, and operational improvements in the I–10 corridor within the study limits. The evaluation of alternatives will consider the social, economic, and environmental impacts to residential and commercial development, including Sky Harbor International Airport, cultural resources, historic roads and canals, Endangered Species, jurisdictional waters of the U.S., air and noise quality, and hazardous waste. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. A full range of reasonable alternatives will be considered including (1) no action; (2) alternative travel modes; (3) transportation system management improvements; (4) Collector-Distributor Road System and (5) mainline freeway improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies including the Environmental Protection Agency, U.S. Army Corps of Engineers, Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, Federal Aviation Agency, Arizona State Land Department, Arizona Game & Fish Department, City of Phoenix, City of Tempe, Maricopa County and Maricopa Association of Governments. Letters will also be sent to interested parties including, the South Mountain Village Planning Committee, Central City Village Planning Committee and appropriate Tempe neighborhood associations.

A series of public meetings will be held in the communities within the proposed study area. In addition, a public hearing will be held. Prior to the meetings and hearing, public notice will be provided advising of the time and place. A formal agency scoping meeting is planned between Federal, State, City, and County stakeholders.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on January 29, 2002.

Kenneth H. Davis,

District Engineer, Phoenix.

[FR Doc. 02–2565 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Morrison County, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this revised notice to advise the public that the southern terminus for the environmental impact statement (EIS) being prepared for the proposed reconstruction of Trunk Highway (TH) 371 in Morrison County, Minnesota, has been revised.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Roger Risser, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2482, V (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: As indicated in the Notice of Intent published in the **Federal Register** on September 22, 1999, the FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT), is preparing an EIS on a proposal to reconstruct and expand TH 371 from a two-lane roadway to a four-lane facility. The notice identified the southerly terminus of the project as County State Aid Highway (CSAH) 46 north of Little Falls. The correct southerly terminus is TH 10, approximately 3.2 kilometers (2.0 miles) south of CSAH 46. Therefore, the EIS will consider alternatives to improve TH 371 from TH 10 to 0.8 kilometer (0.5 mile) north of CSAH 48 in Morrison County, Minnesota, approximately 12.9 kilometers (8.0 miles).

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 26, 2001.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 02–2562 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–22–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 from certain requirements of its safety regulations. 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.

Norfolk Southern Corporation

[Docket Number FRA–2001–10515]

The Norfolk Southern Corporation (NS) seeks a waiver of compliance from certain provisions of the *Railroad Operating Practices* regulations, 49 CFR part 218, regarding blue signal protection of workers. Specifically, NS requests that FRA waive the provisions of §§ 218.22(c)(5), 218.22(h), and 221.16 that address inspection, placement and removal of rear end markers and/or end of train devices.

Section 218.22(c) states in part:

A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions: . . . (5) The utility employee is performing one or more of the following functions: . . . inspect, test, install remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

Section 218.22(h) states: ''Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.''

Section 221.16 states:

Inspection procedure. (a) Prior to operating the activation switch or covering the photoelectric cell when conducting this test, a non-train crew person shall determine that he is being protected against the unexpected movement of the train either under the procedures established in part 218 of this chapter or under the provisions of paragraph (b) of this section.

(b) In order to establish the alternative means of protection under this section, (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer or hostler and be advised by that person that they are occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspection has been completed.

Currently, the regulation requires that any railroad employee that installs or removes an end of train device or rear marker would have to establish blue signal protection, unless it is a train or yard crew member or utility employee performing the task on the equipment he/she is called to operate. Furthermore, FRA has determined that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this activity is a service and repair to the device. Therefore, the only way a utility employee, train or yard crew member can legally remove or replace the EOT battery, without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

NS believes that if certain tasks are restricted and effective communication is established, it would be possible to sanction an alternative means of protection that is the functional equivalent of full compliance with the existing rule. NS's alternative protection methodology, which requires that the person occupying the cab compartment of the controlling locomotive to have an effective communication link to the inspector, assures the inspector that the train is secure against movement and will remain that way until the installation, removal, inspection, test or battery change has been completed. NS proposes to use the following alternative procedures for inspection, placement and removal of rear end markers or end of train devices, and to change the battery on those devices while on the train:

(1) Any person inspecting, testing, installing, or removing a rear end marking device or end of train device or replacing the battery on such device shall determine that he or she is being protected against the unexpected movement of the train either under the procedures established in 49 CFR sections 218.25, 218.27, and 218.29, or under the following provisions:

(a) Blue signal protection must be provided for any person who is not a member of the train or yard crew assigned to the train on which the device to be inspected or tested is installed when inspecting or testing the device except when:

(i) the rear end of the train is standing on a main track, or if on other than main track, access to that portion of the track on which the rear end of the train is standing is physically restricted by either: (1) Lining and locking the switch providing access to that portion of the track away from movement onto that portion of the track, or (2) positioning a locked derail on that portion of the track at least 50 feet from the rear of the train;

(ii) the inspection or testing task is limited to ascertaining that the device is in proper operating condition; and (iii) the person performing the inspection or testing procedure has communicated directly with the locomotive engineer prior to performing the task and has been advised by the locomotive engineer that the controlling locomotive is coupled onto that equipment, that he or she is occupying the cab of the controlling locomotive, and that the train is and will remain secure against movement until the locomotive engineer has been notified by the person performing the inspection that the task has been completed.

(b) Blue signal protection must be provided for any person who is not a member of the train or yard crew assigned to the train being serviced when installing or removing the device or

Replacing the batteries on the device except when: (i) The train on which the device is to be installed or removed or have the batteries replaced on is standing on a main track, or if on other than main track, access to that portion of the track on which the rear end of the train is standing is physically restricted by either: (1) Lining and locking the switch providing access to that portion of the track away from movement onto that portion of the track, or (2) Positioning a locked derail on that portion of the track at least 50 feet from the rear of the train; (ii) the locomotive engineer has made and maintains an automatic brake reduction sufficient to prevent the train from moving, but of not less than 10 pounds per square inch; and (iii) the person performing the task has communicated directly with the locomotive engineer assigned to the controlling locomotive of the train, prior to installing or removing the device or replacing the batteries, and been advised by the locomotive engineer that he or she is occupying the controlling locomotive and that the train is and will remain secure against movement until the locomotive engineer has been notified by the person performing the task that the task has been completed. (2) Procedures will be implemented over Norfolk Southern system as personnel are properly trained in the above procedures.

NS believes that this alternative procedure provides the non-train crew employee with protection equal to a member of a train crew performing the same operation. On main track the protections are basically the same as the protection for a train crew person. On yard track this method provides similar protection as a member of the train crew with additional protection on the end of the track where the inspection, test, or battery change is performed. These measures so minimize the risks of injury that it is appropriate to authorize the unit removal, installation, inspection, testing and battery change without full blue signal protection. NS also believes that granting this waiver will minimize train delays and improve efficiencies without compromising the safety of their employees.

This waiver petition raises issues that are subject to active rulemaking through the Railroad Safety Advisory Committee (RSAC). Although no formal resolution has been reached, FRA believes that the ramifications of affording the requested relief insofar as it pertains to train crews (including utility employees assigned to work with train crews) have been extensively discussed in the RSAC working group, permitting identification of issues and consideration of available information. Accordingly, FRA requests comment on the NS petition to the extent it applies to the circumstances under which train crew members and associated utility employees may perform the specific tasks. FRA would expect any relief extended under this docket to terminate upon adoption of a final rule in the expected, forthcoming rulemaking proceeding.

FRA notes that issues regarding providing further exceptions from blue signal protection with respect to non-operating employees (performing specified duties on main and other-than-main track) have not, in FRA's view, been adequately developed in the

RSAC. Nor did NS provide persuasive analysis in support of the petition that would permit issuance of relief in this regard. Train and engine employees, including yard operating personnel functioning as utility employees, are accustomed to working under the railroad operating rules and ensuring securement of equipment from movement without use of blue signal protection. They are accustomed to working as a unit, placing a premium on effective communication. Other employees involved in inspecting and testing equipment, by contrast, are accustomed to functioning with full blue signal protection, including, as a general matter, securement of switches providing access to the rolling stock on which they are working (see 49 U.S.C. 20131). It may be possible to disturb these patterns of work and allow additional flexibility in the application of the blue signal regulations. However, the dialogue among those most familiar with these issues it not yet sufficiently advanced for FRA to venture a judgment on that issue. Accordingly, FRA has denied the requested relief insofar as the request applies to the duties of non-operating employees, without prejudice to future consideration of this issue (including ongoing RSAC deliberations).

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 FRA–2001–10515) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 400 Seventh Street, SW, Room PL–401, Washington, DC 20590–0001. 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 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC, on January 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–2558 Filed 2–1–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 23, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 6, 2002, to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1739.

Form Number: IRS Forms 9460 and 9477.

Type of Review: Reinstatement.

Title: Tax Forms Inventory Report.

Description: The forms are designed to collect tax forms inventory information from post offices, libraries, and other entities that distribute Federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. This data is combined with shipment data for each account and used to establish forms distribution guidelines for the following year. Source code data is collected to verify that the different entities received tax forms with the correct code.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Respondent: 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,417 hours.

OMB Number: 1545–1750.

Form Number: IRS Form 8038–R.

Type of Review: Extension.

Title: Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

Description: Under Treasury Regulations section 1.148–3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038–R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	5 hr., 44 min.
Learning about the law or the form	3 hr., 10 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 24 min.

Frequency of Response: On occasion.

Estimated Total Reporting and Recordkeeping Burden: 2,466 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–2595 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 28, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 6, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1394.

Form Number: IRS Form 1120–SF.

Type of Review: Extension.

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

Description: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120-SF to determine if income and taxes are correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—18 hr., 39 min.

Learning about the law or the form—2 hr., 43 min.

Preparing the form—5 hr., 0 min.

Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 26,920 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–7860.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–2596 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209060–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of final regulation, REG–209060–86 (TD 8851), Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes (section 1.6046–A).

DATES: Written comments should be received on or before April 5, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: REG–209060–86.

Abstract: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with significant interests in foreign partnerships to ensure the correct reporting of items with respect to these interests.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2623 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, C:AP:AS, 1099 14th Street, NW, Room 4200E Washington, DC 20005, Telephone No. (202) 694–1861, (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 02–2622 Filed 2–1–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 23
Monday, February 4, 2002

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.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction: Fort Leonard Wood Military Reservation Interchange, Mark Twain National Forest, MO

Correction

In notice document 01–22846 beginning on page 47448 in the issue of September 12, 2001, make the following correction:

On page 47449, in the third column, the heading ‘‘**Township 34 North, Range 42 West, 5th Principal Meridian:’’** should read ‘‘**Township 34 North, Range 12 West, 5th Principal Meridian: ’’**.

[FR Doc. C1–22846 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010313063–1297–02; I.D. 121200A]

RIN 0648–A020

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

Correction

In rule document 02–1875 beginning on page 4100 in the issue of Monday, January 28, 2002, make the following correction:

§ 679.5 [Corrected]

On page 4124, in the second column, §679.5, in paragraph (g)(5)(v), in the fifth line, ‘‘□’’ should read, ‘‘}’’.

[FR Doc. C2–1875 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34252; FRL–6820–2]

Oxyfluorfen; Availability of Risk Assesments (Interim Process)

Correction

In notice document 02–2237 beginning on page 4425 in the issue of Wednesday, January 30, 2002, make the following correction:

On page 4425, in the second column, in the second line, ‘‘January 30, 2002’’ should read, ‘‘April 1, 2002’’.

[FR Doc. C2–2237 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–17–AD; Amendment 39–12557; AD 2001–25–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Models LTS101–600A–2 and LTS101–600A–3 Turboshaft Engines; and LTP101–600A–1A and LTP101–700A–1A Turboprop Engines

Correction

In rule document 01–30951 beginning on page 65426 in the issue of Wednesday, December 19, 2001, make the following correction:

§39.13 [Corrected]

On page 65427, in §39.13, in the third column, under the heading **Applicability**, in the fourth line ‘‘LTS101–6000A–2 ’’ should read ‘‘LTS101–600A–2 ’’.

[FR Doc. C1–30951 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8976]

RIN 1545-AX20

Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

Correction

In rule document 02–184, beginning on page 1075, in the issue of Wednesday, January 9, 2002, make the following corrections:

§1.472–8 [Corrected]

1. On page 1083, in the third column, in §1.472–8(e)(3)(iii)(B)*(4)*, in *Example 3,* in the eighth line ‘‘(e)(2)(ii)(b)’’ should read ‘‘(e)(2)(ii)(*b*)’’.

2. On page 1084, in the third column, in §1.472–8(e)(3)(iii)(D), in the first line, ‘‘(*D*)’’ should read ‘‘(D)’’.

3. On page 1089, in the first column, in §1.472–8(e)(3)(iii)(E)*(3)*, in *Example 1,* in the table, in paragraph (iv), in the second line, the word ‘‘Tab1e’’ should read ‘‘Table’’.

4. On the same page, in the same column, in §1.472–8(e)(3)(iii)(E)*(3)*, in *Example 1,* in paragraph (vi) in the 12th line, ‘‘($908,355.80—$850,000.00)’’ should read ‘‘($908,355.80 − $850,000.00)’’.

5. On the same page, in the second column, in §1.472–8(e)(3)(iii)(E)*(3)* in *Example 1,* in paragraph (vii), in the second line, ‘‘2002.0’’ should read ‘‘2002’’.

[FR Doc. C2–184 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119436–01]

RIN 1545–AY87

New Markets Tax Credit

Correction

In proposed rule document 01–31529, beginning on page 66376, in the issue of Wednesday, December 26, 2001, make the following corrections:

On page 66376, in the second column, in the first full paragraph,

(a) In the fifth line, ‘‘utility; The accuracy of’’ should read, ‘‘utility;’’.

(b) In the same column, ‘‘The accuracy of‘‘ begins a new paragraph.

[FR Doc. C1–31529 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 23

Monday, February 4, 2002

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.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction: Fort Leonard Wood Military Reservation Interchange, Mark Twain National Forest, MO

Correction

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010313063–1297–02; I.D. 121200A]

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ENVIRONMENTAL PROTECTION AGENCY

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–17–AD; Amendment 39–12557; AD 2001–25–04]

RIN 2120–AA64

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[FR Doc. C1–30951 Filed 2–1–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8976]

RIN 1545-AX20

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[FR Doc. C2–184 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119436–01]

RIN 1545–AY87

New Markets Tax Credit

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[FR Doc. C1–31529 Filed 2–1–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 4, 2002

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; New Jersey and New York's Reasonable Further Progress Plans, Transportation Conformity Budgets and 1-Hour Ozone Attainment Demonstrations State Implementation Plans: Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ50–238; FRL–7132–4]

Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Transportation Conformity Budgets and 1-Hour Ozone Attainment Demonstrations State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several New Jersey State Implementation Plans (SIP) revisions addressing several Clean Air Act requirements. Specifically, EPA is approving 1-hour Ozone Attainment Demonstrations, Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007, conformity budgets for 2002, 2005 and 2007, contingency measures, a 1996 periodic emission inventory, ozone projection year emission inventories for 2002, 2005 and 2007, enforceable commitments for the 1-hour ozone attainment demonstration, and reasonably available control measure analysis for the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia, Wilmington, Trenton NAA. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island NAA and the Philadelphia, Wilmington, Trenton NAA.

EFFECTIVE DATE: This rule will be effective March 6, 2002.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New Jersey to address Clean Air Act (CAA) requirements related to attainment of the national ambient air quality standard for ozone. These submittals apply to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. Unless otherwise noted, the submissions referenced are for both NAAs.

Specifically, EPA is approving New Jersey's:

—1996 periodic emission inventory;

—2002, 2005 and 2007 ozone emission inventories (which are referred to as projection year emission inventories);

—2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;

—ozone contingency measures;

—2002, 2005 and 2007 conformity budgets;

—reasonably available control measure analysis; and

—1-hour ozone attainment demonstrations for the Northern New Jersey and Trenton NAAs with enforceable commitments.

Table 1 identifies the SIP revisions that have been submitted to fulfill the CAA requirements for the 1-hour ozone attainment demonstrations.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW JERSEY'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP

Date	Content
August 31, 1998.	Attainment demonstrations.
October 16, 1998.	Public participation appendix.
April 26, 2000	1. Revised Motor Vehicle Emissions Budgets (MVEB). 2. Commitments to: —Adopt and submit additional control measures for attainment by October 31, 2001 —Revise transportation conformity budgets to include benefits from the Tier 2/Sulfur-in-fuel rule —Revise attainment year transportation conformity budgets 1 year after release of MOBILE6 —Revise transportation conformity budgets if additional measures include mobile measures —Perform Mid course review
April 11, 2001	1. 1996 Periodic emission inventory. 2. 2002, 2005, 2007 projection year emission inventories. 3. Reasonable Further Progress Plans for 2002, 2005 and 2007. 4. Contingency measures. 5. 2002, 2005 and 2007 Conformity Budgets.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW JERSEY'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP—Continued

Date	Content
June 18, 2001	Proposed Reasonably Available Control Measures Analysis.
October 8, 2001.	Adopted Reasonably Available Control Measures Analysis.

II. What Are the Details of EPA's Specific Actions?

A. Emission Inventories

On April 11, 2001, New Jersey submitted a SIP revision which contained the statewide 1996 periodic emission inventory, and 2002 and 2005 ozone projection year emission inventories for the Northern New Jersey NAA and Trenton NAA and a 2007 ozone projection year emission inventory for the Northern New Jersey NAA. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_X). EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these emission inventories. Therefore, EPA is approving them as part of New Jersey's SIP.

B. RFP Plans for 2002, 2005 and 2007

On April 11, 2001, New Jersey submitted a SIP revision which contained the 2002 and 2005 RFP Plans for the Northern New Jersey NAA and Trenton NAA and a 2007 RFP Plan for the Northern New Jersey NAA. New Jersey has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented or adopted and scheduled for implementation. These plans identified the control measures that will be generating the emission reductions needed to achieve the three percent per year emission reductions averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these RFP Plans. Therefore, EPA is approving them as part of New Jersey's SIP.

C. Ozone Contingency Measures

On April 11, 2001, New Jersey submitted a SIP revision which identified the ozone contingency measures for the Trenton NAA and Northern New Jersey NAA necessary to fulfill the RFP and attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS within the time-frames specified under the CAA. Consistent with EPA guidance, New Jersey used a combination of excess VOC and NO_X emission reductions (0.3 percent VOC and 2.7 percent NO_X) resulting from the implementation of adopted State control programs. These reductions are available for each milestone year (2002 and 2005) and the attainment years (2005 and 2007), for the Trenton NAA and Northern New Jersey NAA respectively. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on the contingency measures portion of the SIP revision. Therefore, EPA is approving it as part of New Jersey's SIP.

D. Conformity Budgets

On April 11, 2001, New Jersey submitted a SIP revision which contained the transportation conformity budgets for the Northern New Jersey NAA and Trenton NAA (see Table 2) and the general conformity emission budgets for McGuire Air Force Base (see Table 3). It should be noted that for the Northern New Jersey NAA the 2002 and 2005 conformity budgets are based on the RFP Plan and the 2007 budgets are based on the 1-hour ozone attainment plan. For the Trenton NAA, the 2002 budgets are based on the RFP Plan and the 2005 budgets are based on the 1-hour ozone attainment plan.

TABLE 2.—NEW JERSEY TRANSPORTATION CONFORMITY BUDGETS

Transportation Planning Area	2002		2005		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
North Jersey Transportation Planning Authority (NJTPA)	140.15	240.19	98.11	187.70	93.20	175.51
South Jersey Transportation Planning Organization (SJTPO)	17.49	33.02	13.36	26.42	[1] n/a	n/a
Delaware Valley Regional Planning Commission (DVRPC)	55.28	73.05	38.03	55.62	n/a	n/a

1. Not applicable.

TABLE 3.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSION BUDGETS

VOC	NO_X tons/year	NO_X tons/year
1990 Baseline	1,112	1,038
1996	1,186	1,107
1999	1,223	1,142
2002	1,405	875
2005	1,406	884

On June 1, 2001 (66 FR 29797), EPA found the transportation conformity budgets to be adequate for conformity purposes effective June 18, 2001. At that time, EPA responded to comments regarding adequacy of budgets. EPA proposed approval of all of these budgets on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No specific comments were received on the proposed approval of New Jersey's budgets, however, EPA received general comments concerning conformity budgets which are addressed in Section III. EPA is approving the budgets as part of New Jersey's SIP.

These budgets (*see* Table 2 and 3) are consistent with the measures in New Jersey's RFP plans and attainment demonstrations that are also being approved today. It is important to note that New Jersey has committed to revise the 2005 and 2007 attainment year transportation conformity emissions budgets within one year of the official release of the MOBILE6 motor vehicles emissions model for regulatory purposes. New Jersey has committed to submit new budgets if any additional measures involve motor vehicles and affect the motor vehicle budgets. Therefore, EPA is approving these budgets only until New Jersey meets its commitments and submits new budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, those budgets will replace the 2005 and 2007 attainment year emissions budgets being approved today for conformity purposes. EPA is approving New Jersey's commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and the commitment to revise the budgets if any additional measures affect the budgets.

E. Reasonably Available Control Measure Analysis

On June 18, 2001, New Jersey submitted a proposed assessment of whether any additional RACM are available to advance the attainment date, from 2005 to an earlier year for the Trenton NAA and from 2007 to an earlier year for the Northern New Jersey NAA. On September 24, 2001 (66 FR 48847), EPA proposed approval of New Jersey's RACM analysis and on October 16, 2001 (66 FR 53560), EPA extended the comment period for this proposal. No specific comments were received on New Jersey's RACM analysis, however, EPA received general comments concerning RACM which are addressed in section III. EPA is approving New Jersey's analysis which determined that there are no additional control measures available, beyond those already included in the attainment demonstrations, that are technically or economically feasible and would advance the attainment dates of 2005 or 2007 for the Trenton NAA or Northern New Jersey NAA, respectively. However, EPA does believe that the control strategies considered in New Jersey's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New Jersey and other states in the Ozone Transport Region revisit these control strategies when they begin developing the 8-hour ozone standard SIP.

F. 1-hour Ozone Attainment Demonstration SIP Including Enforceable Commitments

On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour Ozone Attainment Demonstration SIP. However, this approval was contingent upon New Jersey submitting the following:

(1) The adopted NO_X SIP Call program as a SIP revision;

(2) The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;

(3) enforceable commitments to:

a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment;

b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated;

c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; and

d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

The specifics of how New Jersey fulfilled all these requirements are discussed below.

(1) NO_X SIP Call Submittal

On December 10, 1999 and July 31, 2000, New Jersey submitted adopted SIP revisions which fulfilled the NO_X SIP Call requirements. Specifically, New Jersey adopted Subchapter 31 ''NO_X Budget Program,'' of Title 7, Chapter 27 of the New Jersey Administrative Code in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call during each ozone season, *i.e.,* May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28063), EPA approved New Jersey's SIP revisions as meeting the NO_X SIP Call. It is important to note that New Jersey is implementing its NO_X SIP Call rules requiring source compliance by 2003, even though an order from the D.C. Circuit Court allowed that full implementation could be rolled back to 2004.

(2) CAA Measures and Control Measures Relied on in the Modeled 1-hour Ozone Attainment Demonstration SIP

New Jersey has already adopted the control measures required for areas classified as severe under section 182 of the CAA for the Northern New Jersey and Trenton NAAs. Table 4 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including the Rate of Progress (ROP) and RFP plans. The reader is referred to EPA's March 1, 1999 (64 FR 9952) proposed approval of New Jersey's 15 and 9 Percent ROP Plans and September 12, 2001 (66 FR 47419) proposed approvals of New Jersey's RFP Plans for a more detailed discussion of the control measures identified.

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY'S SIP

Control measure	Type of measure
On-Road Sources:	
Federal Motor Vehicle Control program (Tier 1 & 2)	Federal
National Low Emission Vehicle[1] (NLEV)	State opt-in—SIP approved
Enhanced Inspection & Maintenance	State adopted—SIP approved
Reformulated Gasoline (Phase 1 & 2)	Federal
Heavy Duty Diesel Engines (On-road)	Federal
Non-Road Sources:	
Federal Spark Ignition Small Engine standards	Federal
Federal New Gasoline Spark Ignition Marine Engine standards	Federal
Federal Nonroad Compression Ignition engines	Federal
Locomotive & Locomotive Engines	Federal
Commercial Marine Diesel Engines	Federal
Stationary Sources:	
VOC CTG Source Categories	State adopted—SIP approved
VOC Non-CTG Source Categories—RACT	State adopted—SIP approved
NO_X RACT	State adopted—SIP approved
Marine Vessel Ballasting & Loading Operations	State adopted—SIP approved
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR)	State adopted—SIP approved & Federal
OTC NO_X MOU Controls	State adopted—SIP approved
NO_X SIP Call Program	State adopted—SIP approved

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY'S SIP—Continued

Control measure	Type of measure
Area Sources:	
AIM Surface Coatings	State adopted—SIP approved & Federal
Consumer & Commercial Products	State adopted—SIP approved & Federal
Autobody Refinishing	Federal
Hazardous Organic NESHAP	Federal
Landfill Controls	State adopted—SIP approved & Federal

[1] To the extent NLEV not superceded by Tier 2.

In the December 16, 1999 proposal, EPA specifically identified two CAA required control programs that had yet to be approved by EPA: Post-1999 RFP Plans with control measures needed to meet these Plans and implementation of the Enhanced Inspection and Maintenance (I/M) program. As discussed above, EPA is approving New Jersey's Post-1999 RFP Plans as part of today's action. On June 12, 2001 (66 FR 31544), EPA made a determination that New Jersey has implemented the enhanced I/M program and reinstated the interim approval granted under Section 348 of the National Highway Systems Designation Act. On September 11, 2001 (66 FR 47130), EPA proposed full approval of the enhanced I/M program and on *January 22, 2002,* EPA took final action giving full approval. Therefore, New Jersey has satisfied both of these requirements.

