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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD; Amendment 39–12662; AD 2002–04–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes, that requires repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Effective April 2, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 2002.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 2, 2002 (67 FR 40). That action proposed to continue to require repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections. Additionally, that action proposed to require that actions be done in accordance with newly revised service bulletins, and to revise the applicability.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It will take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–04–05 Airbus Industrie: Amendment 39–12662. Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model—	Excluding those modified per Airbus Modification—
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series airplanes	11349 and 12309.
A300 B4–600 series airplanes, A300 B4–600R series airplanes, and A300 F4–605R airplanes	11348 and 12303.
A310 series airplanes	11350 and 12310.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 600 flight hours after the effective date of this AD, perform a detailed visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

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

Note 3: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 07, dated August 9, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies, as specified by paragraphs (c)(1), (c)(2), or (c)(3) of this AD, as applicable, terminates the requirements of this AD.

(1) For Model A300 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done as specified by paragraph (c)(1)(i) or (c)(1)(ii) of this AD.

(i) For airplanes in the common pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001, or Revision 02, dated September 7, 2001.

(ii) For airplanes in the basic pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001.

(2) For Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001.

(3) For Model A310 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 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

(f) The actions required by paragraph (a) of this AD shall be done in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001; Airbus Service Bulletin A300–24–6011, Revision 05, dated May 18, 2001; or Airbus Service Bulletin A310–24–2021, Revision 06, dated May 18, 2001. The actions required by paragraph (b) of this AD shall be done in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001; Airbus Service Bulletin A300–24–6039, Revision 07, dated August 9, 2001; or Airbus Service Bulletin A310–24–2052, Revision 04, dated April 6, 2001; as applicable. The optional replacement provided in paragraph (c) of this AD, if accomplished, shall be done in accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001; Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001; Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001; or Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on April 2, 2002.

Issued in Renton, Washington, on February 12, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–4225 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30295; Amdt. No. 2093]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective April 18, 2002*