(3) Enforceable Commitments

On April 26, 2000, New Jersey submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the Northern New Jersey and Trenton NAAs. This submission addressed the commitments originally requested in EPA's December 16, 1999 proposal as follows:

a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment.

New Jersey submitted an adopted SIP revision containing the enforceable commitment to adopt and submit by October 31, 2001 additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70380) proposed approval of New Jersey's 1-hour Ozone Attainment Demonstrations. In addition, as a backstop, New Jersey committed to adopt intrastate measures by October 31, 2001 if the regional measures do not provide sufficient emission reductions to achieve the additional reductions identified by EPA. New Jersey also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. In fact, New Jersey has taken a active role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard.

New Jersey adopted a SIP revision which identified the specific measures it would propose to adopt after public notice and comment along with the estimated emission reductions these measures could achieve and the role these measures play in the attainment demonstrations. The following are the measures recommended by the OTC and which New Jersey will be taking to public hearing: consumer and commercial products rule, architectural and industrial maintenance coatings rule, mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New Jersey has begun its regulatory development process for these measures. In a letter dated December 11, 2001, New Jersey provided additional information on their progress in addressing the shortfall in emission reductions, including a schedule for the rulemaking and publishing the schedule in the ''New Jersey Register'' rulemaking calendar dated January 7, 2002. See also section III.D. for an expanded discussion on New Jersey's commitment.

b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated.

New Jersey submitted revised transportation conformity budgets which include the Tier 2/Sulfur program and therefore, this commitment has been satisfied.

c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment.

New Jersey committed to revise the attainment demonstration SIP by submitting additional measures necessary for attainment and to recalculate the transportation conformity budgets, if necessary, based on those measures.

d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA releases MOBILE6. On April 26, 2000, New Jersey submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year of release of MOBILE6.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the states have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving today.

e. Perform and submit a mid course review.

Also in the April 26, 2000 SIP revision, New Jersey revised its prior commitment to a mid course review (MCR). Specifically, to be consistent with EPA's recommendation, New Jersey has revised the date for submitting its MCR to December 31, 2003.

III. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 47419) for New Jersey's ozone attainment demonstration. In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. EPA also received comments on the September 12, 2001 (66 FR 47419) proposed approval of New Jersey's RFP Plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 24, 2001 (66 FR 48847) proposed approval of New Jersey's RACM analysis.

A. Attainment Demonstrations

1. General Comments

Comment: Several commenters urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all Reasonably Available Control Measures (RACM) and a control strategy sufficient to achieve attainment. One commenter went on to say that because they believe the plan should be disapproved and, under the consent decree in *NRDC* v. *Browner*, Civ. No. 99–2976, EPA must commence promulgation of a Federal Implementation Plan (FIP). One commenter supported the proposed approval.

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plans provided by the State of New Jersey are fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA and the plans includes all reasonably available control measures. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New Jersey has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 ppm one-hour standard beyond 2007.

Response: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of part D of the CAA, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the CAA. Under section 181(a)(5), an area that does not have three-years of data demonstrating attainment of the ozone NAAQS, but has complied with all of the statutory requirements and that has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS.

This position is consistent both with EPA's modeling guidance and with the structure of subpart 2 of the CAA. Under EPA's modeling guidance, states model air quality for the attainment year—they do not model air quality for the three-year period preceding the attainment year. As a function of how the model operates, the data produced only predicts the air quality for one year. EPA's modeling guidance has existed for many years and has been relied on by numerous nonattainment areas for demonstrating attainment of the ozone standard. Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 CAA amendments were required to adopt and implement RACT and I/M ''fix-ups'' that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15-percent plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three-years of ''clean data.'' For these reasons, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the Trenton and Northern New Jersey NAAs, all measures are being implemented as expeditiously as practicable and that the areas have demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the Trenton and Northern New Jersey NAAs have three years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the state to provide for maintenance of the standard at this time, we do believe emissions in the Trenton and Northern New Jersey NAAs will continue to decrease after 2005 and 2007, respectively, due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''this'' attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * * '' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, Appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the National Ambient Air Quality Standard (NAAQS). The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance [3] to update the 1991 guidance referenced in 40 CFR part 51, Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (*i.e.*, the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, a state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitoring site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.,* average of daily maximum concentrations from all days modeled)

[1] The August 12, 1996 version of ''Appendix W to part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

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

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

to the peak model predicted ozone concentrations in the base year (*i.e.,* average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to reach attainment at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to reach attainment.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to three exceedances in three years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, Appendix W, section 6.2.1.e. provides ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone in order to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 parts per billion during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: (1) It obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) lastly, the requirement that areas perform a mid course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use of the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 proposal and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) there are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result of these limitations, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter and has determined that the 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. The values given do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, the local or regional control programs are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment: The NAAQS requires that in order to demonstrate attainment of the 1-hour NAAQS that no more than four ambient ozone concentrations exceed 0.12 ppm (235 mg/m3) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no ''rounding convention.'' No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 g/m3). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New Jersey SIP submissions do not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

Response: Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR part 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard.'' (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this CAA, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms . . .'' Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

B. Reliance on the Nitrogen Oxide SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency,* 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area 1-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe-area 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_X SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two States—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_X SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call. It is important to note that New Jersey is implementing its NO_X SIP Call rules requiring source compliance by 2003.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. Comments on RACM

Comment: Several commenters have stated that there is no evidence that New Jersey has adopted reasonably available control measures (RACM) or that the SIPs provide for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Northern New Jersey and Trenton NAA and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from states with Severe 1-hour Ozone Nonattainment Area SIPs'').

New Jersey supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 18, 2001 and adopted revision submitted on October 8, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 24, 2001 (66 FR 48847). Based on this supplement, EPA concluded that the SIP for the Northern New Jersey and Trenton NAA meets the requirement for adopting RACM.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to reach attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

On June 18, 2001, New Jersey submitted a proposed analysis of Reasonably Available Control Measures (RACM) for the Northern New Jersey and Trenton NAA which was adopted after public hearing on October 8, 2001 without substantive changes. The RACM analysis included an evaluation of potential transportation control measures (TCMs) for onroad mobile sources, potential control measures for point, area and offroad sources, and other non-TCM onroad control measures. New Jersey ranked the source categories by emission level to identify source categories with the greatest potential for additional control measure benefits, above and beyond what the State is already implementing, that would advance the 2005 or 2007 attainment dates. Individual measures were then evaluated with regard to their technical feasibility, economic feasibility and the speed at which they could be implemented. Finally, the sums of the estimated emissions benefits from the potentially implementable measures were then compared to the emission reductions required to advance the attainment dates for each nonattainment area. This analysis was performed for the New Jersey portions of the two severe nonattainment areas, the Trenton NAA and the Northern New Jersey NAA.

1. Consideration and Implementation of Transportation Control Measures (TCMs)

Fifteen prospective mobile source measures were examined to determine if any of these TCMs could be considered reasonably available control measures. The candidate measures were screened to determine if they were available for potential implementation, and then each measure analyzed for its potential emissions reduction benefit, economic impact, practicability and potential adverse impact by nonattainment area.

The mobile source measures analyzed were grouped into the following five categories; Travel Demand Management and Commuter Choice, Transportation Pricing Strategies and Scenarios, Traffic Flow Improvements, Transit Projects and Transit Oriented Design and Vehicle Fuel and Technology. In addition, two non-mobile source land use related measures were examined which have the potential to reduce vehicle miles traveled and vehicle emissions.

The State's analysis found that none of the TCM's, singularly or in combination, will yield emissions benefits sufficient to advance the attainment dates for the respective New Jersey ozone nonattainment areas. The range of combined emissions benefits from VOC and NO_X was 0.0 tons/day to 2.054 tons/day in the New Jersey portion of the Northern New Jersey NAA and from 0.0 tons/day to 1.10

tons/day in the New Jersey portion of the Trenton NAA. In addition, the State also found that implementing certain measures is not cost effective. These TCMs are not reasonably available at this time, nor may they be able to generate significant emission reductions by the attainment date.

Two land use measures were also reviewed and evaluated for their potential impact to reduce vehicle miles traveled and emissions. The measures were developed to achieve other State goals and include the statewide programs: Open Space Preservation Program in which the State commits to preserving 1,000,000 acres of open space over a ten-year period, and New Development and Redevelopment Plan which is based on ''smart growth'' principles.

The Open Space Preservation Program can not be phased in any faster and, therefore, can not advance the ozone attainment dates in the New Jersey NAAs. The State Development and Redevelopment Plan is a voluntary plan and has no force of law under municipal home rule. This limits EPA's ability to enforce such a program as part of a SIP. It also requires long lead times before it could be effective on a regional scale and it is not anticipated to advance the attainment dates in the New Jersey nonattainment areas.

2. Consideration and Implementation of Stationary Source, Area Source, and other Non-TCM Measures

The projected attainment year VOC and NO_X emission inventories were separately sorted by source category for each nonattainment area. All source categories with emissions of five tons per day or greater were examined for potential application of new control measures. The State evaluated 29 VOC source categories and 25 NO_X source categories. The analysis for feasibility of potential controls for each source category included evaluation of the potential emissions reduction benefit, technical and economic feasibility, and analysis of whether the measure could be implemented in time to advance the attainment date.

Six potentially implementable control measures were identified with a combined potential emission reduction benefit of 2.2 tons per day of VOC and 0.4 tons per day of NO_X in 2004 for the Trenton NAA and 7.3 tons per day of VOC and 3.3 tons per day of NO_X in 2006 for the Northern New Jersey NAA. Based on a comparison of the emission reductions which are scheduled to occur in the year immediately before the attainment year, the combined benefit of the potential control measures resulted in less emission reductions. Therefore, no TCM or other measure, either singularly or combined, has been identified which could advance the attainment dates of either area and be considered RACM.

New Jersey evaluated all source categories that could contribute meaningful emission reductions. An extensive list of potential control measures was identified and reviewed. The State considered the time needed to implement these measures as a further screen of their reasonableness and availability. However, EPA believes that some of these control measures may offer some benefits in the future for purposes of an 8-hour ozone standard, and recommends that New Jersey and other states in the OTR revisit these controls in the context of any future planning obligations.

Therefore, EPA proposed in the September 24, 2001 **Federal Register** (66 FR 48847) to approve New Jersey's RACM analysis and its finding that no additional measures, individually or as combined measures, were technically and economically feasible nor would they advance the 1-hour ozone attainment dates.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the New Jersey NAAs, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., http://www.epa.gov/otaq/transp.htm*. In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures, including the kind that New Jersey itself evaluated in its RACM analysis, that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation of all techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment dates being approved are as expeditious as practicable.

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate and does not address those issues again here. The previous responses are found at *http://www.epa.gov/otag/transp/conform/njrspnd.pdf.*

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because not all of the emissions reductions assumed in the demonstrations (a) have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, and (c) are credited legally as part of a demonstration because they are not approved by EPA as part of the SIP. Also a commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

New Jersey submitted an enforceable commitment on April 26, 2000, to participate in the OTC process and to adopt measures by October 31, 2001. New Jersey did participate in the OTC process, however, the deadline for choosing and adopting shortfall measures has come and gone. So far, New Jersey has not submitted anything to EPA which states which control measures New Jersey plans to use to address the shortfall. Nor has New Jersey adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New Jersey, the commenters contend that the emissions gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Because the submittal consists in part of commitments, New Jersey has not adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New Jersey. Thus, New Jersey has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the submittal also does not meet the definition of a ''full attainment demonstration SIP,'' in a consent decree EPA entered into in *NRDC* v. *Browner*, Civ. No. 99–2976 (D.CT. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New Jersey 1-hour Ozone Attainment Demonstration SIP by that date.[5] For these reasons, EPA should reject the New Jersey 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[6] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New Jersey does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP. See 66 FR 47419, September 12, 2001. New Jersey's RFP plans, discussed above, demonstrate RFP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved state measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For New Jersey's attainment demonstrations for the Northern New Jersey and Trenton NAA, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with either area's ability to meet the attainment obligation.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.*, 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the CAA speaks directly to the approvability of enforceable commitments.[7] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the CAA.'' (emphasis added). Section 172(c)(6) of the CAA requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques . . . *as may be necessary or appropriate* to provide for attainment . . . by the applicable attainment date . . .'' (emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to reach attainment. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Northern New Jersey and Trenton NAAs—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here because the commitments made here are limited in scope. EPA agrees with the Court that

[5] Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

[6] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp.1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97–6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the CAA, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[7] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a state may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the state, the CAA provides that the conditional approval will convert to a disapproval if ''the state fails to comply with such commitment.''

other provisions in the CAA contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of New Jersey's attainment plans. For the Trenton NAA, the commitment addresses only 10.6 percent and 0.7 percent of the total VOC and NO_X emissions reductions, respectively, necessary to attain the standard. For the Northern New Jersey NAA, the commitment addresses only 9.1 percent of the VOC and 0.8 percent of the NO_X emissions reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in New Jersey's attainment demonstration submission are discussed in Section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the Ozone Transport Commission (OTC) regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC, of which New Jersey is a part, has performed an extensive study and model rule development effort. Public meetings were held and the OTC model rules where also made available for comment. On March 29, 2001 the OTC recommended a set of control measures and model rules. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

New Jersey was an active participant in the OTC rule development effort and concurred on the recommendation that the Northeast States adopt these measures. New Jersey's involvement and support for these regional measures is evidence of New Jersey's intent to also adopt them statewide. This was demonstrated when New Jersey took to public hearing a SIP revision which identified the specific control measures they would be proceeding with rulemaking on, along with a description of the measures and projected emission reductions. This was submitted as part of the adopted October 8, 2001 SIP revision. New Jersey is well underway with the regulatory development process for these measures. While New Jersey has not made the submission on the date to which it committed, EPA believes that it is making sufficient progress to support approval of the attainment demonstration because, within a short time period, New Jersey will adopt and implement measures that are fully consistent with the Northern New Jersey and Trenton NAAs attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the New Jersey attainment demonstrations is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors, such as the need to consider innovative control strategies or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures. The commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months (until October 31, 2001), to complete the OTC and state-adoption processes.

As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas are all located within the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See *e.g.,* 64 FR 70428. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007.

EPA still believes, consistent with the memoranda of understanding signed by Robert C. Shinn, Commissioner, New Jersey Department of Environmental Protection, that it is New Jersey's stated intention to propose, adopt and implement the identified control measures. The actual OTC model regulation development process took longer than EPA anticipated, 15 months of the 22 months that EPA had thought the complete effort should take. This only left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New Jersey did not make its submission by that date, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.,* sections 179(a) and (b) and 304) to ensure New Jersey completes the adoption process.

New Jersey is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). EPA believes that New Jersey is making sufficient progress to support approval of the commitment, because New Jersey will adopt and implement the additional measures well within a time period fully consistent with New Jersey attaining the standard by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA. In a letter dated December 11, 2001, New Jersey provided additional information on their progress in addressing the shortfall in emission reductions. See also section II.F. for further discussion on New Jersey's commitment.

The enforceable commitments submitted by New Jersey for the Northern New Jersey and Trenton NAAs, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because New Jersey has obligated itself to submit the rules by specified short-term dates, because it is making reasonable efforts to adopt and submit them and because the State's commitment is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Section II of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the New Jersey SIP meets the NRDC Consent Decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

Comment: One commenter raises concerns regarding the enforceability of New Jersey's commitments to adopt and submit the additional control measures to achieve additional emission reductions necessary for attainment. Specifically, the commenter is concerned that the lack of specific identified measures and specific identified emission reductions associated with those measures undercuts their enforceability. The commenter suggests that the commitments made by New York and New Jersey are more ''discretionary'' than the types of commitments that courts have enforced in the past because these state's commitments do not identify specific measures.

Response: EPA believes that the CAA provides for enforcement of the terms of an approved SIP. See *e.g.,* CAA 304(a)(1) and (f). Thus, in a case where a state commits to adopt a specific control strategy that will achieve a specific level of reductions by a specific date, the court may require the state to take action to adopt that measure and achieve the prescribed level of reductions. In the case, such as here, where the state commits to adopt and submit by a specific date measures to achieve a certain level of emission reductions, the court may order the state to adopt measures to achieve that level of reductions. Simply because the state retains authority regarding the precise mix of controls that it may adopt, does not interfere with the enforceability of the commitment to achieve the level of reductions necessary for attainment. EPA has determined that there are sufficient available controls to achieve the level of reduction to which the State has committed. This determination is supported by the recommendation of the OTC regarding specific controls. Thus, EPA believes that the commitment submitted by New Jersey is enforceable by EPA and citizens and that a court could order the State to adopt control measures that will achieve the level of reductions necessary for attainment.

Comment: The mid course review process outlined by New Jersey is not a permissible substitute for a currently complete attainment demonstration or adopted enforceable control measures. The mid course review will delay final approval of the SIP until 2004, 10 years after the SIP was required under the CAA.

Response: The mid course review is not intended as a replacement for a complete attainment demonstration or as a replacement for adopted control measures. Rather, it is intended to reflect the reality that the modeling techniques and inputs are uncertain. Thus, EPA provided in its modeling guidance that the progress of implementing the plan should be evaluated so that adjustments can be made to ensure the plan is successful. EPA is fully approving the attainment demonstration because based on the information currently available, EPA believes that it will provide for attainment. However, the mid course review allows the state and EPA an opportunity to consider additional information closer to the attainment date to assess whether adjustments are necessary. In the case of New Jersey, the State has extensive plans to fully evaluate the inputs to the model and the modeling itself using the most up to date information possible. The State will also be evaluating several new control measures for inclusion in the SIP. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action, when we issued our adequacy findings. Therefore we are not listing the individual comments or responding to them here. All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

On September 12, 2001 (66 FR 47419), we proposed to approve the transportation conformity budgets for the Northern New Jersey and Trenton NAAs. See Table 2. We received no specific comments on New Jersey's budgets. In this final rule we are approving these budgets.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. New Jersey used 1999 vehicle registration data, including information on sports utility vehicles, for modeling and inventory purposes. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a, a fluorine compound, could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use could result in a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively.

It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. Using HFC–152a as a blowing agent is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum[8] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[9] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide.

The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately one percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

[8] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

[9] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' 11/29/94, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[10] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the Consumer Products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

[10] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

J. MOBILE6 and Motor Vehicle Emissions Budgets (MVEBS)

Comment: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE6 models are released.

Response: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response: This is the reason that EPA proposed in the July 28, 2000, a supplemental notice (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response: EPA agrees. The motor vehicle emissions budgets in the Northern New Jersey and Trenton attainment demonstrations reflect the motor vehicle control measures in the attainment demonstrations. In addition, New Jersey has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Northern New Jersey and Trenton attainment demonstrations contain explicitly quantified motor vehicle emissions budgets.

Comment: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the CAA.

Comment: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, New Jersey will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. New Jersey has committed to revise its budgets within one-year of MOBILE6's release.

M. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the 8-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The 1-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that the 1-hour ozone NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met.

The EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP Call or 126 orders as an excuse for waiving ROP deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New Jersey submitted its Post-99 RFP Plans on April 11, 2001 and EPA proposed approval on September 12, 2001 (66 FR 47419). EPA is approving the RFP Plans as part of this action. Moreover, EPA has not provided that area's may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states, including New Jersey, are relying on in-state NO_X and VOC measures to meet the ROP requirement.

IV. Conclusion

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstrations for the New Jersey portions of the Northern New Jersey and the Trenton ozone NAAs should affect EPA's determination that the SIP is fully approvable as meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA. EPA is approving several SIP revisions that relate to attainment of the one-hour ozone standard in New Jersey. The SIP revisions include New Jersey's one-hour ozone attainment demonstrations for the state's portions of the Northern New Jersey and the Trenton NAAs, all of the enforceable commitments, a RACM analysis, 1996 periodic emission inventory, 2002, 2005 and 2007 ozone projection year emission inventories, 2002, 2005 and 2007 RFP Plans, and ozone contingency measures.

New Jersey's one-hour ozone attainment demonstrations include 2005 and 2007 motor vehicle emissions budgets for the Trenton and Northern New Jersey NAAs, respectively. EPA is approving these attainment budgets until new budgets using MOBILE6 are submitted and found adequate. Similarly, if new mobile source measures are submitted to fill the shortfall, the revised budgets will apply after they are submitted and found adequate. Also, EPA is approving the motor vehicle emissions budgets for 2002 and 2005 contained in New Jersey's RFP plans for transportation conformity purposes.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (h) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(h)(1) The statewide 1996 periodic emission inventory included in New Jersey's April 11, 2001 State Implementation Plan revision is approved.

(2) The 2002 and 2005 ozone projection year emission inventories for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 ozone projection year emission inventories for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(3) The 2002 and 2005 Reasonable Further Progress Plans for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 Reasonable Further Progress Plans for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(4) The contingency measures for the New Jersey portions of the Philadelphia/Wilmington/Trenton nonattainment area and the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(5) The 2002 and 2005 conformity emission budgets for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 conformity emission budgets for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved. The 2005 and 2007 attainment year budgets are only approved until such time as New Jersey submits revised budgets consistent with its commitments to revise the budgets with respect to MOBILE6 and additional measures and EPA finds those revised budgets adequate.

(6) The Reasonably Available Control Measure Analysis for the New Jersey portion of the Philadelphia/

Wilmington/Trenton and New York-Northern New Jersey-Long Island nonattainment areas included in New Jersey's October 16, 2001 State Implementation Plan revision is approved.

(7) The revisions to the State Implementation Plan submitted by New Jersey on August 31, 1998, October 16, 1998, and April 26, 2000 are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the New Jersey portions of the Philadelphia/Wilmington/Trenton and New York-Northern New Jersey-Long Island severe ozone nonattainment areas. The revisions establish attainment dates of November 15, 2005 for the Philadelphia/Wilmington/Trenton nonattainment area and November 15, 2007 for the New York-Northern New Jersey-Long Island ozone nonattainment area. The revisions include the enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality:

(i) To adopt additional control measures by October 31, 2001 to meet the level of reductions identified by EPA for attainment of the 1-hour ozone standard;

(ii) To submit revised State Implementation Plan and motor vehicle emissions budgets by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory;

(iii) To revise State Implementation Plan and attainment year motor vehicle emissions budgets within one year after the MOBILE6 mobile emissions model is released;

(iv) To perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1753 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY55–237, FRL–7132–5]

Approval and Promulgation of Implementation Plans; New York's Reasonable Further Progress Plans, Transportation Conformity Budgets, Reasonably Available Control Measure Analysis and 1-hour Ozone Attainment Demonstration State Implementation Plan

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

SUMMARY: EPA is approving New York State Implementation Plan revisions involving the 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area. These requirements include the Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for milestone years 2002, 2005 and 2007, ozone contingency measures, Reasonably Available Control Measure Analysis, 1-hour Ozone Attainment Demonstration and enforceable commitments. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island nonattainment area.

EFFECTIVE DATE: This rule will be effective March 6, 2002.

ADDRESSES: Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233

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

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New York to address Clean Air Act (CAA) requirements related to attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. These SIP submittals address the requirements for the New York-Northern New Jersey-Long Island ozone nonattainment area, which is classified as severe nonattainment. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland and the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County (40 CFR 81.333). This nonattainment area will be referred to as the New York Metro Area.

Specifically, EPA is approving New York's:

—Emission inventories for 2002, 2005 and 2007 (referred to as projection year inventories);

—2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;

—Ozone contingency measures;

—2002, 2005 and 2007 transportation conformity budgets (also referred to as motor vehicle emissions budgets);

—A Reasonably Available Control Measure (RACM) Analysis; and,

—A 1-hour Ozone Attainment Demonstration including enforceable commitments

Table 1 identifies the submittal dates and amendment dates for the RFP Plans, RACM Analysis, conformity budgets and 1-hour Ozone Attainment Demonstration, which include the projection year inventories and the contingency measures:

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW YORK'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP

November 27, 1998	Submittal of the 1-hour Ozone Attainment Demonstration SIP including the RFP plans, contingency measures, projection inventories, regional scale modeling and 2002 and 2005 transportation conformity budgets.
April 15, 1999	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing response to comments documentation.
April 18, 2000	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing measures to address the NO_X SIP Call, revised 2007 transportation conformity budgets and enforceable commitments for future actions.
June 15, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's proposed RACM Analysis.
October 1, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's final RACM Analysis.

II. What Are the Details of EPA's Specific Actions?

A. 2002, 2005 and 2007 Projection Year Emission Inventories

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 ozone projection year emission inventories for the New York Metro Area. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_X). EPA proposed approval of the inventories on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

B. 2002, 2005 and 2007 Reasonable Further Progress Plans

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 RFP Plans for the New York Metro Area. New York has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented. These plans identify the control measures which will be generating the emission reductions needed to achieve the three percent per year reduction averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

C. Ozone Contingency Measures

On November 27, 1998, New York submitted a SIP revision which contained the ozone contingency measures for the New York Metro Area necessary to fulfill the RFP and ozone attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS within the time-frames specified under the CAA. Consistent with EPA guidance, New York used a combination of excess VOC and NO_X emission reductions (0.3 percent VOC and 2.7 percent NO_X), resulting from the implementation of adopted State control programs, which will occur by each milestone and the attainment year which in both cases are 2002, 2005 and 2007. EPA proposed approval of the contingency measures on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

D. Conformity Budgets

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 transportation conformity budgets for the New York Metro Area. On November 16, 1999 (64 FR 62194) EPA found the 2002 and 2005 budgets for RFP adequate for conformity purposes. On April 18, 2000, New York revised the 2007 budgets to reflect the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area. On June 9, 2000 (65 FR 36690), EPA found the revised 2007 budget for RFP and attainment adequate for conformity purposes. EPA proposed approval of the conformity budgets on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

These conformity budgets (see Table 2), which EPA is approving today, are consistent with the measures in New York's RFP and attainment plans that are also being approved today. It is important to note that New York has committed to revise the 2007 transportation conformity emissions budget that EPA is approving today within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. Therefore, EPA is approving these budgets only until New York meets its commitments and submits new 2007 budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, they will replace the 2007 emissions budgets being approved today for conformity purposes.

TABLE 2.—EMISSION BUDGETS FOR CONFORMITY PURPOSES

[Tons per day]

County	2002		2005		2007	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Bronx	11	17	10	16	9	12
Kings	17	22	16	21	15	17
Nassau	38	50	36	48	36	44
New York	15	15	13	14	12	11
Lower Orange County Metro Area	4	8	4	8	3	6
Queens	23	31	21	29	19	23
Richmond	7	10	6	10	7	9
Rockland	9	15	8	15	7	11
Suffolk	35	56	33	55	34	51
Westchester	22	41	20	39	21	37
Total	*179	*266	*167	*254	*161	*221

*The totals represent the actual motor vehicle conformity emissions budgets for VOC and NO_X. New York subdivided the county budget numbers from the totals and rounded off to the nearest whole number, therefore, a sum of the county budget numbers identified in Table 2 may be slightly different from the total budget numbers identified in Table 2. New York did not adopt subregional budgets, the county breakdowns are only for informational purposes in explaining how New York established the totals.

E. New York's Reasonably Available Control Measure (RACM) Analysis

On June 15, 2001 and supplemented on October 1, 2001, New York submitted to EPA its assessment of whether any additional RACM are available to advance the 1-hour ozone attainment date from 2007 to an earlier year for the New York Metro Area. On September 11, 2001 (66 FR 47139) EPA proposed approval of New York's RACM Analysis and EPA extended the comment period for that proposal on October 16, 2001 (66 FR 53560). EPA is approving New York's RACM Analysis and has determined that there are no additional RACM's beyond those measures already included in the New York SIP that, when implemented, would advance the attainment date in the New York Metro Area from 2007 to an earlier year. However, EPA does believe that the control strategies considered in New York's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New York and other states in the Ozone Transport Region revisit these control strategies when they begin implementation of the 8-hour ozone standard.

F. 1-Hour Ozone Attainment Demonstration State Implementation Plan (SIP) Including Enforceable Commitments

On December 16, 1999 (64 FR 70364)), EPA proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP. EPA's December 16, 1999 proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP was contingent upon New York submitting the following:

• The adopted NO_X SIP Call program as a SIP revision;

• The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;

• Enforceable commitments to:

—Adopt additional control measures to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard;

—Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA;

—Adopt and submit intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions;

—Submit revised SIP and motor vehicle emissions budget if additional adopted measures affect the motor vehicle emissions inventory;

—Revise SIP and motor vehicle emissions budget within 1 year after MOBILE6 is issued;

—Perform a mid-course review and submit the results to EPA by December 31, 2003.

On April 18, 2000, New York submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area which addressed the requirements identified above. How New York fulfilled these requirements is discussed in more detail below.

(1) NO_X SIP Call Submittal

On November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059), EPA approved New York's regulations as complying with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules requiring source compliance by 2003, even though an order from the DC Circuit Court allowed that full implementation could be rolled back to 2004.

(2) Clean Air Act Measures and Control Measures Relied on in the Modeled 1-Hour Ozone Attainment Demonstration SIP

New York has adopted the control measures already required under section 182 of the CAA for the New York Metro Area. Table 3 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including Rate of Progress (ROP—plans which require emission reductions from 1990 through 1996) and RFP plans (plans which require emission reductions from 1996 through the attainment year of 2007) for the New York Metro Area. The reader is referred to EPA's November 3, 1999 (64 FR 59706) and August 13, 2001 (66 FR 42479) proposed approvals of New York's ROP and RFP Plans for a more detailed discussion of the control measures identified.

TABLE 3.—SUMMARY OF CONTROL MEASURES

Control measures	Type of measure
Non-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
New Engine Standards	Federal.
On-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
Tier I—New Vehicle Standards	Federal.
Low Emission Vehicle	State adopted and SIP approved.
Enhanced Inspection and Maintenance (I/M)	State adopted and SIP approved.
2004 NO_X Emission Standards	Federal.
Stationary Source control measures:	
VOC Reasonably Available Control Technology (RACT)	State adopted and SIP approved.
—Control Techniques Guidelines (CTG) major sources	
—Non-CTG major sources	
MACT (Federal Air Toxics Measures)	Federal.
Ozone Transport Commission (OTC) Phase II Baseline	State adopted and SIP approved.
NO_X RACT	State adopted and SIP approved.
NO_X SIP Call	State adopted and SIP approved.
Large Municipal Waste Combustors	State adopted and SIP approved.
Area Source control measures:	
Architectural and Industrial Maintenance Coatings	State adopted and SIP approved.
Auto Body Refinishing	Federal.
Commercial Bakeries	State adopted and SIP approved.
Consumer Products	Federal.
Graphic Art Facilities	State adopted and SIP approved.
Hospital Sterilizers	State adopted and SIP approved.
Municipal Solid Waste Landfills	State adopted and SIP approved.
Stage II gasoline vapor recovery	State adopted and SIP approved.
Transit/Loading Losses	State adopted and SIP approved.
Surface Cleaning	State adopted and SIP approved.

(3) Enforceable Commitments

Additional Measures To Further Reduce Emissions

On April 18, 2000 New York submitted an enforceable commitment to adopt additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70364) proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP and to submit those measures by October 31, 2001.

In addition, as a backstop, New York committed to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not adopted by the relevant states, and to submit such rules by October 31, 2001.

New York also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. In fact, New York has taken a leadership role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. New York plans to implement regulations consistent with the OTC recommendations, which include a consumer products rule, an architectural and industrial coatings rule, a mobile equipment refinishing rule, a solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are neither included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New York has begun its regulatory development process for these measures. EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions. See also section III. D. for an expanded discussion on New York's commitment.

Conformity Budgets

a. On April 18, 2000, New York committed to recalculate and submit a revised motor vehicle emissions budget if any of the additional emission reductions pertain to motor vehicle measures.

b. All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA issues MOBILE6. On April 18, 2000, New York submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year after MOBILE6 is issued.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and EPA has found them adequate. EPA is limiting the duration of its approval in this manner because it was only approving the attainment demonstrations and their budgets contingent on the states commitment to revise them after EPA issues MOBILE6. Therefore, once EPA has confirmed that the revised budgets are adequate, they will be more accurate to be used for conformity purposes than the budgets EPA is approving today.

In addition, EPA reopened the comment period to allow comment on the additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, including New York, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46387, July 28, 2000).

Mid-Course Review

On April 18, 2000, New York submitted an enforceable commitment to perform a mid-course review and submit the results of this review to EPA by December 31, 2003.

III. What Comments Were Received in Response to EPA's Proposals and How Has EPA Responded to Those Comments?

EPA received comments from the public on the Notice of Proposed Rulemaking published on December 16, 1999 (64 FR 70364) for New York's 1-hour Ozone Attainment Demonstration SIP.

In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs.

EPA also received comments on the August 13, 2001 (66 FR 42479) proposed approval of the New York RFP plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 11, 2001 (66 FR47139) proposed approval of the New York RACM Analysis.

A. Attainment Demonstration

1. General Comments

Comment: Several commenters urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all RACM and a control strategy sufficient to achieve attainment. One commenter went on to say that because they believe the plan should be disapproved under the consent decree in *NRDC* v. *Browner,* Civ. No. 99–2976, EPA must commence promulgation of a Federal Implementation Plan (FIP). One commenter supported the proposed approval.

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plan provided by the State of New York is fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2007, and that the plan includes all RACMs. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New York has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 parts per million (ppm) one-hour standard beyond 2007.

Response: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of part D of the CAA, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the CAA. Under section 181(a)(5), an area that does not have three-years of data demonstrating attainment of the ozone NAAQS, but has complied with all of the statutory requirements and has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS.

This position is consistent both with EPA's modeling guidance and with the structure of subpart 2 of the CAA. Under EPA's modeling guidance, states model air quality for the attainment year—they do not model air quality for the three-year period preceding the attainment year. As a function of how the model operates, the data produced only predicts the air quality for one year. EPA's modeling guidance has existed for many years and has been relied on by numerous nonattainment areas for demonstrating attainment of the ozone standard. Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 Clean Air Act amendments were required to adopt and implement RACT and I/M ''fix-ups'' that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15 percent ROP plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three-years of ''clean data.''

For the reasons provided above, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three-years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the New York Metro Area, all measures are being implemented as expeditiously as practicable and that the area has demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the New York Metro Area has three-years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the State to provide for maintenance of the standard at this time, we do believe emissions in the New York Metro Area will continue to decrease after 2007 due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''this attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, EPA allows states to supplement their photochemical modeling results with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W . . . is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment.* * *'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, Appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance [3] to update the 1991 guidance referenced in 40 CFR part 51, Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, a state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.* analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in

[1] The August 12, 1996, version of ''Appendix W to Part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

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

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.*, average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to reach attainment at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to reach attainment.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 proposals will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 parts per billion (ppb) on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to three exceedances in three years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the WOE determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, Appendix W, section 6.2.1.e. provides ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone in order to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 parts per billion during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: (1) it obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 proposal and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) There are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result of these limitations, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter and has determined that the 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. The values given do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, the local or regional control programs are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is issued. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment: The NAAQS require that in order to demonstrate attainment of the 1-hour NAAQS that no more than 4 ambient ozone concentrations exceed 0.12 ppm (235 micrograms per cubic meter) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no ''rounding convention.'' No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 grams per cubic meter). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New York SIP submission does not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

Response: Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR Part 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard.'' (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 ppm, not 120 ppb as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and *guidance* promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms * * *'' Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

B. Reliance on the NO_X SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area 1-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe area 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_X SIP Call reductions by May 2004. First, the court vacated the rule as it applied to two States—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_X SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

Comment: New York State Department of Environmental Conservation (NYSDEC) commented that EPA is proposing that the State submit the NO_X SIP Call prior to EPA's taking final action on the December 16, 1999 proposal. However, the State agency believes that it cannot submit a SIP until EPA publishes a correction to its ''Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone.''

Response: New York submitted this comment in early 2000, prior to the time EPA published a technical amendment (*see* 65 FR 11222, March 2, 2000), which revised the NO_X statewide emissions budget for New York and other affected states. Since that time, New York submitted its rule in response to the NO_X SIP Call rule and EPA approved the rule (66 FR 28059).

Comment: New York has decided to commit to the California Low Emission Vehicle Program (CA LEV II), rather than meeting EPA's Tier 2 tailpipe emissions program. The Department recommends that EPA's final rulemaking permit New York the option of modeling CA LEV II.

Response: EPA has permitted New York the option of modeling CA LEV II. On June 9, 2000 (65 FR 36690) EPA notified the public that EPA has found that the motor vehicle emissions budget for VOC's and NO_X, in the submitted 2007 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area, is adequate for conformity purposes. New York's motor vehicle emissions budget reflects the results of a modeled CA LEV II program.

C. Comments on RACM

1. General RACM Comments

Comment: Several commenters have stated that there is no evidence that New York has adopted RACM or that the SIP provides for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the motor vehicle emissions budgets submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the State must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the New York Metro Area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs'').

However, New York supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 15, 2001 and adopted revision submitted on October 1, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 11, 2001 (66 FR 47139). Based on this supplement, EPA concluded that the SIP for the New York Metro Area meets the requirement for adopting RACM.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to reach attainment as expeditiously as practicable. EPA previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

On June 15, 2001, New York submitted a proposed analysis of RACM for the New York Metro Area which was adopted after public hearing on October 1, 2001 without substantive changes. The RACM analysis included an evaluation of potential TCMs for on-road mobile sources, potential control measures for point, area and off-road sources, and other non-TCM on-road control measures.

New York determined that there are no additional control measures, above and beyond what the State is already implementing, that would advance the 2007 attainment date specified in the CAA for severe ozone nonattainment areas, because the reductions from any potential RACM measures in the short-term are small compared to the reductions that will be achieved by 2007 through measures that are already in place or through measures which the State has previously committed to implement. In fact, the New York 1-hour

Ozone Attainment Demonstration SIP for the New York Metro Area, the 15 percent ROP plan, and the continuing 3 percent per year RFP emission reductions, already require emission controls on a wide variety of sources. Nevertheless, New York clearly states that there is nothing within its RACM assessment that precludes it from adopting the measures discussed in the assessment for the purpose of meeting the requirements for motor vehicle transportation conformity, attainment of an 8-hour ozone standard or any other air quality standard, and control of certain air toxins, or for any other reason to protect public health. In fact, over the period beyond the attainment date, some of these strategies may provide significant benefit. In some instances, there are efforts already underway to implement some strategies.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the New York Metro Area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that New York itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

EPA previously responded to comments concerning the adequacy of motor vehicle emissions budgets when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at *http://www.epa.gov/otaq/transp/conform/reg2sips.htm#ny.*

Comment: A commenter stated that New York State's submission fails to demonstrate how implementation of the two RACM it considered (referring to a construction/ozone action day program and alternate fuel program) and the other RACM is summarily dismissed from consideration, when taken together, would not advance the ozone attainment date. The commenter states that New York uses an arbitrary threshold value for screening individual control measures.

Response: New York's analysis of potential RACM considered information from the following sources:

1. Section 108(f) of the CAA
2. A list of control measures completed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO)
3. Ozone attainment suggested shortfall measures developed by the Ozone Transport Commission (OTC)
4. Control measures implemented through the California Federal Implementation Plan
5. Control measures implemented in other serious and severe ozone nonattainment areas
6. Control measures suggested by commenters during public comment periods on New York's attainment SIP, and
7. Transportation Control Measures analyzed by the New York State Department of Transportation (NYSDOT) in a document entitled, ''NYSDOT Conformity Measure Analysis''

New York's analysis summed the VOC and NO_X potential emission reductions from the numerous possible measures, including all the reductions from all the measures identified in the NYSDOT study. New York's analysis of TCM's examined the potential emissions reductions from measures included in the documents listed previously. Although, New York did establish a threshold value for screening individual control measures, EPA in its review for approvability, reanalyzed the measures identified by New York as having potential emission reductions and supplemented New York's rationale on why we believed certain measures could be rejected as RACM. In its review of the potential emission reductions identified by New York, EPA, as did New York, rejected measures as not being RACM because they either would not advance the attainment date (when combined would produce only a negligible amount of emission reductions), would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs.

The combination of measures examined by New York indicate potential reductions, but it is important to note that the estimate did not consider practical limitations in their implementation prior to 2007. Unfortunately, many of the actions needed to bring these measures to full fruition cannot be fully implemented in time to advance the attainment date from 2007 to an earlier year. For the NYSDOT study in particular, the measures are currently under interagency review and represent values at the maximum potential emissions reduction range and not values that could potentially be achieved before 2007. For instance, the NYSDOT study estimated significant potential emission reductions associated with a construction/ozone action day program. However, NYSDOT in estimating the emission reductions, did not consider significant issues which need to be addressed before it can be considered a RACM for the 1-hour ozone standard. These include analyses of: (1) Quantity of night-time construction that already takes place to ensure that emission reduction benefits are not ''double counted;'' (2) air quality impacts to ensure that the night-time emissions for New York are not contributing to ozone problems in downwind nonattainment areas; (3) air pollutant emissions from generators needed for lighting and supporting night-time activities; (4) costs associated with implementing the construction/ozone action day program; and (5) the estimated number of ozone action days based on exceedances of the 1-hour ozone standard and not an 8-hour standard. These considerations would substantially reduce the emission reductions for a construction/ozone action day program.

On a related note, New York's analysis of the impact of alternate fuel-consuming vehicles examined the benefits associated with conversion of all government vehicles in the New York Metro Area, regardless of vehicle weight, age or function, to use fuels which exhibit fewer emissions than gasoline-consuming vehicles. While New York identified significant potential reductions associated with an alternate fuels program, there is a lack of sufficient infrastructure currently in place for supply of alternate fuel for all government fleets. In addition, the analysis double counts reductions from vehicles that have already been converted. The New York City Department of Transportation currently only has two compressed natural gas (CNG) bus refueling stations capable of handling 200 buses each, with plans to convert five more stations by 2005. This would give a total capacity of seven stations for 1400 buses, out of a fleet of 3000 buses available for conversion. Moreover, the analysis does not recognize that existing non-CNG buses may have a useful life that extends beyond 2007 and that it may not be economically feasible to replace these buses before completion of their useful life. The promise of substantial emission reductions associated with this measure is contingent on a phase-in period for fleet vehicle turnover and further infrastructure development, which can be achievable, but not in time to advance attainment by 2006 or sooner. Therefore, this measure cannot be considered a RACM for the 1-hour ozone standard. Nevertheless, EPA believes alternate fuels for government vehicle fleets does offer potential emissions reductions to help achieve long-term environmental benefits.

New York's RACM Analysis and EPA's evaluation of their analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

2. RACM Requirements (Comments on EPA's October 16, 2000 Notice of Availability)

The following comments are similar to comments EPA received in response to its October 16, 2000 Notice of Availability (65 FR 61134). Notice was given that EPA performed an analysis to evaluate emission levels of NO_X and VOC and their relationships to the application of current and anticipated control measures expected to be implemented in four serious 1-hour ozone nonattainment areas. Although the New York Metro severe ozone nonattainment area was not included in EPA's October 16, 2000 Notice of Availability, the commenter resubmitted these comments in response to EPA's September 11, 2001 (66 FR 47139) proposed approval of New York's RACM analysis because they believe that the comments are appropriate to New York's RACM analysis.

Comment: Inappropriate grounds for rejecting RACM. The commenter claims that EPA's bases for rejecting measures as RACM are inappropriate considerations: (a) The measures are ''likely to require an intensive and costly effort for numerous small area sources''; or (b) the measures ''do not advance the attainment dates'' for the areas, 65 FR 61134. Neither of these grounds are legally or rationally sufficient bases for rejecting control measures. The commenter further states that motor vehicle Inspection and Maintenance (I/M) requires intensive and costly effort and Congress mandated it.

Response: The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general. Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be ''as expeditiously as practicable but no later than * * * '' the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560. EPA has consistently interpreted the CAA as requiring only such RACM as will provide for expeditious attainment since the Agency first addressed the issue in guidance issued in 1979. See 44 FR 20,372, 20,375 (April 4, 1979).

The term ''reasonably available control measure'' is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the states and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that states can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the time needed to develop rules will vary. Such development will likely take much longer for a large number of very different source categories of small sources for which little control information may exist, than for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time it takes a state to develop rules the less likely the possibility that the emission reductions from the rules would advance the attainment date. New York has determined and we agree that such additional measures in the New York Metro Area could not be developed soon enough to advance the attainment date.

In reference to I/M, Congress never mandated it as RACM but rather required it separately and EPA disagrees that I/M is not economically feasible, in fact we think it is relatively cheap for the resulting emission reductions.

Comment: Congress ratified EPA's 1979 RACM guidance as interpreted in the *Delaney* v. *EPA*, 898 F.2d 687 (1990) case. This decision indicates Congress' intent that states should include control measures in a SIP unless the state determines that such measures are not reasonably available.

Response: EPA changed that guidance in the 1992 ''General Preamble'' to remove the presumption that section 108(f) of the CAA measures were RACM and to clarify that areas only need such RACM as will advance attainment, see 57 FR 13498, 13560–61.

Comment: Although EPA does not articulate a dividing line between its perception of ''small'' and ''not small'' reductions, it does assert that the range of reductions it predicts from the RACMs analyzed in the October policy proposal are ''relatively small.'' These ranges are 2.03 to 29.7 tons per day of VOC and 3.56 to 17.07 tons per day for NO_X. EPA has granted (or proposed to grant) emission reduction credit of comparable or even smaller magnitude for other measures that are included in these SIPs.

Response: EPA has approved emission reduction credits of comparable or even smaller magnitude where New York has adopted certain measures and submitted them as part of SIP revisions, however, EPA has never said that those measures were required as RACM.

Comment: The mandate that nonattainment area SIPs contain all RACM is set out as a separate and distinct requirement in the CAA from the requirement that SIPs provide for attainment of ozone standards as expeditiously as practicable. Congress intended that the RACM requirement serve objectives beyond merely attaining the NAAQS. Plans are also required by section 110(a)(1) of the CAA to maintain the NAAQS.

Response: Areas, including the New York Metro Area, have met the ROP and RFP requirements and will have to show maintenance if they request redesignation. The SIP being approved today is designed to show attainment of the 1-hour ozone standard and the RACM requirement is keyed to expeditious attainment not ROP or maintenance.

Comment: Failure to quantify reductions needed to reach attainment sooner: Even if advancement of the attainment date were a relevant test for RACM, EPA has failed to rationally justify its claim that additional control measures would not meet that test. To begin with, neither the Agency nor the states have quantified, in a manner consistent with EPA rules and guidance, the emission reductions that would be needed to attain the standard prior to achievement of emission reductions required under the NO_X SIP Call. Nowhere is there an analysis that shows what it would take to attain in 2004, 2005, 2006 or 2007. This comment generally repeats a comment provided on EPA's October 12, 2000 Notice of Availability proposing EPA's RACM action for the three areas of Atlanta, Washington DC and Springfield, MA.

Response: First, note that while the commenter makes reference to the NO_X SIP Call, on November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059) EPA approved New York's regulations to comply with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules with full compliance by 2003, even though a decision by the DC Circuit Court allowed that full implementation could be rolled back to 2004. These NO_X control measures in New York are thus being implemented on a more expeditious schedule and as expeditiously as is practicable.

Further, it would be futile for New York to attempt to quantify the emission reductions that could be possible for the New York Metro Area to attain prior to the 2007 deadline. With all of the adopted control measures, and with the enforceable commitments to achieve the additional 85 tons/day of NO_X emission reductions needed for attainment in the New York-Northern New Jersey-Long Island severe ozone nonattainment area, plus the necessary reliance upon Federal measures, including the amount of cleaner on-and off-road vehicles that will enter the fleet in years prior to 2007, there are simply no additional measures that EPA is aware of that are reasonably available or economically feasible that could be implemented, much less implemented in time, to achieve attainment in advance of when the measures are being implemented in this plan. Thus, EPA does not believe that any additional measures could advance the attainment date.

Comment: Inadequate RACM analysis: The commenter states that EPA's RACM analysis is grossly inadequate in several key respects. This comment has several components which are summarized and addressed in (a) through (c) below.

Comment (a): EPA's analysis fails to provide the technical basis and calculations by which it developed its emission reduction estimates for various measures. EPA failed to provide citations to the literature regarding estimates of emission reductions for various TCMs. EPA failed to specify the level of implementation assumed for some of the TCMs in the analysis. The proposal published for New York suffers from the same deficiency. EPA identifies no analysis of the emissions reductions benefits achievable from the eight evaluated measures, does not discuss any emissions reduction estimates in the proposal, and cites no technical support document for the proposal.

Response (a): EPA's RACM analysis (found at *www.epa.gov/ttn/rto*) did provide the technical basis and calculations for its emission reduction estimates for control possible for the source categories in the emission inventory. The commenter apparently believes EPA's analysis is insufficient, however. The technical basis for the analyses and the assumptions used in the calculation of estimated emission reductions were derived from a review of the literature on the implementation and effectiveness of TCM's.[5] The TCMs evaluated depend on the level of implementation. Implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the midpoint level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective. EPA reviewed all potential TCMs at a mid-level of implementation and concluded that together they would not advance the attainment date.

In reference to the RACM analysis performed by New York, EPA evaluated New York's technical basis and estimates of potential emission reduction benefits for controls possible for all of the source categories. Regarding the TCM category, we provided an additional technical evaluation when reviewing New York's analysis for approvability. In conclusion, we determined that at a reasonable level of implementation, all potential categories of TCMs taken

[5] Transportation Control Measures: State Implementation Plan Guidance, US EPA 1992; Transportation Control Measure Information Documents, US EPA 1992; Costs and Effectiveness of Transportation Control Measures: A Review and Analysis of the Literature, National Association of Regional Councils 1994.

together would not be sufficient to advance the attainment date.

Comment (b): EPA's analysis looks at only a small universe of potential measures, and does not evaluate all of the measures identified in public comment and other sources.

Response (b): EPA's RACM analysis was intended to address all categories of stationary and mobile sources that could potentially provide additional emission reductions that might be considered RACM. The EPA believes that all identified measures were included in the categories addressed in the analysis, and EPA concluded on this basis that all measures together would not advance attainment.

Comment (c): EPA's analysis also completely fails to consider the additional benefits likely from combined implementation of complementary TCMs e.g., parking management along with transit improvements. It is arbitrary and irrational for EPA to assume that these measures can and will be implemented in complete isolation from one another.

Response (c): EPA recognizes that many control measures—particularly TCMs—are more effective if done in conjunction with others. EPA maintains, however, that it would be impossible to analyze a seeming infinite set of combinations of measures for possible benefits. The EPA's analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

Comment: Transportation Control Measures as RACM: EPA gives virtually no consideration to the emission reduction benefits of transportation programs, projects and services contained in adopted regional transportation plans (RTPs), or that are clearly available for adoption as part of RTPs adopted for a nonattainment area. In addition, it is arbitrary and capricious for EPA not to require as RACM economic incentive measures that are generally available to reduce motor vehicle emissions in every nonattainment area.

Response: EPA's notice of availability of the RACM analysis (65 FR 61134, October 16, 2000) does consider transportation programs, projects and services that are generally adopted, or available for inclusion in a nonattainment area's regional transportation plan (RTP) and Transportation Improvement Program (TIP). The RACM analysis includes seven broad categories and twenty-seven subcategories of TCMs that represent a range of programs, projects and services that can be included in RTP's and TIP's. The inclusion of a TCM in an RTP or TIP does not necessarily mean that it meets EPA's criteria for RACM and must be included in the SIP.

Some of these TCMs, such as parking cashout, transit subsidies, and parking pricing, are explicitly economic incentive programs. Furthermore, these categories of TCMs, as well as most of the others, could be infinitely differentiated according to criteria, such as the method of implementation, level of promotional effort or market penetration, stringency of enforcement, etc. The application of economic incentives to increase the effectiveness of a TCM is one such criterion. These implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the mid-level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective.