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D
Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-D
San Luis Obispo, CA, San Luis Obispo Co-McChesney Field, ILS RWY 11, Amdt 1
Santa Ana, CA, Santa Ana/John Wayne Airport-Orange County, NDB RWY 1L, Amdt 1B
Santa Ana, CA, Santa Ana/John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1A
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, RNAV (GPS) RWY 12, Orig
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, VOR RWY 12, Amdt 14
Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt 2B, CANCELLED
Pittsfield, IL, Pittsfield Penstone Muni, VOR/DME RWY 13, Amdt 4
Pittsfield, IL, Pittsfield Penstone Muni, NDB RWY 31, Amdt 6
Pittsfield, IL, Pittsfield Penstone Muni, RNAV (GPS) RWY 13, Orig
Pittsfield, IL, Pittsfield Penstone Muni, RNAV (GPS) RWY 31, Orig
Manhattan, KS, Manhattan Regional, VOR RWY 3, Amdt 17C
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 12L (SIMULTANEOUS CLOSE PARALLEL), Amdt, 3C
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 12R (SIMULTANEOUS CLOSE PARALLEL), Amdt, 2D
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 30L (SIMULTANEOUS CLOSE PARALLEL), Amdt, 4B
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 30R (SIMULTANEOUS CLOSE PARALLEL), Amdt, 5C
Warren, MN, Warren Muni, RNAV (GPS) RWY 30, Orig
Winona, MN, Winona Muni-Max Conrad Fld, VOR–A, Amdt 13
Winona, MN, Winona Muni-Max Conrad Fld, VOR RWY 29, Amdt 16
Winona, MN, Winona Muni-Max Conrad Fld, RNAV (GPS) RWY 29, Orig
Winona, MN, Winona Muni-Max Conrad Fld, GPS RWY 29, Amdt 1A
Lakewood, NJ, Lakewood, VOR RWY 6, Amdt 6
Lakewood, NJ, Lakewood, RNAV (GPS) RWY 6, Orig
Lakewood, NJ, Lakewood, GPS RWY 6, Orig, CANCELLED
Lakewood, NJ, Lakewood, RNAV (GPS) RWY 24, Orig
Lakewood, NJ, Lakewood, GPS RWY 24, Orig, CANCELLED
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RWY 7, Amdt 4
Jamestown, NY, Chautauqua County/Jamestown, VOR RWY 25, Amdt 8
Jamestown, NY, Chautauqua County/Jamestown, ILS RWY 25, Amdt 6
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 7, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 13, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) Y RWY 25, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) Z RWY 25, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 31, Orig
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RNAV OR GPS RWY 13, Amdt 3, CANCELLED
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RNAV OR GPS RWY 31, Amdt 2A, CANCELLED
Ocracoke, NC, Ocracoke Island, RNAV (GPS) RWY 6, Orig
Ocracoke, NC, Ocracoke Island, RNAV (GPS) RW 24, Orig
Jackson, OH, James A. Rhodes, RNAV (GPS) RWY 1, Orig
Jackson, OH, James A. Rhodes, RNAV (GPS) RWY 19, Orig
Allentown, PA, Lehigh Valley Intl, VOR/DME RWY 24, Orig, CANCELLED
Bedford, PA, Bedford County, GPS RWY 14, Orig-C
Galeton, PA, Cherry Springs, VOR/DME–A, Orig-A
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 12A
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26, Amdt 1B (Simultaneous Close Parallel)
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 27L, Amdt 1B (Simultaneous Close Parallel)
Philadelphia, PA, Philadelphia Intl, COPTER ILS RWY 17, Orig-B, CANCELLED
Roosevelt, UT, Roosevelt Muni, VOR/DME RNAV RWY 25, Amdt 2
Roosevelt, UT, Roosevelt Muni, VOR OR GPS–A, Amdt 3
Roosevelt, UT, Roosevelt Muni, GPS RWY 25, Orig, CANCELLED
Roosevelt, UT, Roosevelt Muni, RNAV (GPS) RWY 25, Orig
Vernal, UT, Vernal, VOR RWY 34, Amdt 8
Vernal, UT, Vernal, RNAV (GPS) RWY 34, Orig
Melfa, VA, Accomack County, VOR/DME RWY 3, Amdt 1
Melfa, VA, Accomack County, LOC RWY 3, Orig
Melfa, VA, Accomack County, NDB RWY 3, Orig
Melfa, VA, Accomack County, NDB RWY 3, Amdt 8A, CANCELLED
Melfa, VA, Accomack County, RNAV (GPS) RWY 3, Orig
Fort Bridger, WY, Fort Bridger, VOR RWY 22, Amdt 2
Fort Bridger, WY, Fort Bridger, RNAV (GPS) RWY 22, Orig

The FAA published the following procedure in Docket No. 30290, Amdt. No. 2088 to Part 97 of the Federal Aviation Regulations (Vol. 67 FR No. 17 Page 3612: dated January 25, 2002) under section 97.23 effective 18 April 2002 is hereby rescinded.

Tecumseh, MI, Meyers-Diver's, VOR OR GPS–A, Amdt 7

The FAA published an Amendment in Docket No. 30293, Amdt. No. 2091 to Part 97 of the Federal Aviation Regulations (Vol 67 FR No. 28 Page 6167: dated February 11, 2002) under section 97.33 effective 21 March 2002, which is hereby amended as follows:

Warren, MN, Warren Muni, RNAV (GPS) RWY 30, Orig is hereby effective 18 April 2002.

Note: The FAA published the following procedure in Docket No. 30293, Amdt. No. 2091 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 28, Page 6167; dated Monday, February 11, 2002) under

section 97.23, 97.33 effective December 27, 2001 is hereby rescinded.

Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig is hereby rescinded.

Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig is hereby rescinded.

[FR Doc. 02–4287 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30296; Amdt. No. 2094]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

. . . EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC Number	Subject
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0835	ILS Rwy 34R, Amdt 1
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0836	ILS Rwy 34L, Orig
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0837	ILS Rwy 16R, Amdt 1
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0838	ILS Rwy 16L, Amdt 1
02/01/02	UT	Delta	Delta Muni	2/0908	VOR/DME or GPS Rwy 16, Amdt 1A
02/05/02	SD	Mitchell	Mitchell Muni	2/0979	VOR or GPS Rwy 12, Amdt 10A
02/05/02	SD	Mitchell	Mitchell Muni	2/0985	VOR or GPS Rwy 30, Amdt 4A
02/06/02	AZ	Yuma	Yuma MCAS-Yuma Intl	2/0989	VOR/DME or TACAN–1 Rwy 17, Amdt 1B
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0991	VOR/DME RNAV Rwy 21R, Amdt 4
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0994	GPS Rwy 21R, Orig
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0995	VOR Rwy 17, Amdt 5
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0996	GPS Rwy 17, Orig–A
02/08/02	FL	Orlando	Orlando Intl	2/1044	VOR/DME Rwy 36L, Amdt 4B
02/08/02	FL	Orlando	Orlando Intl	2/1045	VOR/DME or GPS Rwy 36R, Amdt 9A
02/08/02	FL	Orlando	Orlando Intl	2/1048	GPS Rwy 36L, Amdt 1A
02/08/02	FL	Orlando	Orlando Intl	2/1049	VOR Rwy 18R, Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1050	VOR Rwy 18L, Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1051	VOR/DME or GPS Rwy 18L, Amdt 5A
02/08/02	FL	Orlando	Orlando Intl	2/1052	ILS Rwy 18R, Amdt 5A
02/08/02	FL	Orlando	Orlando Intl	2/1053	ILS Rwy 17 (Cat I, II), Amdt 2A
02/08/02	FL	Orlando	Orlando Intl	2/1054	ILS Rwy 35 (Cat I, II, III), Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1055	ILS Rwy 36R (Cat I, II, III), Amdt 6A
02/08/02	FL	Orlando	Orlando Intl	2/1057	VOR/DME or GPS Rwy 18R, Amdt 5A
02/08/02	TN	Oneida	Scott Muni	2/1098	SDF Rwy 23, Amdt 4A
02/08/02	TN	Oneida	Scott Muni	2/1099	VOR/DME–A, Amdt 5
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1155	VOR Rwy 13, Amdt 19
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1156	RNAV (GPS) Rwy 31, Orig
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1157	RNAV (GPS) Rwy 13, Orig
02/11/02	AR	Fort Smith	Fort Smith Regional	2/1169	VOR or TACAN Rwy 25, Amdt 20B
02/12/02	IA	Pella	Pella Muni	2/1220	NDB or GPS Rwy 34, Amdt 7
02/12/02	IA	Pella	Pella Muni	2/1221	RNAV (GPS) Z Rwy 34, Orig
02/12/02	IA	Pella	Pella Muni	2/1222	RNAV (GPS) Z Rwy 16, Orig
02/13/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/1245	ILS Rwy 21R, Amdt 5

FDC date	State	City	Airport	FDC Number	Subject
02/14/02 ...	KS	Kingman	Kingman Muni	2/1252	GPS Rwy 18, Orig–A This Replaces FDC NOTAM 2/0313 Published in TL 02–05.

[FR Doc. 02–4288 Filed 2–25–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[KS–022–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Kansas Department of Health and Environment, Surface Mining Section (Kansas) proposed to consolidate and revise its approved revegetation guidance document. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning Kansas' program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

II. Submission of the Proposed Amendment

By letter dated October 9, 2001 (Administrative Record No. KS–622), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to deficiencies that we identified in Kansas' revegetation guidance document in a previous final rule on August 19, 1992 (57 FR 37430). The amendment also included changes made at Kansas' own initiative. Kansas amended the Kansas revegetation guidance document entitled ''Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success.''

We announced receipt of the amendment in the November 30, 2001, **Federal Register** (66 FR 59751). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 31, 2001. We received comments from one industry group and one Federal agency.

During our review of the amendment, we identified concerns at Part I, Section I.6.b, about other plant species (species not approved in the permit) that are allowed for determining the acceptable percentage of ground cover for various postmine land uses. The other plant species are listed in Appendix A of Kansas' revegetation success guidelines. We notified Kansas of this concern in a telephone conference on November 6, 2001 (Administrative Record No. KS–622.1A).