Also, there are many important reasons why a state, regional, or local planning agency might implement TCMs in an integrated traffic management plan beyond whatever air quality benefits the TCMs might generate, including preserving open space, watershed protection, avoiding sprawl, mitigating congestion, toll collection efficiency, and ''smart growth'' planning. So the fact that TCMs are being implemented in certain ozone nonattainment areas does not necessarily lead one to the conclusion that those TCMs represent mandatory RACM measures when they are analyzed primarily for the purpose of determining whether they would advance the ozone attainment date.

3. Point Source NO_X Controls

Comment: A commenter suggested energy efficiency improvements are not just for residential and commercial buildings and suggested savings could be achieved by more efficient motor and drive systems.

Response: EPA agrees that improved energy efficiency is a desirable method of reducing air emissions. NYSDEC and the New York State Energy Research and Development Authority (NYSERDA), are pursuing energy efficiency programs for residential and commercial buildings, and for other sources, such as electric and hybrid vehicles, industrial source process improvements, high efficiency display lighting and motor control efficiency upgrades. NYSDEC has also set aside allowances in 6 NYCRR Part 204 (NO_X Budget Trading Program) for energy efficiency/renewable energy, to encourage such projects.

Comment: Just as Integrated Resource Planning (IRP) for electric utilities resulted in demand side management programs that conserved electricity, IRP for natural gas utilities will have the same impact on conserving natural gas usage and resulting emissions. A number of states have effectively implemented IRP for natural gas.

Response: EPA agrees that improved energy conservation—regardless of the form of energy—is a desirable method of reducing air emissions. Since such measures would likely have to rely on voluntary efforts, the State would have to estimate the effect on emission reductions that would result. Putting in place even a voluntary effort to conserve natural gas that could be quantified in terms of its emission reduction benefits would likely require a significant amount of time. EPA believes it is unlikely—given the time spent on the bulk of the SIP—that the State would have had the time to develop such a quantifiable voluntary program that would have yielded enough NO_X reductions to advance the attainment date. Furthermore, it appears unlikely that such a quantifiable program could be put into place in sufficient time to advance the attainment date given the resources that the State will have to spend over the next several years simply developing and adopting the emission controls to make up the NO_X emission reduction shortfall. Therefore, EPA believes that this measure is not a reasonably available control measure at this time for the New York Metro Area.

Comment: The NYSDEC should establish the same requirements for new and existing stationary diesel engines in the New York Metro Area that are not used exclusively during infrequent emergency or backup situations.

Response: New York's 6 NYCRR 227–2 (Reasonably Available Control Technology for Oxides of Nitrogen), establishes RACT for all major sources of NO_X, including stationary diesel engines and peak shaving units. NYSDEC is currently revising this regulation to apply stricter controls on existing and new engines. EPA will review these stricter controls after New York submits them to EPA as a SIP revision.

4. Mobile Source Control Measures

Comment: A key presumptive RACM that New York has overlooked is diesel retrofits. Heavy-duty on-road and non-road diesel vehicles can be readily retrofit to reduce emissions of NO_X. Retrofit technologies are proven to be cost-effective, can be implemented on a fairly short timeframe and can reduce NO_X by as much as 90 percent. The Carl Moyer program in California and EPA's own voluntary diesel retrofit program have achieved impressive and cost-effective NO_X reductions. New York's failure to even consider or analyze the reasonableness of diesel retrofit measures is unlawful.

A similar comment made stated that retrofit controls on construction equipment could produce emission reductions that amount to ⅔ to ¾ of the 6.2 tons per day (tpd) VOC and 29 tpd NO_X reductions associated with construction stoppages on ozone action days and day time work bans in the NYSDOT Conformity Measure Analysis.

Another similar comment was made concerning control of construction equipment. The commenter pointed out that as stated in an ENVIRON report for the NYSDEC (Pollack, Tran and Lindhjem, 1999), more than half of all construction projects in Texas are completed to provide public infrastructure (*i.e.*, road building, public works, etc.). Most of these federally and state-funded projects are managed by state agencies. Given this, the NYSDEC should incorporate an environmental standard into contract specifications for construction projects managed by state agencies.

Response: Retrofit of heavy duty diesel vehicles is already an ongoing practice in the New York Metro Area, specifically with regard to the transit bus fleet of the Metropolitan Transportation Authority (MTA). To date, the MTA has retrofitted several hundred diesel buses with advanced catalyst particulate filter systems and has plans to retrofit the remainder of its fleet in the future. While MTA has found that its retrofit project is successful in reducing certain pollutants of concern such as particulate matter, the technology it is employing is not effective in reducing emissions of NO_X. Although retrofit technology exists which can be effective in reducing NO_X, it is not as cost effective or as demonstrated as other established diesel retrofit technologies. EPA agrees that while there is promise for this technology to be used effectively in the future, for example, as a measure which may be effective in helping the State meet the future 8-hour ozone standard, highway diesel retrofit technology to reduce NO_X, because it is not cost effective, can be dismissed at this time as a potentially available RACM by the State.

Regarding the 29 tpd NO_X reduction cited in the above comment, the State's calculation was based on a program of increased purchase and phase-in of construction equipment/engines that are less polluting. All information with regard to feasibly available diesel retrofit equipment gathered by the State indicated no reductions in NO_X and a maximum of 50 percent reduction in VOCs that could be associated with this potential measure. The NYSDOT Conformity Measure Analysis, in which this potential RACM was analyzed, did not assume complete participation for the entire New York Metro Area because of the inherent difficulties and uncertainties in voluntary compliance with a retrofit program which would make it infeasible on such a comprehensive basis. Even with the maximum potential VOC reduction associated with the technology as determined by the State, the estimated VOC reductions suggested in the above comment could not be approached without full participation of all private as well as publicly owned equipment, which as noted, New York did not consider reasonable. Additionally, the suggestion of incorporating an environmental standard into contract specifications for construction projects managed by state agencies would not increase the estimated benefits because New York already assumed retrofit of all equipment used in government projects in its analysis. Based on the State's analysis, EPA is in agreement with the State that retrofit of construction equipment can be rejected as a RACM because at a reasonable level of implementation it would not produce significant NO_X reductions.

Comment: Widespread implementation of time of day tolls would produce reduced air pollution emissions both by reducing vehicle miles of travel and reducing congestion delays for the remaining traffic. The SIP should include as a reasonably available transportation control measure value or congestion pricing and toll system automation. The toll authorities in the region have already demonstrated the potential for these measures by steps that include:

• Achieving more than 75 percent market penetration among regular commuters in the use of the electronic EZ-Pass transponder for non-stop toll collection on a number of major bridges, tunnels, and toll highways in the New York/New Jersey region.

• The full automation of truck tolls at Spring Valley on the New York Thruway,

• The successful introduction of time-of-day tolls on trans-Hudson bridges and tunnels and the New Jersey Turnpike in 2000–2001, resulting in reduced peak period traffic

• The dedication of a significant portion of revenues from bridge and tunnel tolls to pay for enhancements to transit services and related travel options in the tolled corridors.

The full automation of existing toll booths could provide further emission reductions. For congestion pricing to be most effective on major bridges and tunnels in the metro area the Port Authority and other facility operators should reinstate two-way tolling, which was abandoned in the past because toll booths were major congestion points. Now with EZ-pass this is no longer the case for the large majority of commuters who have the EZ-pass tags.

In the wake of the September 11, 2001, tragedy and the subsequent traffic delays caused by increased security measures, New York City Mayor Giuliani ordered a ban on the entry of solo drivers of non-commercial vehicles into Manhattan on bridges and tunnels south of 63rd Street during morning rush hours. This has led to a significant drop in traffic entering Manhattan. The Manhattan carpool rule has dramatically cut congestion and traffic entering Manhattan, cutting air pollution and proving popular with most city residents and workers. The SIP should consider continuation of this rule as a transportation control measure. The SIP should consider opportunities to relax the rule by allowing solo motorists entry to Manhattan on the affected bridges and tunnels if they pay a premium time-of-day toll which would generate revenue to pay for enhanced transit options.

Response: Emission reduction estimates for congestion pricing, e.g., time of day tolls, reported in the State's RACM Analysis are necessarily based on existing sources of information (local or other area program results, studies, EPA documentation) which allow quantification of potential benefits. New York's analysis of congestion pricing as a potential RACM was based, in part, on the same information discussed by the commenter, *i.e.,* a 7 percent reduction in traffic on Port Authority bridges and tunnels in the 6–9am commuter rush hours. The State's analysis included an extrapolation to assume a 7 percent reduction in total vehicle miles traveled (VMT) in the entire New York Metro Area. The potential NO_X and VOC emission reduction estimated by the

State for this measure included an assumption used previously in other areas regarding the effects of shifting emissions out of one time period into another. Based on its analysis using available data and assumptions, the State concluded that potential emission reductions were not sufficient to advance the attainment date to 2006. EPA is in agreement with the State's methodology and consequent rejection of this measure as a RACM.

The commenter suggests that full automation of existing tolls such as EZ-pass technology could provide further emission reductions. The commenter points out that substantial market penetration among regular commuters has already been achieved. While New York is currently working with other states to increase the use of EZ-pass throughout the northeast region, full automation cannot be reasonably achieved since a certain fraction of the motoring public will choose not to purchase EZ-pass, and both New York and EPA conclude that 100 percent participation cannot be considered a reasonable or feasible goal for the program.

Regarding the commenter's suggestion that the current ban on entry of solo drivers of non-commercial vehicles into Manhattan south of 63rd street should be continued as a RACM, which was put in place subsequent to the terrorist attacks of September 11, 2001, that ban was not in place and thus could not be considered at the time the State performed its RACM analysis in June 2001. Furthermore, the ban is a direct result of problems the City encountered and is attempting to avoid as a result of the attacks and their aftermath, which were and are not normal or reasonable occurrences; therefore the State could not have been expected to consider it a reasonably available measure at the time it conducted the RACM analysis. However, in rebuilding lower Manhattan after the disaster, EPA expects that state and other regional agencies will give consideration to mass transit and roadway modifications which will better accommodate new traffic and commuting patterns which will ultimately result in reduced emissions in the future. These modifications may become an integral part of the State's plan to meet the future 8-hour ozone standard.

Comment: Two commenters suggested that 15 ppm sulfur gasoline and low sulfur diesel should be adopted in the New York Metro Area as a reasonably available control measure.

Response: The CAA preempts states from establishing state fuels under section 211(c)(4)(A). Waivers from preemption are possible under section 211(c)(4)(C) if the state can show necessity for that fuel to meet the NAAQS, and if no other reasonable or practicable non-fuel measures exist that could be implemented in place of a state fuel. For a state to obtain a waiver of preemption, an acceptable demonstration must be submitted to EPA that can justify the need for a particular state fuel. This provision of the CAA was included to discourage the development of a patchwork of fuel requirements from state to state. When other states, such as Texas, have considered implementing fuel programs which control sulfur levels such as 15 ppm sulfur gasoline, they determined that excessive costs when compared with the emissions benefit, the difficulties in producing a boutique fuel, and anticipated distribution problems made such a measure unreasonable. Furthermore, state-adopted gasoline and diesel sulfur control programs would directly conflict with on-going efforts to comply with the federal low-sulfur requirements for those fuels which will be implemented beginning in 2004 and 2006, respectively. When considering this measure, Texas only projected a 1.15 tpd of emission reduction from the institution of 15 ppm sulfur gasoline at an estimated cost of over $500,000 per ton to consumers. Because of the general preemption in the CAA and the low projected cost effectiveness, EPA does not consider this fuel requirement to be a RACM for New York at this time.

Comment: One commenter suggested that public and large commercial fleets be required to have low emitting vehicles.

Response: New York, in exercising its option under section 177 of the CAA, adopted the first and second phases of the California Low Emission Vehicle (LEV) program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 6,000 pounds gross vehicle weight rating for vehicle model years 1994 and later. Also as allowed under the CAA, New York chose to use a substitute measure to meet its clean fuel fleet requirements, and did so with the California LEV program. EPA approved New York's SIP revision using the LEV program as an opt out because it demonstrated that it would assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized from the federal clean fuel fleet program. Moreover, a clean vehicle program limited to large fleets would affect a much smaller subset of vehicles than the LEV program currently applicable in New York. New York's LEV program, which is already accounted for in its ozone SIP, is a statewide program affecting the sale of all light duty vehicles. New York's implementation of its LEV program and inclusion in the SIP precludes it from consideration of the suggested commercial LEV program as RACM.

Comment: One commenter suggested New York institute an auto license fee tied to actual vehicle NO_X emission rates.

Response: EPA is not aware of any area where this type of measure has been instituted or even thoroughly considered. This brings to mind a host of legal and implementation issues. Moreover, it is not clear how much emission reductions could be achieved and at what fee levels. Furthermore, there is a lack of information on the localized costs and benefits of this program. Consequently, EPA believes that this cannot be considered a RACM for New York.

Comment: One commenter suggested the following measures to achieve additional emission reductions from aircraft operations: (1) Mandatory Powering of Jets at gates with Electric Power (2) Reduced Idling on the runway (3) Congestion Pricing at Rush Hours at Airports.

Response: The Port Authority of New York/New Jersey is the jurisdictional agency and landlord for the New York City metropolitan airports. The State of New York alone does not have the authority to require airport gates to supply electricity to aircraft for powering. Therefore, while this measure has promise in the future as a potential important source of emissions reductions, the State can not consider gate electrification or other airport modifications which are under the control of the airport landlord agency as RACM available to it. Similarly, although planning of airline operations during rush hours to reduce idling on runways to reduce emissions may have merit, New York does not have the authority to impose regulations on airlines to require this planning. The Federal Aviation Administration has jurisdiction over airline operations once the aircraft leaves the gate and State regulation is pre-empted. Additionally, since the State has no authority to control airline operations, and congestion is a function of the higher level of operations during rush hours, congestion pricing is likely to place an unnecessary economic burden on the traveling public with no air quality benefits. State controls on pricing are expressly preempted by the Air Deregulation Act. Therefore, EPA concludes that such measures are not reasonably available.

Comment: A number of specific TCMs and economic incentive programs to reduce VMT were identified by various commenters. These include: telecommuting, satellite offices, college/university traffic control measures, bike and walk pathways, increased government use of the web, voluntary no drive days, trip reduction ordinances, employer based transportation management, road pricing, ride share incentives, insurance pricing, commuter choice, parking cashout, taxes on paid parking, congestion pricing, incentives for transit oriented development and improved incident response.

Response: EPA does not believe it is necessary, or even practically possible, to evaluate every level of implementation of TCMs in order to adequately determine if they are reasonably available. EPA notes that the TCM measures listed above are either being encouraged or a similar measure is being implemented in the New York Metro Area as part of the commuter choice program such as telecommuting, ride share incentives, and employer based transportation management. New York has identified emission reductions from TCMs, however, New York determined that it is not feasible for these measures to advance the attainment date in the New York Metro Area. EPA agrees that the small amount of additional reductions that could reasonably be achieved would not advance attainment. Therefore, EPA agrees with New York's conclusion that such measures are not required as RACM.

Comment: The 2022 Metropolitan Transportation Plan and TIP devote an increasing share of scarce funds over time to projects that exacerbate sprawl, traffic, and pollution growth, while shortchanging projects to improve air quality and expand travel choices. Reallocating MTP/TIP funds could allow the region to meet CAA requirements for timely attainment of air quality while improving mobility for the citizens of the region.

Response: It is unclear whether or not the commenter is referring to a transportation plan in the New York area; the long range regional transportation plan (RTP) of the New York Metropolitan Transportation Council (NYMTC), which is the New York portion of the New York City region's federally designated metropolitan planning organization (MPO), terminates with the year 2020, not 2022 and it is referred to as ''Mobility for the Millennium,'' not the ''Metropolitan Transportation Plan.'' Only NYMTC, which is comprised of several government agencies and transportation providers in the region, has the authority and responsibility to allocate or reallocate funds for projects in its transportation plans; the State does not have this authority. As it works to conform its transportation improvement program with the State's SIP, NYMTC has and will continue to give high priority to those projects which are air quality-beneficial. However, at the least because it lacks the authority to do so, EPA believes this suggested measure should not be considered a RACM available to the State for the purpose of advancing the attainment date.

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because not all of the emissions reductions assumed in the demonstrations (a) have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP. Also a commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions. The commenter indicated that New York submitted an enforceable commitment on April 18, 2000 to participate in the OTC process and to adopt measures by October 31, 2001. Although New York did participate in the OTC process, the deadline for choosing and adopting shortfall measures has come and gone. So far, New York has not submitted anything to EPA which states which control measures New York plans to use to address the shortfall. Nor has New York adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New York for the New York Metro Area, the commenters contend that the 85 tons per day VOC and 7 tons per day of NO_X gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Although the submittal consists in part of commitments, New York has not yet actually adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New York. Thus, New York has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the commenter points out the submittal also does not meet the definition of a ''full attainment demonstration SIP,'' in a current consent decree EPA entered into in *NRDC* v. *Browner*, cir. 99–2976 (D.Ct. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New York 1-hour Ozone Attainment Demonstration SIP by that date.[6] The commenter believes that for these reasons, EPA should reject the New York 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[7] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3)

[6] Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

[7] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp.1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97—6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the CAA, which starts an 18-month period for the state to begin implementation before mandatory sanctions are imposed.

whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New York does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP (see 66 FR 42479, August 13, 2001). New York's RFP plans, discussed above, demonstrate RFP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved State measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast States that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For New York's attainment demonstration for the New York Metro Area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with the area's ability to meet the 2007 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.*, 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State implementation plan for New Jersey). Nothing in the CAA speaks directly to the approvability of enforceable commitments.[8] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the CAA.'' (Emphasis added). Section 172(c)(6) of the CAA requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date* * *'' (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to reach attainment. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the New York Metro Area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). EPA does not believe that case is directly applicable here, because the commitments made here are limited. EPA agrees with the Court that other provisions in the CAA contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the attainment plan. For the New York Metro Area, the commitment addresses only 9.1 percent and 0.8 percent of the total VOC and NO_X emissions reductions , respectively, necessary to attain the standard. A summary of the adopted control measures and other components credited in New York's attainment demonstration submission are discussed in section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001 recommended a set of control measures. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

The third factor, EPA has considered in determining to approve limited commitments for the New York attainment demonstration is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors, such as the need to consider innovative control strategies or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the

[8] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a state may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the state, the CAA provides that the conditional approval will convert to a disapproval if ''the state fails to comply with such commitment.''

necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes.

As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See e.g., 64 FR 70364. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007.

EPA still believes that New York, consistent with the memoranda of understanding signed by Carl Johnson, Deputy Commissioner, NYSDEC, will propose, adopt and implement the identified control measures. The actual OTC regulation development process took longer than EPA anticipated—15 months of the 22 months that EPA had thought the complete effort (*i.e.,* OTC process and state adoption) should take. This left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New York did not make its submission by the October 31, 2001 deadline, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.* sections 179(a) and (b) and 304) to ensure New York completes the adoption process.

New York is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures well within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions.

The enforceable commitments submitted by New York for the New York Metro Area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because New York has obligated itself to submit the rules by specified short-term dates, the states commitment is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and section II of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the New York SIP meets the NRDC Consent Decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

Comment: One commenter raises concerns regarding the enforceability of New York's commitment to adopt and submit the additional control measures to achieve additional emission reductions necessary for attainment. Specifically, the commenter is concerned that the lack of specific identified measures and specific identified emission reductions associated with those measures undercuts their enforceability. The commenter suggests that the commitments made by New York are more ''discretionary'' than the types of commitments that courts have enforced in the past because these State's commitments do not identify specific measures.

Response: EPA believes that the CAA provides for enforcement of the terms of an approved SIP. *See e.g.*, CAA 304(a)(1) and (f). Thus, in a case where a state commits to adopt a specific control strategy that will achieve a specific level of reductions by a specific date, the Court may require the State to take action to adopt that measure and achieve the prescribed level of reductions. In the case, such as here, where the State commits to adopt and submit by a specific date measures to achieve a certain level of emission reductions, the Court may order the State to adopt measures to achieve that level of reductions. Simply because the State retains authority regarding the precise mix of controls that it may adopt, does not interfere with the enforceability of the commitment to achieve the level of reductions necessary for attainment. EPA has determined that there are sufficient available controls to achieve the level of reduction to which the State has committed. This determination is supported by the recommendation of the OTC regarding specific controls. Thus, EPA believes that the commitment submitted by New York is enforceable by EPA and citizens and that a court could order the State to adopt control measures that will achieve the level of reductions necessary for attainment.

Comment: One commenter suggested several changes to the enforceable commitments in the New York 1-hour Ozone Attainment Demonstration SIP. In particular, the commenter believes that because the various commitments are scattered throughout the State's submission, it is difficult to assess what the State is required to do. In addition, the commenter suggests that the State adopt additional specific language as part of its commitments.

Response: EPA has identified in section II. F. in this notice the specific commitments made by New York that are being approved in this rulemaking. This should eliminate confusion regarding the enforceable commitments being relied upon for approval of the attainment demonstration. The specific language changes proposed by the commenters are not necessary for approvable enforceable commitments. EPA believes the current submission complies with the requirements of sections 110, 172 and 182 of the CAA and that such commitments are enforceable by EPA and citizens under CAA sections 113, 304 and 179(a).

Comment: EPA must reject any efforts to relax effective control measures on the books before New York eliminates the identified shortfall in emission reductions.

Response: Section 110(l) of the CAA governs EPA's review of a SIP revision from a state that wishes to make changes to its approved SIP. This section provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Therefore, if we receive an attainment demonstration SIP revision from New York that contains relaxed control measures or the replacement of existing control measures, we would consider the revised plan's prospects for meeting the current attainment requirements and other applicable requirements of the CAA. If we receive a SIP revision that meets our completeness criteria, we will review it against the statutory requirements of section 110(l). Further, the CAA requires us to publish a notice and to provide for public comment on our proposed decision. EPA believes that it is in the context of that future rulemaking, not EPA's current approval, that the commenter's concern regarding the appropriateness of any replacement measures adopted by the State should be considered.

Comment: The mid-course review process outlined by New York is not a permissible substitute for a currently complete attainment demonstration or adopted enforceable control measures. The mid-course review will delay final approval of the SIP until 2004, 10 years after the SIP was required under the CAA.

Response: The mid-course review is not intended as a replacement for a complete attainment demonstration or as a replacement for adopted control measures. Rather, it is intended to reflect the reality that the modeling techniques and inputs are uncertain. Thus, the progress of implementing the plan should be evaluated so that adjustments can be made to ensure the plan is successful. EPA is fully approving the attainment demonstration because, based on the information currently available, EPA believes that it will provide for attainment. However, the mid-course review allows the State and EPA an opportunity to consider additional information closer to the attainment date to assess whether adjustments are necessary. In the case of New York, the State has extensive plans to fully evaluate the inputs to the model and the modeling itself using the most up to date information possible. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: The commenters raised several questions concerning the Motor Vehicle Emissions Budgets (the budgets) established in the New York 1-hour Ozone Attainment Demonstration SIP. The commenters stated that the budgets submitted in the SIP should not be called adequate or be approved by the EPA because the attainment demonstration SIP does not provide for attainment. One commenter specifically pointed to the need for adopted and enforceable control measures.

Response: EPA's adequacy process for the 2007 motor vehicle emissions budgets in New York's 1-hour Ozone Attainment Demonstration SIP has been completed, and we have found the motor vehicle emissions budgets to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action, when we issued our adequacy findings. Therefore, we are not responding to comments on the adequacy of the budgets here. Our finding of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

The emission budgets for New York for the year of 2007 are 161 tpd and 221 tpd for VOC and NO_X, respectively. The 2007 budgets associated with New York's 1-hour Ozone Attainment Demonstration SIP are being approved by the EPA only until revised budgets pursuant to the State's commitments relating to MOBILE6 and shortfall measures are submitted and we have found the revised budgets adequate for transportation conformity purposes. Approval of the attainment budgets is based on the current control measures specified in the SIP and the enforceable commitments made for additional controls which will be implemented in the interim period.

Because enforceable commitments to adopt additional measures are included in the SIP, EPA believes that it can approve the budgets. We believe that the budgets can be approved because the budgets will not interfere with the area's ability to adopt additional measures to attain the ozone standard and they are consistent with New York's 1-hour Ozone Attainment Demonstration SIP. While the area is adopting its additional measures, the SIP's budgets will cap motor vehicle emissions and thereby ensure that the amount of additional reductions necessary to demonstrate attainment will not increase. The budgets are consistent with, and clearly related to, the emissions inventory and the control measures and are consistent with attainment.

EPA disagrees that the SIP does not provide for attainment. For further explanation of how this attainment demonstration SIP as an overall plan provides for attainment please see other responses directly relating to the sufficiency of the overall attainment plan, control strategy, enforceable commitments, etc. contained in this final action.

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action when we issued our adequacy findings and continue to maintain the finding and the reasoning behind those findings. Therefore, we are not listing the individual comments or responding to them here. All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

On August 13, 2001 (66 FR 42479), we proposed to approve the transportation conformity budgets for the New York Metro Area. See Table 2. In this final rule we are approving these budgets.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: The commenter claims that there is a growing proportion of sport utility vehicles in the New York Metro Area by citing an increase of sport utility vehicles in the Washington DC metropolitan area. The New York Metro Area is not Washington DC nor has the commenter provided any specific evidence that there is a significant increase of sport utility vehicles in the New York Metro Area. However, all of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. New York used 1990 vehicle registration data for 2002, and 2005 modeling and inventory purposes, however, the vehicle mix which was formerly based on 1990 data was updated to 1996 data when New York revised the 2007 budgets in April 2000. These were updated to be consistent with New York's revised 1-hour Ozone Attainment Demonstration SIP. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6. New York has committed to submit such a SIP revision within one year after MOBILE6 is issued.

Comment: The New York SIP understates the real speed of traffic on Interstate Roads, Freeways, and Expressways, thereby underestimating related emissions.

Response: The commenter has only made an assertion that the real speed of traffic on Interstate Roads, Freeways, and Expressways exceed those contained in the New York SIP, without providing any specific data to support that assertion. However, the estimates of vehicle speeds on the various roadway types the State used in the SIP revision on which we are taking final action were based on standard professional practices and the most accurate information available at the time the SIP was submitted. Estimation of vehicle speeds is a complex process. The State estimated vehicle speeds based on a methodology it detailed in a New York State Department of Transportation document, ''Speed Estimates for Use in1994 Air Quality State Implementation Plan'', dated October 24, 1994. The State determined speeds for each time period through a number of successive steps. Generally, that methodology involves collection of speed data for a base and a future year from the New York Metropolitan Transportation Council, which provides 24 hour average speeds for three functional class groups for the New York City metropolitan area. Speeds for intermediate years are linearly interpolated between the base and future years by the State. The relationship between speed and the volume-capacity ratio (vcr) for different functional classes were relied on and identified by the State from the Highway-Capacity Manual (HCM) and other sources. Final speeds are based on adjustments of preliminary speeds to reflect differences between MPO travel demand model and HCM based off-peak speed data. In the New York City metropolitan area, the 24 hour average speeds in each county were available to the State for three functional classes. To estimate speeds by the required 6 functional classes, the distribution of VMT between functional classes were obtained from highway performance monitoring system (HPMS) data. A speed difference between the two functional classes represented in each functional class group was assumed by the State: the average speed in the lower functional class was assumed to be 95 percent of the average speed in the higher functional class. To calculate the 24 hour average speeds from the HCM, a selected VMT is divided by the total travel time for that VMT for all time periods, in both functional classes included in a functional class group. For more detail on this methodology, the reader is referred to the above referenced document. Regarding the commenter's assertion that speeds used by the State were understated and may not be reflective of actual speeds reached on area roadways, it should be stressed that the modeling requires the use of vehicle speeds averaged over an hour, as opposed to instantaneous or cruise speeds. EPA defines speed, for modeling purposes, to include all operation of vehicles, including intersections and other obstacles to travel, which may result in stopping and idling. Thus, while stop and go traffic may at times reach speeds above those used by the State in its modeling, the slower speeds must also be accounted for in the hourly average.

Additionally, while EPA requires the most recent available estimates to be used, we do not require it to be updated on a specific schedule. As with vehicle registration data, we expect that the revision to New York's SIP that will be submitted using MOBILE6 will update vehicle speed estimates as appropriate for use with MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used as a blowing agent instead of hydrocarbons, a known pollutant. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively.

It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long-term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. Using HFC–152a as a blowing agent is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA § 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (*http://www.epa.gov/ozone/title6/snap/*).

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [9] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP, RFP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and RFP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and RFP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs. Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[10] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide.

The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[11] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the Consumer Products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by the EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets

Comment: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE6 models are released.

Response: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor

[9] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

[10] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[11] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I—X.

vehicle emissions budgets after MOBILE6 is issued.

Comment: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response: This is the reason that EPA proposed on the July 28, 2000, a supplemental notice (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response: EPA agrees. The motor vehicle emissions budgets in the New York Metro Area attainment demonstration reflects the motor vehicle control measures in New York's 1-hour Ozone Attainment Demonstration SIP. In addition, New York has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The New York Metro Area attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the CAA.

Comment: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, New York will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is issued.

Comment: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is issued. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option to Revise the Motor Vehicle Emissions Budgets

Comment: One commenter did not prefer the additional option for a second year before the State has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. New York has committed to revise its budgets within one-year of MOBILE6's being issued.

M. Measures for the 1-hour National Ambient Air Quality Standards (NAAQS) and for Progress Toward 8-hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone NAAQS because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The 1-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-

hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met.

The commenter continues stating that the EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP Call or 126 orders as an excuse for waiving RFP deadlines. The statutory RFP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New York submitted its Post-99 RFP Plans on November 27, 1998 and EPA proposed approval on August 13, 2001 (66 FR 42479). EPA is approving the RFP Plans as part of this action.

IV. What Are EPA's Conclusions?

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstration and other SIP revisions for the New York portion of the New York-Northern New Jersey-Long Island ozone nonattainment area should affect EPA's determination that the SIP is fully approvable. Thus, EPA is approving several SIP revisions that relate to attainment of the 1-hour ozone standard in New York. EPA has evaluated New York's 1-hour Ozone Attainment Demonstration SIP submittal for consistency with the CAA, applicable EPA regulations, and EPA policy. EPA has determined that the 1-hour ozone standard in the New York Metro Area will not be achieved until the states and EPA implement additional measures to meet the necessary level of reductions identified by EPA, including Tier 2/Sulfur program and a group of local controls, such as measures consistent with the OTC recommendations. EPA has promulgated all of the necessary federal rules needed to provide for attainment. New York has committed to adopt and submit the measures necessary to achieve additional reductions. EPA is approving New York's 1-hour Ozone Attainment Demonstration SIP, including all of the enforceable commitments, as fully meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA.

EPA has also evaluated New York's Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for 2002, 2005 and 2007, ozone contingency measures and RACM Analysis submittals for consistency with the CAA and EPA regulations and policy. EPA is approving New York's: 2002, 2005 and 2007 ozone projection emission inventories; 2002, 2005 and 2007 RFP Plans; 2002, 2005 and 2007 transportation conformity budgets; ozone contingency measures; and RACM Analysis.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This final action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final 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 (Pub. L. 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. section 804(2). This rule will be effective March 6, 2002.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (i) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(i)(1) The 2002, 2005 and 2007 ozone projection year emission inventories included in New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(2) The Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007 included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(3) The contingency measures included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area necessary to fulfill the RFP and attainment requirement of section 172(c)(9) of the CAA are approved.

(4) The 2002, 2005 and 2007 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's November 27, 1998 and April 18, 2000 State Implementation Plan revisions are approved until such time as New York submits revised budgets consistent with its commitments to revise the budgets with reference to MOBILE6 and/or additional control measures and EPA finds those revised budgets adequate.

(5) The Reasonably Available Control Measure Analysis for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's October 1, 2001 State Implementation Plan revision is approved.

(6) The revisions to the State Implementation Plan submitted by New York on November 27, 1998, April 15, 1999, and April 18, 2000, are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the CAA for the New York portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area. The revisions establish an attainment date of November 15, 2007, for the New York-Northern New Jersey-Long Island ozone nonattainment area. The April 18, 2000, revision includes the following enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality standard:

(i) Adopt additional control measures by October 31, 2001, to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard.

(ii) Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA.

(iii) Adopt and submit by October 31, 2001 intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions.

(iv) Submit revised State Implementation Plan and motor vehicle emissions budget by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory.

(v) Revise State Implementation Plan and motor vehicle emissions budget within 1 year after MOBILE6 mobile emissions model is issued.

(vi) Perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1754 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
February 4, 2002

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; New Jersey and New York's Reasonable Further Progress Plans, Transportation Conformity Budgets and 1-Hour Ozone Attainment Demonstrations State Implementation Plans: Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ50–238; FRL–7132–4]

Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Transportation Conformity Budgets and 1-Hour Ozone Attainment Demonstrations State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several New Jersey State Implementation Plans (SIP) revisions addressing several Clean Air Act requirements. Specifically, EPA is approving 1-hour Ozone Attainment Demonstrations, Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007, conformity budgets for 2002, 2005 and 2007, contingency measures, a 1996 periodic emission inventory, ozone projection year emission inventories for 2002, 2005 and 2007, enforceable commitments for the 1-hour ozone attainment demonstration, and reasonably available control measure analysis for the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia, Wilmington, Trenton NAA. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island NAA and the Philadelphia, Wilmington, Trenton NAA.

EFFECTIVE DATE: This rule will be effective March 6, 2002.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460

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

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New Jersey to address Clean Air Act (CAA) requirements related to attainment of the national ambient air quality standard for ozone. These submittals apply to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. Unless otherwise noted, the submissions referenced are for both NAAs.

Specifically, EPA is approving New Jersey's:

—1996 periodic emission inventory;
—2002, 2005 and 2007 ozone emission inventories (which are referred to as projection year emission inventories);
—2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;
—ozone contingency measures;
—2002, 2005 and 2007 conformity budgets;
—reasonably available control measure analysis; and
—1-hour ozone attainment demonstrations for the Northern New Jersey and Trenton NAAs with enforceable commitments.

Table 1 identifies the SIP revisions that have been submitted to fulfill the CAA requirements for the 1-hour ozone attainment demonstrations.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW JERSEY'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP

Date	Content
August 31, 1998.	Attainment demonstrations.
October 16, 1998.	Public participation appendix.
April 26, 2000	1. Revised Motor Vehicle Emissions Budgets (MVEB). 2. Commitments to: —Adopt and submit additional control measures for attainment by October 31, 2001 —Revise transportation conformity budgets to include benefits from the Tier 2/Sulfur-in-fuel rule —Revise attainment year transportation conformity budgets 1 year after release of MOBILE6 —Revise transportation conformity budgets if additional measures include mobile measures —Perform Mid course review
April 11, 2001	1. 1996 Periodic emission inventory. 2. 2002, 2005, 2007 projection year emission inventories. 3. Reasonable Further Progress Plans for 2002, 2005 and 2007. 4. Contingency measures. 5. 2002, 2005 and 2007 Conformity Budgets.

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW JERSEY'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP—Continued

Date	Content
June 18, 2001	Proposed Reasonably Available Control Measures Analysis.
October 8, 2001.	Adopted Reasonably Available Control Measures Analysis.

II. What Are the Details of EPA's Specific Actions?

A. Emission Inventories

On April 11, 2001, New Jersey submitted a SIP revision which contained the statewide 1996 periodic emission inventory, and 2002 and 2005 ozone projection year emission inventories for the Northern New Jersey NAA and Trenton NAA and a 2007 ozone projection year emission inventory for the Northern New Jersey NAA. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_X). EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these emission inventories. Therefore, EPA is approving them as part of New Jersey's SIP.

B. RFP Plans for 2002, 2005 and 2007

On April 11, 2001, New Jersey submitted a SIP revision which contained the 2002 and 2005 RFP Plans for the Northern New Jersey NAA and Trenton NAA and a 2007 RFP Plan for the Northern New Jersey NAA. New Jersey has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented or adopted and scheduled for implementation. These plans identified the control measures that will be generating the emission reductions needed to achieve the three percent per year emission reductions averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these RFP Plans. Therefore, EPA is approving them as part of New Jersey's SIP.

C. Ozone Contingency Measures

On April 11, 2001, New Jersey submitted a SIP revision which identified the ozone contingency measures for the Trenton NAA and Northern New Jersey NAA necessary to fulfill the RFP and attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS within the time-frames specified under the CAA. Consistent with EPA guidance, New Jersey used a combination of excess VOC and NO_X emission reductions (0.3 percent VOC and 2.7 percent NO_X) resulting from the implementation of adopted State control programs. These reductions are available for each milestone year (2002 and 2005) and the attainment years (2005 and 2007), for the Trenton NAA and Northern New Jersey NAA respectively. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on the contingency measures portion of the SIP revision. Therefore, EPA is approving it as part of New Jersey's SIP.

D. Conformity Budgets

On April 11, 2001, New Jersey submitted a SIP revision which contained the transportation conformity budgets for the Northern New Jersey NAA and Trenton NAA (see Table 2) and the general conformity emission budgets for McGuire Air Force Base (see Table 3). It should be noted that for the Northern New Jersey NAA the 2002 and 2005 conformity budgets are based on the RFP Plan and the 2007 budgets are based on the 1-hour ozone attainment plan. For the Trenton NAA, the 2002 budgets are based on the RFP Plan and the 2005 budgets are based on the 1-hour ozone attainment plan.

TABLE 2.—NEW JERSEY TRANSPORTATION CONFORMITY BUDGETS

Transportation Planning Area	2002		2005		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
North Jersey Transportation Planning Authority (NJTPA)	140.15	240.19	98.11	187.70	93.20	175.51
South Jersey Transportation Planning Organization (SJTPO)	17.49	33.02	13.36	26.42	[1] n/a	n/a
Delaware Valley Regional Planning Commission (DVRPC)	55.28	73.05	38.03	55.62	n/a	n/a

1. Not applicable.

TABLE 3.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSION BUDGETS

VOC	NO_X tons/year	NO_X tons/year
1990 Baseline	1,112	1,038
1996	1,186	1,107
1999	1,223	1,142
2002	1,405	875
2005	1,406	884

On June 1, 2001 (66 FR 29797), EPA found the transportation conformity budgets to be adequate for conformity purposes effective June 18, 2001. At that time, EPA responded to comments regarding adequacy of budgets. EPA proposed approval of all of these budgets on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No specific comments were received on the proposed approval of New Jersey's budgets, however, EPA received general comments concerning conformity budgets which are addressed in Section III. EPA is approving the budgets as part of New Jersey's SIP.

These budgets (*see* Table 2 and 3) are consistent with the measures in New Jersey's RFP plans and attainment demonstrations that are also being approved today. It is important to note that New Jersey has committed to revise the 2005 and 2007 attainment year transportation conformity emissions budgets within one year of the official release of the MOBILE6 motor vehicles emissions model for regulatory purposes. New Jersey has committed to submit new budgets if any additional measures involve motor vehicles and affect the motor vehicle budgets. Therefore, EPA is approving these budgets only until New Jersey meets its commitments and submits new budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, those budgets will replace the 2005 and 2007 attainment year emissions budgets being approved today for conformity purposes. EPA is approving New Jersey's commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and the commitment to revise the budgets if any additional measures affect the budgets.

E. Reasonably Available Control Measure Analysis

On June 18, 2001, New Jersey submitted a proposed assessment of whether any additional RACM are available to advance the attainment date, from 2005 to an earlier year for the Trenton NAA and from 2007 to an earlier year for the Northern New Jersey NAA. On September 24, 2001 (66 FR 48847), EPA proposed approval of New Jersey's RACM analysis and on October 16, 2001 (66 FR 53560), EPA extended the comment period for this proposal. No specific comments were received on New Jersey's RACM analysis, however, EPA received general comments concerning RACM which are addressed in section III. EPA is approving New Jersey's analysis which determined that there are no additional control measures available, beyond those already included in the attainment demonstrations, that are technically or economically feasible and would advance the attainment dates of 2005 or 2007 for the Trenton NAA or Northern New Jersey NAA, respectively. However, EPA does believe that the control strategies considered in New Jersey's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New Jersey and other states in the Ozone Transport Region revisit these control strategies when they begin developing the 8-hour ozone standard SIP.

F. 1-hour Ozone Attainment Demonstration SIP Including Enforceable Commitments

On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour Ozone Attainment Demonstration SIP. However, this approval was contingent upon New Jersey submitting the following:

(1) The adopted NO_X SIP Call program as a SIP revision;

(2) The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;

(3) enforceable commitments to:

a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment;

b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated;

c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; and

d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

The specifics of how New Jersey fulfilled all these requirements are discussed below.

(1) NO_X SIP Call Submittal

On December 10, 1999 and July 31, 2000, New Jersey submitted adopted SIP revisions which fulfilled the NO_X SIP Call requirements. Specifically, New Jersey adopted Subchapter 31 ''NO_X Budget Program,'' of Title 7, Chapter 27 of the New Jersey Administrative Code in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call during each ozone season, *i.e.,* May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28063), EPA approved New Jersey's SIP revisions as meeting the NO_X SIP Call. It is important to note that New Jersey is implementing its NO_X SIP Call rules requiring source compliance by 2003, even though an order from the D.C. Circuit Court allowed that full implementation could be rolled back to 2004.

(2) CAA Measures and Control Measures Relied on in the Modeled 1-hour Ozone Attainment Demonstration SIP

New Jersey has already adopted the control measures required for areas classified as severe under section 182 of the CAA for the Northern New Jersey and Trenton NAAs. Table 4 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including the Rate of Progress (ROP) and RFP plans. The reader is referred to EPA's March 1, 1999 (64 FR 9952) proposed approval of New Jersey's 15 and 9 Percent ROP Plans and September 12, 2001 (66 FR 47419) proposed approvals of New Jersey's RFP Plans for a more detailed discussion of the control measures identified.

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY'S SIP

Control measure	Type of measure
On-Road Sources:	
Federal Motor Vehicle Control program (Tier 1 & 2)	Federal
National Low Emission Vehicle [1] (NLEV)	State opt-in—SIP approved
Enhanced Inspection & Maintenance	State adopted—SIP approved
Reformulated Gasoline (Phase 1 & 2)	Federal
Heavy Duty Diesel Engines (On-road)	Federal
Non-Road Sources:	
Federal Spark Ignition Small Engine standards	Federal
Federal New Gasoline Spark Ignition Marine Engine standards	Federal
Federal Nonroad Compression Ignition engines	Federal
Locomotive & Locomotive Engines	Federal
Commercial Marine Diesel Engines	Federal
Stationary Sources:	
VOC CTG Source Categories	State adopted—SIP approved
VOC Non-CTG Source Categories—RACT	State adopted—SIP approved
NO_X RACT	State adopted—SIP approved
Marine Vessel Ballasting & Loading Operations	State adopted—SIP approved
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR)	State adopted—SIP approved & Federal
OTC NO_X MOU Controls	State adopted—SIP approved
NO_X SIP Call Program	State adopted—SIP approved

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY'S SIP—Continued

Control measure	Type of measure
Area Sources:	
AIM Surface Coatings	State adopted—SIP approved & Federal
Consumer & Commercial Products	State adopted—SIP approved & Federal
Autobody Refinishing	Federal
Hazardous Organic NESHAP	Federal
Landfill Controls	State adopted—SIP approved & Federal

[1] To the extent NLEV not superceded by Tier 2.

In the December 16, 1999 proposal, EPA specifically identified two CAA required control programs that had yet to be approved by EPA: Post-1999 RFP Plans with control measures needed to meet these Plans and implementation of the Enhanced Inspection and Maintenance (I/M) program. As discussed above, EPA is approving New Jersey's Post-1999 RFP Plans as part of today's action. On June 12, 2001 (66 FR 31544), EPA made a determination that New Jersey has implemented the enhanced I/M program and reinstated the interim approval granted under Section 348 of the National Highway Systems Designation Act. On September 11, 2001 (66 FR 47130), EPA proposed full approval of the enhanced I/M program and on *January 22, 2002,* EPA took final action giving full approval. Therefore, New Jersey has satisfied both of these requirements.

(3) Enforceable Commitments

On April 26, 2000, New Jersey submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the Northern New Jersey and Trenton NAAs. This submission addressed the commitments originally requested in EPA's December 16, 1999 proposal as follows:

a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment.

New Jersey submitted an adopted SIP revision containing the enforceable commitment to adopt and submit by October 31, 2001 additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70380) proposed approval of New Jersey's 1-hour Ozone Attainment Demonstrations. In addition, as a backstop, New Jersey committed to adopt intrastate measures by October 31, 2001 if the regional measures do not provide sufficient emission reductions to achieve the additional reductions identified by EPA. New Jersey also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. In fact, New Jersey has taken a active role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard.

New Jersey adopted a SIP revision which identified the specific measures it would propose to adopt after public notice and comment along with the estimated emission reductions these measures could achieve and the role these measures play in the attainment demonstrations. The following are the measures recommended by the OTC and which New Jersey will be taking to public hearing: consumer and commercial products rule, architectural and industrial maintenance coatings rule, mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New Jersey has begun its regulatory development process for these measures. In a letter dated December 11, 2001, New Jersey provided additional information on their progress in addressing the shortfall in emission reductions, including a schedule for the rulemaking and publishing the schedule in the ''New Jersey Register'' rulemaking calendar dated January 7, 2002. See also section III.D. for an expanded discussion on New Jersey's commitment.

b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated.

New Jersey submitted revised transportation conformity budgets which include the Tier 2/Sulfur program and therefore, this commitment has been satisfied.

c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment.

New Jersey committed to revise the attainment demonstration SIP by submitting additional measures necessary for attainment and to recalculate the transportation conformity budgets, if necessary, based on those measures.

d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA releases MOBILE6. On April 26, 2000, New Jersey submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year of release of MOBILE6.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the states have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving today.

e. Perform and submit a mid course review.

Also in the April 26, 2000 SIP revision, New Jersey revised its prior commitment to a mid course review (MCR). Specifically, to be consistent with EPA's recommendation, New Jersey has revised the date for submitting its MCR to December 31, 2003.

III. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 47419) for New Jersey's ozone attainment demonstration. In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. EPA also received comments on the September 12, 2001 (66 FR 47419) proposed approval of New Jersey's RFP Plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 24, 2001 (66 FR 48847) proposed approval of New Jersey's RACM analysis.

A. Attainment Demonstrations

1. General Comments

Comment: Several commenters urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all Reasonably Available Control Measures (RACM) and a control strategy sufficient to achieve attainment. One commenter went on to say that because they believe the plan should be disapproved and, under the consent decree in *NRDC* v. *Browner*, Civ. No. 99–2976, EPA must commence promulgation of a Federal Implementation Plan (FIP). One commenter supported the proposed approval.

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plans provided by the State of New Jersey are fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA and the plans includes all reasonably available control measures. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New Jersey has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 ppm one-hour standard beyond 2007.

Response: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of part D of the CAA, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the CAA. Under section 181(a)(5), an area that does not have three-years of data demonstrating attainment of the ozone NAAQS, but has complied with all of the statutory requirements and that has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS.

This position is consistent both with EPA's modeling guidance and with the structure of subpart 2 of the CAA. Under EPA's modeling guidance, states model air quality for the attainment year—they do not model air quality for the three-year period preceding the attainment year. As a function of how the model operates, the data produced only predicts the air quality for one year. EPA's modeling guidance has existed for many years and has been relied on by numerous nonattainment areas for demonstrating attainment of the ozone standard. Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 CAA amendments were required to adopt and implement RACT and I/M ''fix-ups'' that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15-percent plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three-years of ''clean data.'' For these reasons, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the Trenton and Northern New Jersey NAAs, all measures are being implemented as expeditiously as practicable and that the areas have demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the Trenton and Northern New Jersey NAAs have three years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the state to provide for maintenance of the standard at this time, we do believe emissions in the Trenton and Northern New Jersey NAAs will continue to decrease after 2005 and 2007, respectively, due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''this'' attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * * '' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, Appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the National Ambient Air Quality Standard (NAAQS). The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance [3] to update the 1991 guidance referenced in 40 CFR part 51, Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (*i.e.*, the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, a state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitoring site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.,* average of daily maximum concentrations from all days modeled)

[1] The August 12, 1996 version of ''Appendix W to part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

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

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

to the peak model predicted ozone concentrations in the base year (*i.e.,* average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to reach attainment at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to reach attainment.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to three exceedances in three years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, Appendix W, section 6.2.1.e. provides ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone in order to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 parts per billion during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: (1) It obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) lastly, the requirement that areas perform a mid course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use of the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 proposal and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) there are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result of these limitations, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter and has determined that the 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. The values given do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, the local or regional control programs are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment: The NAAQS requires that in order to demonstrate attainment of the 1-hour NAAQS that no more than four ambient ozone concentrations exceed 0.12 ppm (235 mg/m3) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no ''rounding convention.'' No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 g/m3). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New Jersey SIP submissions do not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

Response: Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR part 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard.'' (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this CAA, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms . . .'' Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

B. Reliance on the Nitrogen Oxide SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency,* 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area 1-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe-area 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_X SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two States—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_X SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call. It is important to note that New Jersey is implementing its NO_X SIP Call rules requiring source compliance by 2003.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. Comments on RACM

Comment: Several commenters have stated that there is no evidence that New Jersey has adopted reasonably available control measures (RACM) or that the SIPs provide for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Northern New Jersey and Trenton NAA and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from states with Severe 1-hour Ozone Nonattainment Area SIPs").

New Jersey supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 18, 2001 and adopted revision submitted on October 8, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 24, 2001 (66 FR 48847). Based on this supplement, EPA concluded that the SIP for the Northern New Jersey and Trenton NAA meets the requirement for adopting RACM.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to reach attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

On June 18, 2001, New Jersey submitted a proposed analysis of Reasonably Available Control Measures (RACM) for the Northern New Jersey and Trenton NAA which was adopted after public hearing on October 8, 2001 without substantive changes. The RACM analysis included an evaluation of potential transportation control measures (TCMs) for onroad mobile sources, potential control measures for point, area and offroad sources, and other non-TCM onroad control measures. New Jersey ranked the source categories by emission level to identify source categories with the greatest potential for additional control measure benefits, above and beyond what the State is already implementing, that would advance the 2005 or 2007 attainment dates. Individual measures were then evaluated with regard to their technical feasibility, economic feasibility and the speed at which they could be implemented. Finally, the sums of the estimated emissions benefits from the potentially implementable measures were then compared to the emission reductions required to advance the attainment dates for each nonattainment area. This analysis was performed for the New Jersey portions of the two severe nonattainment areas, the Trenton NAA and the Northern New Jersey NAA.

1. Consideration and Implementation of Transportation Control Measures (TCMs)

Fifteen prospective mobile source measures were examined to determine if any of these TCMs could be considered reasonably available control measures. The candidate measures were screened to determine if they were available for potential implementation, and then each measure analyzed for its potential emissions reduction benefit, economic impact, practicability and potential adverse impact by nonattainment area.

The mobile source measures analyzed were grouped into the following five categories; Travel Demand Management and Commuter Choice, Transportation Pricing Strategies and Scenarios, Traffic Flow Improvements, Transit Projects and Transit Oriented Design and Vehicle Fuel and Technology. In addition, two non-mobile source land use related measures were examined which have the potential to reduce vehicle miles traveled and vehicle emissions.

The State's analysis found that none of the TCM's, singularly or in combination, will yield emissions benefits sufficient to advance the attainment dates for the respective New Jersey ozone nonattainment areas. The range of combined emissions benefits from VOC and NO_X was 0.0 tons/day to 2.054 tons/day in the New Jersey portion of the Northern New Jersey NAA and from 0.0 tons/day to 1.10

tons/day in the New Jersey portion of the Trenton NAA. In addition, the State also found that implementing certain measures is not cost effective. These TCMs are not reasonably available at this time, nor may they be able to generate significant emission reductions by the attainment date.

Two land use measures were also reviewed and evaluated for their potential impact to reduce vehicle miles traveled and emissions. The measures were developed to achieve other State goals and include the statewide programs: Open Space Preservation Program in which the State commits to preserving 1,000,000 acres of open space over a ten-year period, and New Development and Redevelopment Plan which is based on ''smart growth'' principles.

The Open Space Preservation Program can not be phased in any faster and, therefore, can not advance the ozone attainment dates in the New Jersey NAAs. The State Development and Redevelopment Plan is a voluntary plan and has no force of law under municipal home rule. This limits EPA's ability to enforce such a program as part of a SIP. It also requires long lead times before it could be effective on a regional scale and it is not anticipated to advance the attainment dates in the New Jersey nonattainment areas.

2. Consideration and Implementation of Stationary Source, Area Source, and other Non-TCM Measures

The projected attainment year VOC and NO_X emission inventories were separately sorted by source category for each nonattainment area. All source categories with emissions of five tons per day or greater were examined for potential application of new control measures. The State evaluated 29 VOC source categories and 25 NO_X source categories. The analysis for feasibility of potential controls for each source category included evaluation of the potential emissions reduction benefit, technical and economic feasibility, and analysis of whether the measure could be implemented in time to advance the attainment date.

Six potentially implementable control measures were identified with a combined potential emission reduction benefit of 2.2 tons per day of VOC and 0.4 tons per day of NO_X in 2004 for the Trenton NAA and 7.3 tons per day of VOC and 3.3 tons per day of NO_X in 2006 for the Northern New Jersey NAA. Based on a comparison of the emission reductions which are scheduled to occur in the year immediately before the attainment year, the combined benefit of the potential control measures resulted in less emission reductions. Therefore, no TCM or other measure, either singularly or combined, has been identified which could advance the attainment dates of either area and be considered RACM.

New Jersey evaluated all source categories that could contribute meaningful emission reductions. An extensive list of potential control measures was identified and reviewed. The State considered the time needed to implement these measures as a further screen of their reasonableness and availability. However, EPA believes that some of these control measures may offer some benefits in the future for purposes of an 8-hour ozone standard, and recommends that New Jersey and other states in the OTR revisit these controls in the context of any future planning obligations.

Therefore, EPA proposed in the September 24, 2001 **Federal Register** (66 FR 48847) to approve New Jersey's RACM analysis and its finding that no additional measures, individually or as combined measures, were technically and economically feasible nor would they advance the 1-hour ozone attainment dates.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the New Jersey NAAs, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., http://www.epa.gov/otaq/transp.htm*. In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures, including the kind that New Jersey itself evaluated in its RACM analysis, that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation of all techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment dates being approved are as expeditious as practicable.

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate and does not address those issues again here. The previous responses are found at *http://www.epa.gov/otag/transp/conform/njrspnd.pdf.*

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because not all of the emissions reductions assumed in the demonstrations (a) have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, and (c) are credited legally as part of a demonstration because they are not approved by EPA as part of the SIP. Also a commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

New Jersey submitted an enforceable commitment on April 26, 2000, to participate in the OTC process and to adopt measures by October 31, 2001. New Jersey did participate in the OTC process, however, the deadline for choosing and adopting shortfall measures has come and gone. So far, New Jersey has not submitted anything to EPA which states which control measures New Jersey plans to use to address the shortfall. Nor has New Jersey adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New Jersey, the commenters contend that the emissions gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Because the submittal consists in part of commitments, New Jersey has not adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New Jersey. Thus, New Jersey has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the submittal also does not meet the definition of a ''full attainment demonstration SIP,'' in a consent decree EPA entered into in *NRDC* v. *Browner*, Civ. No. 99–2976 (D.CT. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New Jersey 1-hour Ozone Attainment Demonstration SIP by that date.[5] For these reasons, EPA should reject the New Jersey 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[6] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New Jersey does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP. See 66 FR 47419, September 12, 2001. New Jersey's RFP plans, discussed above, demonstrate RFP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved state measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For New Jersey's attainment demonstrations for the Northern New Jersey and Trenton NAA, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with either area's ability to meet the attainment obligation.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.*, 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the CAA speaks directly to the approvability of enforceable commitments.[7] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the CAA.'' (emphasis added). Section 172(c)(6) of the CAA requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques . . . *as may be necessary or appropriate* to provide for attainment . . . by the applicable attainment date . . .'' (emphasis added.) The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to reach attainment. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Northern New Jersey and Trenton NAAs—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here because the commitments made here are limited in scope. EPA agrees with the Court that

[5] Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

[6] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp.1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97–6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the CAA, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[7] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a state may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the state, the CAA provides that the conditional approval will convert to a disapproval if ''the state fails to comply with such commitment.''

other provisions in the CAA contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of New Jersey's attainment plans. For the Trenton NAA, the commitment addresses only 10.6 percent and 0.7 percent of the total VOC and NO_X emissions reductions, respectively, necessary to attain the standard. For the Northern New Jersey NAA, the commitment addresses only 9.1 percent of the VOC and 0.8 percent of the NO_X emissions reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in New Jersey's attainment demonstration submission are discussed in Section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the Ozone Transport Commission (OTC) regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC, of which New Jersey is a part, has performed an extensive study and model rule development effort. Public meetings were held and the OTC model rules where also made available for comment. On March 29, 2001 the OTC recommended a set of control measures and model rules. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

New Jersey was an active participant in the OTC rule development effort and concurred on the recommendation that the Northeast States adopt these measures. New Jersey's involvement and support for these regional measures is evidence of New Jersey's intent to also adopt them statewide. This was demonstrated when New Jersey took to public hearing a SIP revision which identified the specific control measures they would be proceeding with rulemaking on, along with a description of the measures and projected emission reductions. This was submitted as part of the adopted October 8, 2001 SIP revision. New Jersey is well underway with the regulatory development process for these measures. While New Jersey has not made the submission on the date to which it committed, EPA believes that it is making sufficient progress to support approval of the attainment demonstration because, within a short time period, New Jersey will adopt and implement measures that are fully consistent with the Northern New Jersey and Trenton NAAs attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the New Jersey attainment demonstrations is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors, such as the need to consider innovative control strategies or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures. The commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months (until October 31, 2001), to complete the OTC and state-adoption processes.

As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas are all located within the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See *e.g.,* 64 FR 70428. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007.

EPA still believes, consistent with the memoranda of understanding signed by Robert C. Shinn, Commissioner, New Jersey Department of Environmental Protection, that it is New Jersey's stated intention to propose, adopt and implement the identified control measures. The actual OTC model regulation development process took longer than EPA anticipated, 15 months of the 22 months that EPA had thought the complete effort should take. This only left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New Jersey did not make its submission by that date, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.,* sections 179(a) and (b) and 304) to ensure New Jersey completes the adoption process.

New Jersey is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). EPA believes that New Jersey is making sufficient progress to support approval of the commitment, because New Jersey will adopt and implement the additional measures well within a time period fully consistent with New Jersey attaining the standard by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA. In a letter dated December 11, 2001, New Jersey provided additional information on their progress in addressing the shortfall in emission reductions. See also section II.F. for further discussion on New Jersey's commitment.

The enforceable commitments submitted by New Jersey for the Northern New Jersey and Trenton NAAs, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because New Jersey has obligated itself to submit the rules by specified short-term dates, because it is making reasonable efforts to adopt and submit them and because the State's commitment is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Section II of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the New Jersey SIP meets the NRDC Consent Decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

Comment: One commenter raises concerns regarding the enforceability of New Jersey's commitments to adopt and submit the additional control measures to achieve additional emission reductions necessary for attainment. Specifically, the commenter is concerned that the lack of specific identified measures and specific identified emission reductions associated with those measures undercuts their enforceability. The commenter suggests that the commitments made by New York and New Jersey are more ''discretionary'' than the types of commitments that courts have enforced in the past because these state's commitments do not identify specific measures.

Response: EPA believes that the CAA provides for enforcement of the terms of an approved SIP. See *e.g.,* CAA 304(a)(1) and (f). Thus, in a case where a state commits to adopt a specific control strategy that will achieve a specific level of reductions by a specific date, the court may require the state to take action to adopt that measure and achieve the prescribed level of reductions. In the case, such as here, where the state commits to adopt and submit by a specific date measures to achieve a certain level of emission reductions, the court may order the state to adopt measures to achieve that level of reductions. Simply because the state retains authority regarding the precise mix of controls that it may adopt, does not interfere with the enforceability of the commitment to achieve the level of reductions necessary for attainment. EPA has determined that there are sufficient available controls to achieve the level of reduction to which the State has committed. This determination is supported by the recommendation of the OTC regarding specific controls. Thus, EPA believes that the commitment submitted by New Jersey is enforceable by EPA and citizens and that a court could order the State to adopt control measures that will achieve the level of reductions necessary for attainment.

Comment: The mid course review process outlined by New Jersey is not a permissible substitute for a currently complete attainment demonstration or adopted enforceable control measures. The mid course review will delay final approval of the SIP until 2004, 10 years after the SIP was required under the CAA.

Response: The mid course review is not intended as a replacement for a complete attainment demonstration or as a replacement for adopted control measures. Rather, it is intended to reflect the reality that the modeling techniques and inputs are uncertain. Thus, EPA provided in its modeling guidance that the progress of implementing the plan should be evaluated so that adjustments can be made to ensure the plan is successful. EPA is fully approving the attainment demonstration because based on the information currently available, EPA believes that it will provide for attainment. However, the mid course review allows the state and EPA an opportunity to consider additional information closer to the attainment date to assess whether adjustments are necessary. In the case of New Jersey, the State has extensive plans to fully evaluate the inputs to the model and the modeling itself using the most up to date information possible. The State will also be evaluating several new control measures for inclusion in the SIP. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action, when we issued our adequacy findings. Therefore we are not listing the individual comments or responding to them here. All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

On September 12, 2001 (66 FR 47419), we proposed to approve the transportation conformity budgets for the Northern New Jersey and Trenton NAAs. See Table 2. We received no specific comments on New Jersey's budgets. In this final rule we are approving these budgets.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. New Jersey used 1999 vehicle registration data, including information on sports utility vehicles, for modeling and inventory purposes. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a, a fluorine compound, could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use could result in a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively.

It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. Using HFC–152a as a blowing agent is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (http://www.epa.gov/ozone/title6/snap/).

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [8] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[9] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide.

The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately one percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

[8] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

[9] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' 11/29/94, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[10] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the Consumer Products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

[10] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

J. MOBILE6 and Motor Vehicle Emissions Budgets (MVEBS)

Comment: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE6 models are released.

Response: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response: This is the reason that EPA proposed in the July 28, 2000, a supplemental notice (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response: EPA agrees. The motor vehicle emissions budgets in the Northern New Jersey and Trenton attainment demonstrations reflect the motor vehicle control measures in the attainment demonstrations. In addition, New Jersey has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Northern New Jersey and Trenton attainment demonstrations contain explicitly quantified motor vehicle emissions budgets.

Comment: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the CAA.

Comment: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, New Jersey will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. New Jersey has committed to revise its budgets within one-year of MOBILE6's release.

M. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the 8-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The 1-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that the 1-hour ozone NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met.

The EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP Call or 126 orders as an excuse for waiving ROP deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New Jersey submitted its Post-99 RFP Plans on April 11, 2001 and EPA proposed approval on September 12, 2001 (66 FR 47419). EPA is approving the RFP Plans as part of this action. Moreover, EPA has not provided that area's may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states, including New Jersey, are relying on in-state NO_X and VOC measures to meet the ROP requirement.

IV. Conclusion

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstrations for the New Jersey portions of the Northern New Jersey and the Trenton ozone NAAs should affect EPA's determination that the SIP is fully approvable as meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA. EPA is approving several SIP revisions that relate to attainment of the one-hour ozone standard in New Jersey. The SIP revisions include New Jersey's one-hour ozone attainment demonstrations for the state's portions of the Northern New Jersey and the Trenton NAAs, all of the enforceable commitments, a RACM analysis, 1996 periodic emission inventory, 2002, 2005 and 2007 ozone projection year emission inventories, 2002, 2005 and 2007 RFP Plans, and ozone contingency measures.

New Jersey's one-hour ozone attainment demonstrations include 2005 and 2007 motor vehicle emissions budgets for the Trenton and Northern New Jersey NAAs, respectively. EPA is approving these attainment budgets until new budgets using MOBILE6 are submitted and found adequate. Similarly, if new mobile source measures are submitted to fill the shortfall, the revised budgets will apply after they are submitted and found adequate. Also, EPA is approving the motor vehicle emissions budgets for 2002 and 2005 contained in New Jersey's RFP plans for transportation conformity purposes.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (h) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(h)(1) The statewide 1996 periodic emission inventory included in New Jersey's April 11, 2001 State Implementation Plan revision is approved.

(2) The 2002 and 2005 ozone projection year emission inventories for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 ozone projection year emission inventories for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(3) The 2002 and 2005 Reasonable Further Progress Plans for the New Jersey portion of the Philadelphia/ Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 Reasonable Further Progress Plans for the New Jersey portion of the New York/ Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(4) The contingency measures for the New Jersey portions of the Philadelphia/ Wilmington/Trenton nonattainment area and the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(5) The 2002 and 2005 conformity emission budgets for the New Jersey portion of the Philadelphia/ Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 conformity emission budgets for the New Jersey portion of the New York/ Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved. The 2005 and 2007 attainment year budgets are only approved until such time as New Jersey submits revised budgets consistent with its commitments to revise the budgets with respect to MOBILE6 and additional measures and EPA finds those revised budgets adequate.

(6) The Reasonably Available Control Measure Analysis for the New Jersey portion of the Philadelphia/

Wilmington/Trenton and New York-Northern New Jersey-Long Island nonattainment areas included in New Jersey's October 16, 2001 State Implementation Plan revision is approved.

(7) The revisions to the State Implementation Plan submitted by New Jersey on August 31, 1998, October 16, 1998, and April 26, 2000 are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the New Jersey portions of the Philadelphia/Wilmington/Trenton and New York-Northern New Jersey-Long Island severe ozone nonattainment areas. The revisions establish attainment dates of November 15, 2005 for the Philadelphia/Wilmington/Trenton nonattainment area and November 15, 2007 for the New York-Northern New Jersey-Long Island ozone nonattainment area. The revisions include the enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality:

(i) To adopt additional control measures by October 31, 2001 to meet the level of reductions identified by EPA for attainment of the 1-hour ozone standard;

(ii) To submit revised State Implementation Plan and motor vehicle emissions budgets by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory;

(iii) To revise State Implementation Plan and attainment year motor vehicle emissions budgets within one year after the MOBILE6 mobile emissions model is released;

(iv) To perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1753 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY55–237, FRL–7132–5]

Approval and Promulgation of Implementation Plans; New York's Reasonable Further Progress Plans, Transportation Conformity Budgets, Reasonably Available Control Measure Analysis and 1-hour Ozone Attainment Demonstration State Implementation Plan

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

SUMMARY: EPA is approving New York State Implementation Plan revisions involving the 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area. These requirements include the Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for milestone years 2002, 2005 and 2007, ozone contingency measures, Reasonably Available Control Measure Analysis, 1-hour Ozone Attainment Demonstration and enforceable commitments. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island nonattainment area.

EFFECTIVE DATE: This rule will be effective March 6, 2002.

ADDRESSES: Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233

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

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New York to address Clean Air Act (CAA) requirements related to attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. These SIP submittals address the requirements for the New York-Northern New Jersey-Long Island ozone nonattainment area, which is classified as severe nonattainment. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland and the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County (40 CFR 81.333). This nonattainment area will be referred to as the New York Metro Area.

Specifically, EPA is approving New York's:

—Emission inventories for 2002, 2005 and 2007 (referred to as projection year inventories);

—2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;

—Ozone contingency measures;

—2002, 2005 and 2007 transportation conformity budgets (also referred to as motor vehicle emissions budgets);

—A Reasonably Available Control Measure (RACM) Analysis; and,

—A 1-hour Ozone Attainment Demonstration including enforceable commitments

Table 1 identifies the submittal dates and amendment dates for the RFP Plans, RACM Analysis, conformity budgets and 1-hour Ozone Attainment Demonstration, which include the projection year inventories and the contingency measures:

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW YORK'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP

November 27, 1998	Submittal of the 1-hour Ozone Attainment Demonstration SIP including the RFP plans, contingency measures, projection inventories, regional scale modeling and 2002 and 2005 transportation conformity budgets.
April 15, 1999	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing response to comments documentation.
April 18, 2000	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing measures to address the NO_X SIP Call, revised 2007 transportation conformity budgets and enforceable commitments for future actions.
June 15, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's proposed RACM Analysis.
October 1, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's final RACM Analysis.

II. What Are the Details of EPA's Specific Actions?

A. 2002, 2005 and 2007 Projection Year Emission Inventories

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 ozone projection year emission inventories for the New York Metro Area. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_X). EPA proposed approval of the inventories on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

B. 2002, 2005 and 2007 Reasonable Further Progress Plans

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 RFP Plans for the New York Metro Area. New York has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented. These plans identify the control measures which will be generating the emission reductions needed to achieve the three percent per year reduction averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

C. Ozone Contingency Measures

On November 27, 1998, New York submitted a SIP revision which contained the ozone contingency measures for the New York Metro Area necessary to fulfill the RFP and ozone attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS within the time-frames specified under the CAA. Consistent with EPA guidance, New York used a combination of excess VOC and NO_X emission reductions (0.3 percent VOC and 2.7 percent NO_X), resulting from the implementation of adopted State control programs, which will occur by each milestone and the attainment year which in both cases are 2002, 2005 and 2007. EPA proposed approval of the contingency measures on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

D. Conformity Budgets

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 transportation conformity budgets for the New York Metro Area. On November 16, 1999 (64 FR 62194) EPA found the 2002 and 2005 budgets for RFP adequate for conformity purposes. On April 18, 2000, New York revised the 2007 budgets to reflect the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area. On June 9, 2000 (65 FR 36690), EPA found the revised 2007 budget for RFP and attainment adequate for conformity purposes. EPA proposed approval of the conformity budgets on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

These conformity budgets (see Table 2), which EPA is approving today, are consistent with the measures in New York's RFP and attainment plans that are also being approved today. It is important to note that New York has committed to revise the 2007 transportation conformity emissions budget that EPA is approving today within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. Therefore, EPA is approving these budgets only until New York meets its commitments and submits new 2007 budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, they will replace the 2007 emissions budgets being approved today for conformity purposes.

TABLE 2.—EMISSION BUDGETS FOR CONFORMITY PURPOSES

[Tons per day]

County	2002		2005		2007	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Bronx	11	17	10	16	9	12
Kings	17	22	16	21	15	17
Nassau	38	50	36	48	36	44
New York	15	15	13	14	12	11
Lower Orange County Metro Area	4	8	4	8	3	6
Queens	23	31	21	29	19	23
Richmond	7	10	6	10	7	9
Rockland	9	15	8	15	7	11
Suffolk	35	56	33	55	34	51
Westchester	22	41	20	39	21	37
Total	*179	*266	*167	*254	*161	*221

*The totals represent the actual motor vehicle conformity emissions budgets for VOC and NO_X. New York subdivided the county budget numbers from the totals and rounded off to the nearest whole number, therefore, a sum of the county budget numbers identified in Table 2 may be slightly different from the total budget numbers identified in Table 2. New York did not adopt subregional budgets, the county breakdowns are only for informational purposes in explaining how New York established the totals.

E. New York's Reasonably Available Control Measure (RACM) Analysis

On June 15, 2001 and supplemented on October 1, 2001, New York submitted to EPA its assessment of whether any additional RACM are available to advance the 1-hour ozone attainment date from 2007 to an earlier year for the New York Metro Area. On September 11, 2001 (66 FR 47139) EPA proposed approval of New York's RACM Analysis and EPA extended the comment period for that proposal on October 16, 2001 (66 FR 53560). EPA is approving New York's RACM Analysis and has determined that there are no additional RACM's beyond those measures already included in the New York SIP that, when implemented, would advance the attainment date in the New York Metro Area from 2007 to an earlier year. However, EPA does believe that the control strategies considered in New York's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New York and other states in the Ozone Transport Region revisit these control strategies when they begin implementation of the 8-hour ozone standard.

F. 1-Hour Ozone Attainment Demonstration State Implementation Plan (SIP) Including Enforceable Commitments

On December 16, 1999 (64 FR 70364)), EPA proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP. EPA's December 16, 1999 proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP was contingent upon New York submitting the following:

- The adopted NO_X SIP Call program as a SIP revision;
- The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;
- Enforceable commitments to:

—Adopt additional control measures to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard;

—Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA;

—Adopt and submit intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions;

—Submit revised SIP and motor vehicle emissions budget if additional adopted measures affect the motor vehicle emissions inventory;

—Revise SIP and motor vehicle emissions budget within 1 year after MOBILE6 is issued;

—Perform a mid-course review and submit the results to EPA by December 31, 2003.

On April 18, 2000, New York submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area which addressed the requirements identified above. How New York fulfilled these requirements is discussed in more detail below.

(1) NO_X SIP Call Submittal

On November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059), EPA approved New York's regulations as complying with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules requiring source compliance by 2003, even though an order from the DC Circuit Court allowed that full implementation could be rolled back to 2004.

(2) Clean Air Act Measures and Control Measures Relied on in the Modeled 1-Hour Ozone Attainment Demonstration SIP

New York has adopted the control measures already required under section 182 of the CAA for the New York Metro Area. Table 3 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including Rate of Progress (ROP—plans which require emission reductions from 1990 through 1996) and RFP plans (plans which require emission reductions from 1996 through the attainment year of 2007) for the New York Metro Area. The reader is referred to EPA's November 3, 1999 (64 FR 59706) and August 13, 2001 (66 FR 42479) proposed approvals of New York's ROP and RFP Plans for a more detailed discussion of the control measures identified.

TABLE 3.—SUMMARY OF CONTROL MEASURES

Control measures	Type of measure
Non-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
New Engine Standards	Federal.
On-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
Tier I—New Vehicle Standards	Federal.
Low Emission Vehicle	State adopted and SIP approved.
Enhanced Inspection and Maintenance (I/M)	State adopted and SIP approved.
2004 NO_X Emission Standards	Federal.
Stationary Source control measures:	
VOC Reasonably Available Control Technology (RACT)	State adopted and SIP approved.
—Control Techniques Guidelines (CTG) major sources	
—Non-CTG major sources	
MACT (Federal Air Toxics Measures)	Federal.
Ozone Transport Commission (OTC) Phase II Baseline	State adopted and SIP approved.
NO_X RACT	State adopted and SIP approved.
NO_X SIP Call	State adopted and SIP approved.
Large Municipal Waste Combustors	State adopted and SIP approved.
Area Source control measures:	
Architectural and Industrial Maintenance Coatings	State adopted and SIP approved.
Auto Body Refinishing	Federal.
Commercial Bakeries	State adopted and SIP approved.
Consumer Products	Federal.
Graphic Art Facilities	State adopted and SIP approved.
Hospital Sterilizers	State adopted and SIP approved.
Municipal Solid Waste Landfills	State adopted and SIP approved.
Stage II gasoline vapor recovery	State adopted and SIP approved.
Transit/Loading Losses	State adopted and SIP approved.
Surface Cleaning	State adopted and SIP approved.

(3) Enforceable Commitments

Additional Measures To Further Reduce Emissions

On April 18, 2000 New York submitted an enforceable commitment to adopt additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70364) proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP and to submit those measures by October 31, 2001.

In addition, as a backstop, New York committed to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not adopted by the relevant states, and to submit such rules by October 31, 2001.

New York also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. In fact, New York has taken a leadership role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. New York plans to implement regulations consistent with the OTC recommendations, which include a consumer products rule, an architectural and industrial coatings rule, a mobile equipment refinishing rule, a solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are neither included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New York has begun its regulatory development process for these measures. EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions. See also section III. D. for an expanded discussion on New York's commitment.

Conformity Budgets

a. On April 18, 2000, New York committed to recalculate and submit a revised motor vehicle emissions budget if any of the additional emission reductions pertain to motor vehicle measures.

b. All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA issues MOBILE6. On April 18, 2000, New York submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year after MOBILE6 is issued.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and EPA has found them adequate. EPA is limiting the duration of its approval in this manner because it was only approving the attainment demonstrations and their budgets contingent on the states commitment to revise them after EPA issues MOBILE6. Therefore, once EPA has confirmed that the revised budgets are adequate, they will be more accurate to be used for conformity purposes than the budgets EPA is approving today.

In addition, EPA reopened the comment period to allow comment on the additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, including New York, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46387, July 28, 2000).

Mid-Course Review

On April 18, 2000, New York submitted an enforceable commitment to perform a mid-course review and submit the results of this review to EPA by December 31, 2003.

III. What Comments Were Received in Response to EPA's Proposals and How Has EPA Responded to Those Comments?

EPA received comments from the public on the Notice of Proposed Rulemaking published on December 16, 1999 (64 FR 70364) for New York's 1-hour Ozone Attainment Demonstration SIP.

In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs.

EPA also received comments on the August 13, 2001 (66 FR 42479) proposed approval of the New York RFP plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 11, 2001 (66 FR47139) proposed approval of the New York RACM Analysis.

A. Attainment Demonstration

1. General Comments

Comment: Several commenters urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all RACM and a control strategy sufficient to achieve attainment. One commenter went on to say that because they believe the plan should be disapproved under the consent decree in *NRDC* v. *Browner,* Civ. No. 99–2976, EPA must commence promulgation of a Federal Implementation Plan (FIP). One commenter supported the proposed approval.

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plan provided by the State of New York is fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2007, and that the plan includes all RACMs. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New York has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 parts per million (ppm) one-hour standard beyond 2007.

Response: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of part D of the CAA, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the CAA. Under section 181(a)(5), an area that does not have three-years of data demonstrating attainment of the ozone NAAQS, but has complied with all of the statutory requirements and has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS.

This position is consistent both with EPA's modeling guidance and with the structure of subpart 2 of the CAA. Under EPA's modeling guidance, states model air quality for the attainment year—they do not model air quality for the three-year period preceding the attainment year. As a function of how the model operates, the data produced only predicts the air quality for one year. EPA's modeling guidance has existed for many years and has been relied on by numerous nonattainment areas for demonstrating attainment of the ozone standard. Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 Clean Air Act amendments were required to adopt and implement RACT and I/M ''fix-ups'' that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15 percent ROP plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three-years of ''clean data.''

For the reasons provided above, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three-years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the New York Metro Area, all measures are being implemented as expeditiously as practicable and that the area has demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the New York Metro Area has three-years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the State to provide for maintenance of the standard at this time, we do believe emissions in the New York Metro Area will continue to decrease after 2007 due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that ''this attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, EPA allows states to supplement their photochemical modeling results with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).'' [1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W . . . is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment.* * *'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, Appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance [3] to update the 1991 guidance referenced in 40 CFR part 51, Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, a state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.* analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in

[1] The August 12, 1996, version of ''Appendix W to Part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

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

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.*, average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to reach attainment at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to reach attainment.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 proposals will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 parts per billion (ppb) on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to three exceedances in three years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the WOE determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, Appendix W, section 6.2.1.e. provides ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone in order to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 parts per billion during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: (1) it obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 proposal and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) There are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result of these limitations, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP Call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter and has determined that the 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. The values given do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, the local or regional control programs are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is issued. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

Comment: The NAAQS require that in order to demonstrate attainment of the 1-hour NAAQS that no more than 4 ambient ozone concentrations exceed 0.12 ppm (235 micrograms per cubic meter) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no ''rounding convention.'' No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 grams per cubic meter). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New York SIP submission does not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

Response: Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR Part 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard.'' (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 ppm, not 120 ppb as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and *guidance* promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms * * *'' Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

B. Reliance on the NO_X SIP Call and the Tier 2/Sulfur Rule

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call, *Michigan* v. *United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area 1-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe area 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_X SIP Call reductions by May 2004. First, the court vacated the rule as it applied to two States—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_X SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

Comment: New York State Department of Environmental Conservation (NYSDEC) commented that EPA is proposing that the State submit the NO_X SIP Call prior to EPA's taking final action on the December 16, 1999 proposal. However, the State agency believes that it cannot submit a SIP until EPA publishes a correction to its ''Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone.''

Response: New York submitted this comment in early 2000, prior to the time EPA published a technical amendment (*see* 65 FR 11222, March 2, 2000), which revised the NO_X statewide emissions budget for New York and other affected states. Since that time, New York submitted its rule in response to the NO_X SIP Call rule and EPA approved the rule (66 FR 28059).

Comment: New York has decided to commit to the California Low Emission Vehicle Program (CA LEV II), rather than meeting EPA's Tier 2 tailpipe emissions program. The Department recommends that EPA's final rulemaking permit New York the option of modeling CA LEV II.

Response: EPA has permitted New York the option of modeling CA LEV II. On June 9, 2000 (65 FR 36690) EPA notified the public that EPA has found that the motor vehicle emissions budget for VOC's and NO_X, in the submitted 2007 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area, is adequate for conformity purposes. New York's motor vehicle emissions budget reflects the results of a modeled CA LEV II program.

C. Comments on RACM

1. General RACM Comments

Comment: Several commenters have stated that there is no evidence that New York has adopted RACM or that the SIP provides for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the motor vehicle emissions budgets submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the State must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the New York Metro Area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs'').

However, New York supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 15, 2001 and adopted revision submitted on October 1, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 11, 2001 (66 FR 47139). Based on this supplement, EPA concluded that the SIP for the New York Metro Area meets the requirement for adopting RACM.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to reach attainment as expeditiously as practicable. EPA previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM.

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

On June 15, 2001, New York submitted a proposed analysis of RACM for the New York Metro Area which was adopted after public hearing on October 1, 2001 without substantive changes. The RACM analysis included an evaluation of potential TCMs for on-road mobile sources, potential control measures for point, area and off-road sources, and other non-TCM on-road control measures.

New York determined that there are no additional control measures, above and beyond what the State is already implementing, that would advance the 2007 attainment date specified in the CAA for severe ozone nonattainment areas, because the reductions from any potential RACM measures in the short-term are small compared to the reductions that will be achieved by 2007 through measures that are already in place or through measures which the State has previously committed to implement. In fact, the New York 1-hour

Ozone Attainment Demonstration SIP for the New York Metro Area, the 15 percent ROP plan, and the continuing 3 percent per year RFP emission reductions, already require emission controls on a wide variety of sources. Nevertheless, New York clearly states that there is nothing within its RACM assessment that precludes it from adopting the measures discussed in the assessment for the purpose of meeting the requirements for motor vehicle transportation conformity, attainment of an 8-hour ozone standard or any other air quality standard, and control of certain air toxins, or for any other reason to protect public health. In fact, over the period beyond the attainment date, some of these strategies may provide significant benefit. In some instances, there are efforts already underway to implement some strategies.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the New York Metro Area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that New York itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

EPA previously responded to comments concerning the adequacy of motor vehicle emissions budgets when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at *http://www.epa.gov/otaq/transp/conform/reg2sips.htm#ny.*

Comment: A commenter stated that New York State's submission fails to demonstrate how implementation of the two RACM it considered (referring to a construction/ozone action day program and alternate fuel program) and the other RACM is summarily dismissed from consideration, when taken together, would not advance the ozone attainment date. The commenter states that New York uses an arbitrary threshold value for screening individual control measures.

Response: New York's analysis of potential RACM considered information from the following sources:

1. Section 108(f) of the CAA
2. A list of control measures completed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO)
3. Ozone attainment suggested shortfall measures developed by the Ozone Transport Commission (OTC)
4. Control measures implemented through the California Federal Implementation Plan
5. Control measures implemented in other serious and severe ozone nonattainment areas
6. Control measures suggested by commenters during public comment periods on New York's attainment SIP, and
7. Transportation Control Measures analyzed by the New York State Department of Transportation (NYSDOT) in a document entitled, ''NYSDOT Conformity Measure Analysis''

New York's analysis summed the VOC and NO_X potential emission reductions from the numerous possible measures, including all the reductions from all the measures identified in the NYSDOT study. New York's analysis of TCM's examined the potential emissions reductions from measures included in the documents listed previously. Although, New York did establish a threshold value for screening individual control measures, EPA in its review for approvability, reanalyzed the measures identified by New York as having potential emission reductions and supplemented New York's rationale on why we believed certain measures could be rejected as RACM. In its review of the potential emission reductions identified by New York, EPA, as did New York, rejected measures as not being RACM because they either would not advance the attainment date (when combined would produce only a negligible amount of emission reductions), would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs.

The combination of measures examined by New York indicate potential reductions, but it is important to note that the estimate did not consider practical limitations in their implementation prior to 2007. Unfortunately, many of the actions needed to bring these measures to full fruition cannot be fully implemented in time to advance the attainment date from 2007 to an earlier year. For the NYSDOT study in particular, the measures are currently under interagency review and represent values at the maximum potential emissions reduction range and not values that could potentially be achieved before 2007. For instance, the NYSDOT study estimated significant potential emission reductions associated with a construction/ozone action day program. However, NYSDOT in estimating the emission reductions, did not consider significant issues which need to be addressed before it can be considered a RACM for the 1-hour ozone standard. These include analyses of: (1) Quantity of night-time construction that already takes place to ensure that emission reduction benefits are not ''double counted;'' (2) air quality impacts to ensure that the night-time emissions for New York are not contributing to ozone problems in downwind nonattainment areas; (3) air pollutant emissions from generators needed for lighting and supporting night-time activities; (4) costs associated with implementing the construction/ozone action day program; and (5) the estimated number of ozone action days based on exceedances of the 1-hour ozone standard and not an 8-hour standard. These considerations would substantially reduce the emission reductions for a construction/ozone action day program.

On a related note, New York's analysis of the impact of alternate fuel-consuming vehicles examined the benefits associated with conversion of all government vehicles in the New York Metro Area, regardless of vehicle weight, age or function, to use fuels which exhibit fewer emissions than gasoline-consuming vehicles. While New York identified significant potential reductions associated with an alternate fuels program, there is a lack of sufficient infrastructure currently in place for supply of alternate fuel for all government fleets. In addition, the analysis double counts reductions from vehicles that have already been converted. The New York City Department of Transportation currently only has two compressed natural gas (CNG) bus refueling stations capable of handling 200 buses each, with plans to convert five more stations by 2005. This would give a total capacity of seven stations for 1400 buses, out of a fleet of 3000 buses available for conversion. Moreover, the analysis does not recognize that existing non-CNG buses may have a useful life that extends beyond 2007 and that it may not be economically feasible to replace these buses before completion of their useful life. The promise of substantial emission reductions associated with this measure is contingent on a phase-in period for fleet vehicle turnover and further infrastructure development, which can be achievable, but not in time to advance attainment by 2006 or sooner. Therefore, this measure cannot be considered a RACM for the 1-hour ozone standard. Nevertheless, EPA believes alternate fuels for government vehicle fleets does offer potential emissions reductions to help achieve long-term environmental benefits.

New York's RACM Analysis and EPA's evaluation of their analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

2. RACM Requirements (Comments on EPA's October 16, 2000 Notice of Availability)

The following comments are similar to comments EPA received in response to its October 16, 2000 Notice of Availability (65 FR 61134). Notice was given that EPA performed an analysis to evaluate emission levels of NO_X and VOC and their relationships to the application of current and anticipated control measures expected to be implemented in four serious 1-hour ozone nonattainment areas. Although the New York Metro severe ozone nonattainment area was not included in EPA's October 16, 2000 Notice of Availability, the commenter resubmitted these comments in response to EPA's September 11, 2001 (66 FR 47139) proposed approval of New York's RACM analysis because they believe that the comments are appropriate to New York's RACM analysis.

Comment: Inappropriate grounds for rejecting RACM. The commenter claims that EPA's bases for rejecting measures as RACM are inappropriate considerations: (a) The measures are ''likely to require an intensive and costly effort for numerous small area sources''; or (b) the measures ''do not advance the attainment dates'' for the areas, 65 FR 61134. Neither of these grounds are legally or rationally sufficient bases for rejecting control measures. The commenter further states that motor vehicle Inspection and Maintenance (I/M) requires intensive and costly effort and Congress mandated it.

Response: The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general. Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be ''as expeditiously as practicable but no later than * * * '' the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560. EPA has consistently interpreted the CAA as requiring only such RACM as will provide for expeditious attainment since the Agency first addressed the issue in guidance issued in 1979. See 44 FR 20,372, 20,375 (April 4, 1979).

The term ''reasonably available control measure'' is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the states and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that states can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the time needed to develop rules will vary. Such development will likely take much longer for a large number of very different source categories of small sources for which little control information may exist, than for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time it takes a state to develop rules the less likely the possibility that the emission reductions from the rules would advance the attainment date. New York has determined and we agree that such additional measures in the New York Metro Area could not be developed soon enough to advance the attainment date.

In reference to I/M, Congress never mandated it as RACM but rather required it separately and EPA disagrees that I/M is not economically feasible, in fact we think it is relatively cheap for the resulting emission reductions.

Comment: Congress ratified EPA's 1979 RACM guidance as interpreted in the *Delaney* v. *EPA*, 898 F.2d 687 (1990) case. This decision indicates Congress' intent that states should include control measures in a SIP unless the state determines that such measures are not reasonably available.

Response: EPA changed that guidance in the 1992 ''General Preamble'' to remove the presumption that section 108(f) of the CAA measures were RACM and to clarify that areas only need such RACM as will advance attainment, see 57 FR 13498, 13560–61.

Comment: Although EPA does not articulate a dividing line between its perception of ''small'' and ''not small'' reductions, it does assert that the range of reductions it predicts from the RACMs analyzed in the October policy proposal are ''relatively small.'' These ranges are 2.03 to 29.7 tons per day of VOC and 3.56 to 17.07 tons per day for NO_X. EPA has granted (or proposed to grant) emission reduction credit of comparable or even smaller magnitude for other measures that are included in these SIPs.

Response: EPA has approved emission reduction credits of comparable or even smaller magnitude where New York has adopted certain measures and submitted them as part of SIP revisions, however, EPA has never said that those measures were required as RACM.

Comment: The mandate that nonattainment area SIPs contain all RACM is set out as a separate and distinct requirement in the CAA from the requirement that SIPs provide for attainment of ozone standards as expeditiously as practicable. Congress intended that the RACM requirement serve objectives beyond merely attaining the NAAQS. Plans are also required by section 110(a)(1) of the CAA to maintain the NAAQS.

Response: Areas, including the New York Metro Area, have met the ROP and RFP requirements and will have to show maintenance if they request redesignation. The SIP being approved today is designed to show attainment of the 1-hour ozone standard and the RACM requirement is keyed to expeditious attainment not ROP or maintenance.

Comment: Failure to quantify reductions needed to reach attainment sooner: Even if advancement of the attainment date were a relevant test for RACM, EPA has failed to rationally justify its claim that additional control measures would not meet that test. To begin with, neither the Agency nor the states have quantified, in a manner consistent with EPA rules and guidance, the emission reductions that would be needed to attain the standard prior to achievement of emission reductions required under the NO_X SIP Call. Nowhere is there an analysis that shows what it would take to attain in 2004, 2005, 2006 or 2007. This comment generally repeats a comment provided on EPA's October 12, 2000 Notice of Availability proposing EPA's RACM action for the three areas of Atlanta, Washington DC and Springfield, MA.

Response: First, note that while the commenter makes reference to the NO_X SIP Call, on November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059) EPA approved New York's regulations to comply with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules with full compliance by 2003, even though a decision by the DC Circuit Court allowed that full implementation could be rolled back to 2004. These NO_X control measures in New York are thus being implemented on a more expeditious schedule and as expeditiously as is practicable.

Further, it would be futile for New York to attempt to quantify the emission reductions that could be possible for the New York Metro Area to attain prior to the 2007 deadline. With all of the adopted control measures, and with the enforceable commitments to achieve the additional 85 tons/day of NO_X emission reductions needed for attainment in the New York-Northern New Jersey-Long Island severe ozone nonattainment area, plus the necessary reliance upon Federal measures, including the amount of cleaner on-and off-road vehicles that will enter the fleet in years prior to 2007, there are simply no additional measures that EPA is aware of that are reasonably available or economically feasible that could be implemented, much less implemented in time, to achieve attainment in advance of when the measures are being implemented in this plan. Thus, EPA does not believe that any additional measures could advance the attainment date.

Comment: Inadequate RACM analysis: The commenter states that EPA's RACM analysis is grossly inadequate in several key respects. This comment has several components which are summarized and addressed in (a) through (c) below.

Comment (a): EPA's analysis fails to provide the technical basis and calculations by which it developed its emission reduction estimates for various measures. EPA failed to provide citations to the literature regarding estimates of emission reductions for various TCMs. EPA failed to specify the level of implementation assumed for some of the TCMs in the analysis. The proposal published for New York suffers from the same deficiency. EPA identifies no analysis of the emissions reductions benefits achievable from the eight evaluated measures, does not discuss any emissions reduction estimates in the proposal, and cites no technical support document for the proposal.

Response (a): EPA's RACM analysis (found at *www.epa.gov/ttn/rto*) did provide the technical basis and calculations for its emission reduction estimates for control possible for the source categories in the emission inventory. The commenter apparently believes EPA's analysis is insufficient, however. The technical basis for the analyses and the assumptions used in the calculation of estimated emission reductions were derived from a review of the literature on the implementation and effectiveness of TCM's.[5] The TCMs evaluated depend on the level of implementation. Implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the midpoint level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective. EPA reviewed all potential TCMs at a mid-level of implementation and concluded that together they would not advance the attainment date.

In reference to the RACM analysis performed by New York, EPA evaluated New York's technical basis and estimates of potential emission reduction benefits for controls possible for all of the source categories. Regarding the TCM category, we provided an additional technical evaluation when reviewing New York's analysis for approvability. In conclusion, we determined that at a reasonable level of implementation, all potential categories of TCMs taken

[5] Transportation Control Measures: State Implementation Plan Guidance, US EPA 1992; Transportation Control Measure Information Documents, US EPA 1992; Costs and Effectiveness of Transportation Control Measures: A Review and Analysis of the Literature, National Association of Regional Councils 1994.

together would not be sufficient to advance the attainment date.

Comment (b): EPA's analysis looks at only a small universe of potential measures, and does not evaluate all of the measures identified in public comment and other sources.

Response (b): EPA's RACM analysis was intended to address all categories of stationary and mobile sources that could potentially provide additional emission reductions that might be considered RACM. The EPA believes that all identified measures were included in the categories addressed in the analysis, and EPA concluded on this basis that all measures together would not advance attainment.

Comment (c): EPA's analysis also completely fails to consider the additional benefits likely from combined implementation of complementary TCMs e.g., parking management along with transit improvements. It is arbitrary and irrational for EPA to assume that these measures can and will be implemented in complete isolation from one another.

Response (c): EPA recognizes that many control measures—particularly TCMs—are more effective if done in conjunction with others. EPA maintains, however, that it would be impossible to analyze a seeming infinite set of combinations of measures for possible benefits. The EPA's analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

Comment: Transportation Control Measures as RACM: EPA gives virtually no consideration to the emission reduction benefits of transportation programs, projects and services contained in adopted regional transportation plans (RTPs), or that are clearly available for adoption as part of RTPs adopted for a nonattainment area. In addition, it is arbitrary and capricious for EPA not to require as RACM economic incentive measures that are generally available to reduce motor vehicle emissions in every nonattainment area.

Response: EPA's notice of availability of the RACM analysis (65 FR 61134, October 16, 2000) does consider transportation programs, projects and services that are generally adopted, or available for inclusion in a nonattainment area's regional transportation plan (RTP) and Transportation Improvement Program (TIP). The RACM analysis includes seven broad categories and twenty-seven subcategories of TCMs that represent a range of programs, projects and services that can be included in RTP's and TIP's. The inclusion of a TCM in an RTP or TIP does not necessarily mean that it meets EPA's criteria for RACM and must be included in the SIP.

Some of these TCMs, such as parking cashout, transit subsidies, and parking pricing, are explicitly economic incentive programs. Furthermore, these categories of TCMs, as well as most of the others, could be infinitely differentiated according to criteria, such as the method of implementation, level of promotional effort or market penetration, stringency of enforcement, etc. The application of economic incentives to increase the effectiveness of a TCM is one such criterion. These implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the mid-level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective.

Also, there are many important reasons why a state, regional, or local planning agency might implement TCMs in an integrated traffic management plan beyond whatever air quality benefits the TCMs might generate, including preserving open space, watershed protection, avoiding sprawl, mitigating congestion, toll collection efficiency, and ''smart growth'' planning. So the fact that TCMs are being implemented in certain ozone nonattainment areas does not necessarily lead one to the conclusion that those TCMs represent mandatory RACM measures when they are analyzed primarily for the purpose of determining whether they would advance the ozone attainment date.

3. Point Source NO_X Controls

Comment: A commenter suggested energy efficiency improvements are not just for residential and commercial buildings and suggested savings could be achieved by more efficient motor and drive systems.

Response: EPA agrees that improved energy efficiency is a desirable method of reducing air emissions. NYSDEC and the New York State Energy Research and Development Authority (NYSERDA), are pursuing energy efficiency programs for residential and commercial buildings, and for other sources, such as electric and hybrid vehicles, industrial source process improvements, high efficiency display lighting and motor control efficiency upgrades. NYSDEC has also set aside allowances in 6 NYCRR Part 204 (NO_X Budget Trading Program) for energy efficiency/renewable energy, to encourage such projects.

Comment: Just as Integrated Resource Planning (IRP) for electric utilities resulted in demand side management programs that conserved electricity, IRP for natural gas utilities will have the same impact on conserving natural gas usage and resulting emissions. A number of states have effectively implemented IRP for natural gas.

Response: EPA agrees that improved energy conservation—regardless of the form of energy—is a desirable method of reducing air emissions. Since such measures would likely have to rely on voluntary efforts, the State would have to estimate the effect on emission reductions that would result. Putting in place even a voluntary effort to conserve natural gas that could be quantified in terms of its emission reduction benefits would likely require a significant amount of time. EPA believes it is unlikely—given the time spent on the bulk of the SIP—that the State would have had the time to develop such a quantifiable voluntary program that would have yielded enough NO_X reductions to advance the attainment date. Furthermore, it appears unlikely that such a quantifiable program could be put into place in sufficient time to advance the attainment date given the resources that the State will have to spend over the next several years simply developing and adopting the emission controls to make up the NO_X emission reduction shortfall. Therefore, EPA believes that this measure is not a reasonably available control measure at this time for the New York Metro Area.

Comment: The NYSDEC should establish the same requirements for new and existing stationary diesel engines in the New York Metro Area that are not used exclusively during infrequent emergency or backup situations.

Response: New York's 6 NYCRR 227–2 (Reasonably Available Control Technology for Oxides of Nitrogen), establishes RACT for all major sources of NO_X, including stationary diesel engines and peak shaving units. NYSDEC is currently revising this regulation to apply stricter controls on existing and new engines. EPA will review these stricter controls after New York submits them to EPA as a SIP revision.

4. Mobile Source Control Measures

Comment: A key presumptive RACM that New York has overlooked is diesel retrofits. Heavy-duty on-road and non-road diesel vehicles can be readily retrofit to reduce emissions of NO_X. Retrofit technologies are proven to be cost-effective, can be implemented on a fairly short timeframe and can reduce NO_X by as much as 90 percent. The Carl Moyer program in California and EPA's own voluntary diesel retrofit program have achieved impressive and cost-effective NO_X reductions. New York's failure to even consider or analyze the reasonableness of diesel retrofit measures is unlawful.

A similar comment made stated that retrofit controls on construction equipment could produce emission reductions that amount to ⅔ to ¾ of the 6.2 tons per day (tpd) VOC and 29 tpd NO_X reductions associated with construction stoppages on ozone action days and day time work bans in the NYSDOT Conformity Measure Analysis.

Another similar comment was made concerning control of construction equipment. The commenter pointed out that as stated in an ENVIRON report for the NYSDEC (Pollack, Tran and Lindhjem, 1999), more than half of all construction projects in Texas are completed to provide public infrastructure (*i.e.*, road building, public works, etc.). Most of these federally and state-funded projects are managed by state agencies. Given this, the NYSDEC should incorporate an environmental standard into contract specifications for construction projects managed by state agencies.

Response: Retrofit of heavy duty diesel vehicles is already an ongoing practice in the New York Metro Area, specifically with regard to the transit bus fleet of the Metropolitan Transportation Authority (MTA). To date, the MTA has retrofitted several hundred diesel buses with advanced catalyst particulate filter systems and has plans to retrofit the remainder of its fleet in the future. While MTA has found that its retrofit project is successful in reducing certain pollutants of concern such as particulate matter, the technology it is employing is not effective in reducing emissions of NO_X. Although retrofit technology exists which can be effective in reducing NO_X, it is not as cost effective or as demonstrated as other established diesel retrofit technologies. EPA agrees that while there is promise for this technology to be used effectively in the future, for example, as a measure which may be effective in helping the State meet the future 8-hour ozone standard, highway diesel retrofit technology to reduce NO_X, because it is not cost effective, can be dismissed at this time as a potentially available RACM by the State.

Regarding the 29 tpd NO_X reduction cited in the above comment, the State's calculation was based on a program of increased purchase and phase-in of construction equipment/engines that are less polluting. All information with regard to feasibly available diesel retrofit equipment gathered by the State indicated no reductions in NO_X and a maximum of 50 percent reduction in VOCs that could be associated with this potential measure. The NYSDOT Conformity Measure Analysis, in which this potential RACM was analyzed, did not assume complete participation for the entire New York Metro Area because of the inherent difficulties and uncertainties in voluntary compliance with a retrofit program which would make it infeasible on such a comprehensive basis. Even with the maximum potential VOC reduction associated with the technology as determined by the State, the estimated VOC reductions suggested in the above comment could not be approached without full participation of all private as well as publicly owned equipment, which as noted, New York did not consider reasonable. Additionally, the suggestion of incorporating an environmental standard into contract specifications for construction projects managed by state agencies would not increase the estimated benefits because New York already assumed retrofit of all equipment used in government projects in its analysis. Based on the State's analysis, EPA is in agreement with the State that retrofit of construction equipment can be rejected as a RACM because at a reasonable level of implementation it would not produce significant NO_X reductions.

Comment: Widespread implementation of time of day tolls would produce reduced air pollution emissions both by reducing vehicle miles of travel and reducing congestion delays for the remaining traffic. The SIP should include as a reasonably available transportation control measure value or congestion pricing and toll system automation. The toll authorities in the region have already demonstrated the potential for these measures by steps that include:

- Achieving more than 75 percent market penetration among regular commuters in the use of the electronic EZ-Pass transponder for non-stop toll collection on a number of major bridges, tunnels, and toll highways in the New York/New Jersey region.
- The full automation of truck tolls at Spring Valley on the New York Thruway,
- The successful introduction of time-of-day tolls on trans-Hudson bridges and tunnels and the New Jersey Turnpike in 2000–2001, resulting in reduced peak period traffic
- The dedication of a significant portion of revenues from bridge and tunnel tolls to pay for enhancements to transit services and related travel options in the tolled corridors.

The full automation of existing toll booths could provide further emission reductions. For congestion pricing to be most effective on major bridges and tunnels in the metro area the Port Authority and other facility operators should reinstate two-way tolling, which was abandoned in the past because toll booths were major congestion points. Now with EZ-pass this is no longer the case for the large majority of commuters who have the EZ-pass tags.

In the wake of the September 11, 2001, tragedy and the subsequent traffic delays caused by increased security measures, New York City Mayor Giuliani ordered a ban on the entry of solo drivers of non-commercial vehicles into Manhattan on bridges and tunnels south of 63rd Street during morning rush hours. This has led to a significant drop in traffic entering Manhattan. The Manhattan carpool rule has dramatically cut congestion and traffic entering Manhattan, cutting air pollution and proving popular with most city residents and workers. The SIP should consider continuation of this rule as a transportation control measure. The SIP should consider opportunities to relax the rule by allowing solo motorists entry to Manhattan on the affected bridges and tunnels if they pay a premium time-of-day toll which would generate revenue to pay for enhanced transit options.

Response: Emission reduction estimates for congestion pricing, e.g., time of day tolls, reported in the State's RACM Analysis are necessarily based on existing sources of information (local or other area program results, studies, EPA documentation) which allow quantification of potential benefits. New York's analysis of congestion pricing as a potential RACM was based, in part, on the same information discussed by the commenter, *i.e.,* a 7 percent reduction in traffic on Port Authority bridges and tunnels in the 6–9am commuter rush hours. The State's analysis included an extrapolation to assume a 7 percent reduction in total vehicle miles traveled (VMT) in the entire New York Metro Area. The potential NO_X and VOC emission reduction estimated by the

State for this measure included an assumption used previously in other areas regarding the effects of shifting emissions out of one time period into another. Based on its analysis using available data and assumptions, the State concluded that potential emission reductions were not sufficient to advance the attainment date to 2006. EPA is in agreement with the State's methodology and consequent rejection of this measure as a RACM.

The commenter suggests that full automation of existing tolls such as EZ-pass technology could provide further emission reductions. The commenter points out that substantial market penetration among regular commuters has already been achieved. While New York is currently working with other states to increase the use of EZ-pass throughout the northeast region, full automation cannot be reasonably achieved since a certain fraction of the motoring public will choose not to purchase EZ-pass, and both New York and EPA conclude that 100 percent participation cannot be considered a reasonable or feasible goal for the program.

Regarding the commenter's suggestion that the current ban on entry of solo drivers of non-commercial vehicles into Manhattan south of 63rd street should be continued as a RACM, which was put in place subsequent to the terrorist attacks of September 11, 2001, that ban was not in place and thus could not be considered at the time the State performed its RACM analysis in June 2001. Furthermore, the ban is a direct result of problems the City encountered and is attempting to avoid as a result of the attacks and their aftermath, which were and are not normal or reasonable occurrences; therefore the State could not have been expected to consider it a reasonably available measure at the time it conducted the RACM analysis. However, in rebuilding lower Manhattan after the disaster, EPA expects that state and other regional agencies will give consideration to mass transit and roadway modifications which will better accommodate new traffic and commuting patterns which will ultimately result in reduced emissions in the future. These modifications may become an integral part of the State's plan to meet the future 8-hour ozone standard.

Comment: Two commenters suggested that 15 ppm sulfur gasoline and low sulfur diesel should be adopted in the New York Metro Area as a reasonably available control measure.

Response: The CAA preempts states from establishing state fuels under section 211(c)(4)(A). Waivers from preemption are possible under section 211(c)(4)(C) if the state can show necessity for that fuel to meet the NAAQS, and if no other reasonable or practicable non-fuel measures exist that could be implemented in place of a state fuel. For a state to obtain a waiver of preemption, an acceptable demonstration must be submitted to EPA that can justify the need for a particular state fuel. This provision of the CAA was included to discourage the development of a patchwork of fuel requirements from state to state. When other states, such as Texas, have considered implementing fuel programs which control sulfur levels such as 15 ppm sulfur gasoline, they determined that excessive costs when compared with the emissions benefit, the difficulties in producing a boutique fuel, and anticipated distribution problems made such a measure unreasonable. Furthermore, state-adopted gasoline and diesel sulfur control programs would directly conflict with on-going efforts to comply with the federal low-sulfur requirements for those fuels which will be implemented beginning in 2004 and 2006, respectively. When considering this measure, Texas only projected a 1.15 tpd of emission reduction from the institution of 15 ppm sulfur gasoline at an estimated cost of over $500,000 per ton to consumers. Because of the general preemption in the CAA and the low projected cost effectiveness, EPA does not consider this fuel requirement to be a RACM for New York at this time.

Comment: One commenter suggested that public and large commercial fleets be required to have low emitting vehicles.

Response: New York, in exercising its option under section 177 of the CAA, adopted the first and second phases of the California Low Emission Vehicle (LEV) program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 6,000 pounds gross vehicle weight rating for vehicle model years 1994 and later. Also as allowed under the CAA, New York chose to use a substitute measure to meet its clean fuel fleet requirements, and did so with the California LEV program. EPA approved New York's SIP revision using the LEV program as an opt out because it demonstrated that it would assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized from the federal clean fuel fleet program. Moreover, a clean vehicle program limited to large fleets would affect a much smaller subset of vehicles than the LEV program currently applicable in New York. New York's LEV program, which is already accounted for in its ozone SIP, is a statewide program affecting the sale of all light duty vehicles. New York's implementation of its LEV program and inclusion in the SIP precludes it from consideration of the suggested commercial LEV program as RACM.

Comment: One commenter suggested New York institute an auto license fee tied to actual vehicle NO_X emission rates.

Response: EPA is not aware of any area where this type of measure has been instituted or even thoroughly considered. This brings to mind a host of legal and implementation issues. Moreover, it is not clear how much emission reductions could be achieved and at what fee levels. Furthermore, there is a lack of information on the localized costs and benefits of this program. Consequently, EPA believes that this cannot be considered a RACM for New York.

Comment: One commenter suggested the following measures to achieve additional emission reductions from aircraft operations: (1) Mandatory Powering of Jets at gates with Electric Power (2) Reduced Idling on the runway (3) Congestion Pricing at Rush Hours at Airports.

Response: The Port Authority of New York/New Jersey is the jurisdictional agency and landlord for the New York City metropolitan airports. The State of New York alone does not have the authority to require airport gates to supply electricity to aircraft for powering. Therefore, while this measure has promise in the future as a potential important source of emissions reductions, the State can not consider gate electrification or other airport modifications which are under the control of the airport landlord agency as RACM available to it. Similarly, although planning of airline operations during rush hours to reduce idling on runways to reduce emissions may have merit, New York does not have the authority to impose regulations on airlines to require this planning. The Federal Aviation Administration has jurisdiction over airline operations once the aircraft leaves the gate and State regulation is pre-empted. Additionally, since the State has no authority to control airline operations, and congestion is a function of the higher level of operations during rush hours, congestion pricing is likely to place an unnecessary economic burden on the traveling public with no air quality benefits. State controls on pricing are expressly preempted by the Air Deregulation Act. Therefore, EPA concludes that such measures are not reasonably available.

Comment: A number of specific TCMs and economic incentive programs to reduce VMT were identified by various commenters. These include: telecommuting, satellite offices, college/university traffic control measures, bike and walk pathways, increased government use of the web, voluntary no drive days, trip reduction ordinances, employer based transportation management, road pricing, ride share incentives, insurance pricing, commuter choice, parking cashout, taxes on paid parking, congestion pricing, incentives for transit oriented development and improved incident response.

Response: EPA does not believe it is necessary, or even practically possible, to evaluate every level of implementation of TCMs in order to adequately determine if they are reasonably available. EPA notes that the TCM measures listed above are either being encouraged or a similar measure is being implemented in the New York Metro Area as part of the commuter choice program such as telecommuting, ride share incentives, and employer based transportation management. New York has identified emission reductions from TCMs, however, New York determined that it is not feasible for these measures to advance the attainment date in the New York Metro Area. EPA agrees that the small amount of additional reductions that could reasonably be achieved would not advance attainment. Therefore, EPA agrees with New York's conclusion that such measures are not required as RACM.

Comment: The 2022 Metropolitan Transportation Plan and TIP devote an increasing share of scarce funds over time to projects that exacerbate sprawl, traffic, and pollution growth, while shortchanging projects to improve air quality and expand travel choices. Reallocating MTP/TIP funds could allow the region to meet CAA requirements for timely attainment of air quality while improving mobility for the citizens of the region.

Response: It is unclear whether or not the commenter is referring to a transportation plan in the New York area; the long range regional transportation plan (RTP) of the New York Metropolitan Transportation Council (NYMTC), which is the New York portion of the New York City region's federally designated metropolitan planning organization (MPO), terminates with the year 2020, not 2022 and it is referred to as ''Mobility for the Millennium,'' not the ''Metropolitan Transportation Plan.'' Only NYMTC, which is comprised of several government agencies and transportation providers in the region, has the authority and responsibility to allocate or reallocate funds for projects in its transportation plans; the State does not have this authority. As it works to conform its transportation improvement program with the State's SIP, NYMTC has and will continue to give high priority to those projects which are air quality-beneficial. However, at the least because it lacks the authority to do so, EPA believes this suggested measure should not be considered a RACM available to the State for the purpose of advancing the attainment date.

D. Approval of Attainment Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and rate of progress demonstrations because not all of the emissions reductions assumed in the demonstrations (a) have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP. Also a commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions. The commenter indicated that New York submitted an enforceable commitment on April 18, 2000 to participate in the OTC process and to adopt measures by October 31, 2001. Although New York did participate in the OTC process, the deadline for choosing and adopting shortfall measures has come and gone. So far, New York has not submitted anything to EPA which states which control measures New York plans to use to address the shortfall. Nor has New York adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New York for the New York Metro Area, the commenters contend that the 85 tons per day VOC and 7 tons per day of NO_X gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Although the submittal consists in part of commitments, New York has not yet actually adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New York. Thus, New York has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the commenter points out the submittal also does not meet the definition of a ''full attainment demonstration SIP,'' in a current consent decree EPA entered into in *NRDC* v. *Browner*, cir. 99–2976 (D.Ct. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New York 1-hour Ozone Attainment Demonstration SIP by that date.[6] The commenter believes that for these reasons, EPA should reject the New York 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[7] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3)

[6] Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

[7] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp.1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97—6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the CAA, which starts an 18-month period for the state to begin implementation before mandatory sanctions are imposed.

whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New York does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP (see 66 FR 42479, August 13, 2001). New York's RFP plans, discussed above, demonstrate RFP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved State measures.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast States that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For New York's attainment demonstration for the New York Metro Area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with the area's ability to meet the 2007 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.*, 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State implementation plan for New Jersey). Nothing in the CAA speaks directly to the approvability of enforceable commitments.[8] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance*, as may be necessary or appropriate to met the applicable requirement of the CAA.'' (Emphasis added). Section 172(c)(6) of the CAA requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date* * *'' (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to reach attainment. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the New York Metro Area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). EPA does not believe that case is directly applicable here, because the commitments made here are limited. EPA agrees with the Court that other provisions in the CAA contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

[8] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a state may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the state, the CAA provides that the conditional approval will convert to a disapproval if ''the state fails to comply with such commitment.''

In the present circumstances, the commitments address only a small portion of the attainment plan. For the New York Metro Area, the commitment addresses only 9.1 percent and 0.8 percent of the total VOC and NO_X emissions reductions , respectively, necessary to attain the standard. A summary of the adopted control measures and other components credited in New York's attainment demonstration submission are discussed in section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001 recommended a set of control measures. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

The third factor, EPA has considered in determining to approve limited commitments for the New York attainment demonstration is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors, such as the need to consider innovative control strategies or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes.

As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of it's proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See e.g., 64 FR 70364. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007.

EPA still believes that New York, consistent with the memoranda of understanding signed by Carl Johnson, Deputy Commissioner, NYSDEC, will propose, adopt and implement the identified control measures. The actual OTC regulation development process took longer than EPA anticipated—15 months of the 22 months that EPA had thought the complete effort (*i.e.,* OTC process and state adoption) should take. This left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New York did not make its submission by the October 31, 2001 deadline, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.* sections 179(a) and (b) and 304) to ensure New York completes the adoption process.

New York is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures well within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions.

The enforceable commitments submitted by New York for the New York Metro Area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because New York has obligated itself to submit the rules by specified short-term dates, the states commitment is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and section II of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the New York SIP meets the NRDC Consent Decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

Comment: One commenter raises concerns regarding the enforceability of New York's commitment to adopt and submit the additional control measures to achieve additional emission reductions necessary for attainment. Specifically, the commenter is concerned that the lack of specific identified measures and specific identified emission reductions associated with those measures undercuts their enforceability. The commenter suggests that the commitments made by New York are more ''discretionary'' than the types of commitments that courts have enforced in the past because these State's commitments do not identify specific measures.

Response: EPA believes that the CAA provides for enforcement of the terms of an approved SIP. *See e.g.,* CAA 304(a)(1) and (f). Thus, in a case where a state commits to adopt a specific control strategy that will achieve a specific level of reductions by a specific date, the Court may require the State to take action to adopt that measure and achieve the prescribed level of reductions. In the case, such as here, where the State commits to adopt and submit by a specific date measures to achieve a certain level of emission reductions, the Court may order the State to adopt measures to achieve that level of reductions. Simply because the State retains authority regarding the precise mix of controls that it may adopt, does not interfere with the enforceability of the commitment to achieve the level of reductions necessary for attainment. EPA has determined that there are sufficient available controls to achieve the level of reduction to which the State has committed. This determination is supported by the recommendation of the OTC regarding specific controls. Thus, EPA believes that the commitment submitted by New York is enforceable by EPA and citizens and that a court could order the State to adopt control measures that will achieve the level of reductions necessary for attainment.

Comment: One commenter suggested several changes to the enforceable commitments in the New York 1-hour Ozone Attainment Demonstration SIP. In particular, the commenter believes that because the various commitments are scattered throughout the State's submission, it is difficult to assess what the State is required to do. In addition, the commenter suggests that the State adopt additional specific language as part of its commitments.

Response: EPA has identified in section II. F. in this notice the specific commitments made by New York that are being approved in this rulemaking. This should eliminate confusion regarding the enforceable commitments being relied upon for approval of the attainment demonstration. The specific language changes proposed by the commenters are not necessary for approvable enforceable commitments. EPA believes the current submission complies with the requirements of sections 110, 172 and 182 of the CAA and that such commitments are enforceable by EPA and citizens under CAA sections 113, 304 and 179(a).

Comment: EPA must reject any efforts to relax effective control measures on the books before New York eliminates the identified shortfall in emission reductions.

Response: Section 110(l) of the CAA governs EPA's review of a SIP revision from a state that wishes to make changes to its approved SIP. This section provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Therefore, if we receive an attainment demonstration SIP revision from New York that contains relaxed control measures or the replacement of existing control measures, we would consider the revised plan's prospects for meeting the current attainment requirements and other applicable requirements of the CAA. If we receive a SIP revision that meets our completeness criteria, we will review it against the statutory requirements of section 110(l). Further, the CAA requires us to publish a notice and to provide for public comment on our proposed decision. EPA believes that it is in the context of that future rulemaking, not EPA's current approval, that the commenter's concern regarding the appropriateness of any replacement measures adopted by the State should be considered.

Comment: The mid-course review process outlined by New York is not a permissible substitute for a currently complete attainment demonstration or adopted enforceable control measures. The mid-course review will delay final approval of the SIP until 2004, 10 years after the SIP was required under the CAA.

Response: The mid-course review is not intended as a replacement for a complete attainment demonstration or as a replacement for adopted control measures. Rather, it is intended to reflect the reality that the modeling techniques and inputs are uncertain. Thus, the progress of implementing the plan should be evaluated so that adjustments can be made to ensure the plan is successful. EPA is fully approving the attainment demonstration because, based on the information currently available, EPA believes that it will provide for attainment. However, the mid-course review allows the State and EPA an opportunity to consider additional information closer to the attainment date to assess whether adjustments are necessary. In the case of New York, the State has extensive plans to fully evaluate the inputs to the model and the modeling itself using the most up to date information possible. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: The commenters raised several questions concerning the Motor Vehicle Emissions Budgets (the budgets) established in the New York 1-hour Ozone Attainment Demonstration SIP. The commenters stated that the budgets submitted in the SIP should not be called adequate or be approved by the EPA because the attainment demonstration SIP does not provide for attainment. One commenter specifically pointed to the need for adopted and enforceable control measures.

Response: EPA's adequacy process for the 2007 motor vehicle emissions budgets in New York's 1-hour Ozone Attainment Demonstration SIP has been completed, and we have found the motor vehicle emissions budgets to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action, when we issued our adequacy findings. Therefore, we are not responding to comments on the adequacy of the budgets here. Our finding of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

The emission budgets for New York for the year of 2007 are 161 tpd and 221 tpd for VOC and NO_X, respectively. The 2007 budgets associated with New York's 1-hour Ozone Attainment Demonstration SIP are being approved by the EPA only until revised budgets pursuant to the State's commitments relating to MOBILE6 and shortfall measures are submitted and we have found the revised budgets adequate for transportation conformity purposes. Approval of the attainment budgets is based on the current control measures specified in the SIP and the enforceable commitments made for additional controls which will be implemented in the interim period.

Because enforceable commitments to adopt additional measures are included in the SIP, EPA believes that it can approve the budgets. We believe that the budgets can be approved because the budgets will not interfere with the area's ability to adopt additional measures to attain the ozone standard and they are consistent with New York's 1-hour Ozone Attainment Demonstration SIP. While the area is adopting its additional measures, the SIP's budgets will cap motor vehicle emissions and thereby ensure that the amount of additional reductions necessary to demonstrate attainment will not increase. The budgets are consistent with, and clearly related to, the emissions inventory and the control measures and are consistent with attainment.

EPA disagrees that the SIP does not provide for attainment. For further explanation of how this attainment demonstration SIP as an overall plan provides for attainment please see other responses directly relating to the sufficiency of the overall attainment plan, control strategy, enforceable commitments, etc. contained in this final action.

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action when we issued our adequacy findings and continue to maintain the finding and the reasoning behind those findings. Therefore, we are not listing the individual comments or responding to them here. All of our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the web site, EPA regional contacts are identified.

On August 13, 2001 (66 FR 42479), we proposed to approve the transportation conformity budgets for the New York Metro Area. See Table 2. In this final rule we are approving these budgets.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: The commenter claims that there is a growing proportion of sport utility vehicles in the New York Metro Area by citing an increase of sport utility vehicles in the Washington DC metropolitan area. The New York Metro Area is not Washington DC nor has the commenter provided any specific evidence that there is a significant increase of sport utility vehicles in the New York Metro Area. However, all of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. New York used 1990 vehicle registration data for 2002, and 2005 modeling and inventory purposes, however, the vehicle mix which was formerly based on 1990 data was updated to 1996 data when New York revised the 2007 budgets in April 2000. These were updated to be consistent with New York's revised 1-hour Ozone Attainment Demonstration SIP. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6. New York has committed to submit such a SIP revision within one year after MOBILE6 is issued.

Comment: The New York SIP understates the real speed of traffic on Interstate Roads, Freeways, and Expressways, thereby underestimating related emissions.

Response: The commenter has only made an assertion that the real speed of traffic on Interstate Roads, Freeways, and Expressways exceed those contained in the New York SIP, without providing any specific data to support that assertion. However, the estimates of vehicle speeds on the various roadway types the State used in the SIP revision on which we are taking final action were based on standard professional practices and the most accurate information available at the time the SIP was submitted. Estimation of vehicle speeds is a complex process. The State estimated vehicle speeds based on a methodology it detailed in a New York State Department of Transportation document, ''Speed Estimates for Use in1994 Air Quality State Implementation Plan'', dated October 24, 1994. The State determined speeds for each time period through a number of successive steps. Generally, that methodology involves collection of speed data for a base and a future year from the New York Metropolitan Transportation Council, which provides 24 hour average speeds for three functional class groups for the New York City metropolitan area. Speeds for intermediate years are linearly interpolated between the base and future years by the State. The relationship between speed and the volume-capacity ratio (vcr) for different functional classes were relied on and identified by the State from the Highway-Capacity Manual (HCM) and other sources. Final speeds are based on adjustments of preliminary speeds to reflect differences between MPO travel demand model and HCM based off-peak speed data. In the New York City metropolitan area, the 24 hour average speeds in each county were available to the State for three functional classes. To estimate speeds by the required 6 functional classes, the distribution of VMT between functional classes were obtained from highway performance monitoring system (HPMS) data. A speed difference between the two functional classes represented in each functional class group was assumed by the State: the average speed in the lower functional class was assumed to be 95 percent of the average speed in the higher functional class. To calculate the 24 hour average speeds from the HCM, a selected VMT is divided by the total travel time for that VMT for all time periods, in both functional classes included in a functional class group. For more detail on this methodology, the reader is referred to the above referenced document. Regarding the commenter's assertion that speeds used by the State were understated and may not be reflective of actual speeds reached on area roadways, it should be stressed that the modeling requires the use of vehicle speeds averaged over an hour, as opposed to instantaneous or cruise speeds. EPA defines speed, for modeling purposes, to include all operation of vehicles, including intersections and other obstacles to travel, which may result in stopping and idling. Thus, while stop and go traffic may at times reach speeds above those used by the State in its modeling, the slower speeds must also be accounted for in the hourly average.

Additionally, while EPA requires the most recent available estimates to be used, we do not require it to be updated on a specific schedule. As with vehicle registration data, we expect that the revision to New York's SIP that will be submitted using MOBILE6 will update vehicle speed estimates as appropriate for use with MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used as a blowing agent instead of hydrocarbons, a known pollutant. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively.

It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long-term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. Using HFC–152a as a blowing agent is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA § 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (*http://www.epa.gov/ozone/title6/snap/*).

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [9] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP, RFP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and RFP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and RFP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs. Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[10] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide.

The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[11] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the Consumer Products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by the EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets

Comment: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE6 models are released.

Response: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor

[9] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

[10] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[11] ''Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I—X.

vehicle emissions budgets after MOBILE6 is issued.

Comment: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response: This is the reason that EPA proposed on the July 28, 2000, a supplemental notice (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response: EPA agrees. The motor vehicle emissions budgets in the New York Metro Area attainment demonstration reflects the motor vehicle control measures in New York's 1-hour Ozone Attainment Demonstration SIP. In addition, New York has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The New York Metro Area attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the CAA.

Comment: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, New York will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is issued.

Comment: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is issued. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option to Revise the Motor Vehicle Emissions Budgets

Comment: One commenter did not prefer the additional option for a second year before the State has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. New York has committed to revise its budgets within one-year of MOBILE6's being issued.

M. Measures for the 1-hour National Ambient Air Quality Standards (NAAQS) and for Progress Toward 8-hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone NAAQS because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The 1-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-

hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call. Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met.

The commenter continues stating that the EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP Call or 126 orders as an excuse for waiving RFP deadlines. The statutory RFP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New York submitted its Post-99 RFP Plans on November 27, 1998 and EPA proposed approval on August 13, 2001 (66 FR 42479). EPA is approving the RFP Plans as part of this action.

IV. What Are EPA's Conclusions?

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstration and other SIP revisions for the New York portion of the New York-Northern New Jersey-Long Island ozone nonattainment area should affect EPA's determination that the SIP is fully approvable. Thus, EPA is approving several SIP revisions that relate to attainment of the 1-hour ozone standard in New York. EPA has evaluated New York's 1-hour Ozone Attainment Demonstration SIP submittal for consistency with the CAA, applicable EPA regulations, and EPA policy. EPA has determined that the 1-hour ozone standard in the New York Metro Area will not be achieved until the states and EPA implement additional measures to meet the necessary level of reductions identified by EPA, including Tier 2/Sulfur program and a group of local controls, such as measures consistent with the OTC recommendations. EPA has promulgated all of the necessary federal rules needed to provide for attainment. New York has committed to adopt and submit the measures necessary to achieve additional reductions. EPA is approving New York's 1-hour Ozone Attainment Demonstration SIP, including all of the enforceable commitments, as fully meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA.

EPA has also evaluated New York's Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for 2002, 2005 and 2007, ozone contingency measures and RACM Analysis submittals for consistency with the CAA and EPA regulations and policy. EPA is approving New York's: 2002, 2005 and 2007 ozone projection emission inventories; 2002, 2005 and 2007 RFP Plans; 2002, 2005 and 2007 transportation conformity budgets; ozone contingency measures; and RACM Analysis.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This final action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final 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 (Pub. L. 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. section 804(2). This rule will be effective March 6, 2002.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (i) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(i)(1) The 2002, 2005 and 2007 ozone projection year emission inventories included in New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(2) The Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007 included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(3) The contingency measures included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area necessary to fulfill the RFP and attainment requirement of section 172(c)(9) of the CAA are approved.

(4) The 2002, 2005 and 2007 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's November 27, 1998 and April 18, 2000 State Implementation Plan revisions are approved until such time as New York submits revised budgets consistent with its commitments to revise the budgets with reference to MOBILE6 and/or additional control measures and EPA finds those revised budgets adequate.

(5) The Reasonably Available Control Measure Analysis for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's October 1, 2001 State Implementation Plan revision is approved.

(6) The revisions to the State Implementation Plan submitted by New York on November 27, 1998, April 15, 1999, and April 18, 2000, are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the CAA for the New York portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area. The revisions establish an attainment date of November 15, 2007, for the New York-Northern New Jersey-Long Island ozone nonattainment area. The April 18, 2000, revision includes the following enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality standard:

(i) Adopt additional control measures by October 31, 2001, to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard.

(ii) Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA.

(iii) Adopt and submit by October 31, 2001 intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions.

(iv) Submit revised State Implementation Plan and motor vehicle emissions budget by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory.

(v) Revise State Implementation Plan and motor vehicle emissions budget within 1 year after MOBILE6 mobile emissions model is issued.

(vi) Perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1754 Filed 2–1–02; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[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..