By letter dated November 29, 2001 (Administrative Record No. KS–622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant specifies listed in Appendix A for determining ground cover success. Appendix A lists the acceptable plant species by land use (including legume, grass, tree, shrub, and vine) that permittees may use to meet Kansas' productivity and ground cover success standards when reclaiming mined land.

Kansas also submitted revisions to its revegetation guidance document on January 8, 2002 (Administrative Record No. 622.7), in response to comments received from Triad Environmental Services and the Natural Resources Conservation Service. These revisions are discussed in section IV, ''Summary and Disposition of Comments.''

Because the additional information and revisions merely clarified certain provisions of Kansas' amendment, we did not reopen the public comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid techniques for determining revegetation success and include them in its approved regulatory program. Kansas sent us its revised revegetation guidance document to satisfy this requirement. As required by the Federal regulations at 30 CFR 816.116(a)(2), 817.117(a)(2), and 823.15(b), Kansas prescribed success standards in its guidance document that include criteria representative of unmined lands in the area being reclaimed, using parameters of ground cover, production, or stocking relevant to the approved postmining land use. The standards, criteria, and parameters reflect the extent of cover, species composition, and soil stabilization requirements of the Federal regulations at 30 CFR 816.111 and 817.111. The

revised guidance document also specifies the procedures to be used for sampling, measuring, and analyzing vegetation parameters. Use of these procedures will ensure consistent, objective collection of vegetation data. Therefore, we are approving the revisions to Kansas' revegetation guidance document as described below.

A. Preface

The preface to Kansas' guidance document discusses the purpose of the document, the geographic region the document concentrates on, and the State regulations covered by the document. Kansas removed language from the preface that we did not approve in the August 19, 1992, final rule decision. This language appeared to exempt specific permits from certain requirements of Kansas' guidance document.

We find that with the removal of the disapproved language, the preface to Kansas' guidance document meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

B. Definitions

Kansas defined the following terms that are specific to the Kansas revegetation guidance document: Animal Unit Month (A.U.M.); Cropland; Desirable; Diverse; Effective; Forage; Global Positioning System (GPS); Historically Cropped; Kansas Department of Wildlife and Parks (KDWP); Kansas State University (KSU); Natural Resources Conservation Service (NRCS); Permanent; Previously Mined; Prime Farmland; Surface Mining Section (SMS); and Total Cover.

The Federal regulations do not contain all of the definitions proposed by Kansas. However, we find that Kansas' definitions for cropland, historically cropped, previously mined, and prime farmland are substantively the same as the counterpart Federal definitions at 30 CFR 701.5. We further find that the other definitions are not inconsistent with other Federal definitions or the requirements for revegetation success at 30 CFR 816.116(a)(2), 817.116(a)(2), 816.111, or 817.111.

C. Tables

Kansas added three new tables that contain a summary of the vegetation requirements that are detailed in the guidance document. Table 1 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of pasture land and grazing land; wildlife habitat, recreation, shelter belts, and forest products; and industrial, commercial, or residential land uses. Table 2 lists a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of prime farmland. Table 3 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of cropland.

We find that these summary tables meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

D. Part I. Ground Cover Success

Kansas consolidated the substantive provisions of its approved ground cover success standards for all land uses in Part I. Section A provides the standard for ground cover on prime farmland, cropland, and pasture/grazing land. Section B discusses the standard for ground cover on previously mined areas. Section C provides the standard for ground cover on wildlife habitat, recreation, shelter belt, and forest product land use areas that have topsoil. Section D contains standards for ground cover on industrial, commercial, or residential land use areas that have topsoil. Sections E and F provide general information on pre-mining ground cover sampling criteria and techniques. Section G contains specific pre-mining ground cover sampling techniques. Section H provides specific post-mining ground cover sampling criteria. Finally, Section I covers specific post-mining ground cover sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover. Ground cover will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for ground cover for each land use. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part I and found that Kansas' guidelines for ground cover are no less effective than the requirements of these Federal regulations.

E. Part II. Forage Production Success Standard

Kansas revised and consolidated the substantive provisions of its approved forage production success standards for prime farmland, cropland, pasture land, and grazing land in Part II. Section A discusses the use of the United States Department of Agriculture, Natural Resources Conservation Service (USDA–NRCS) soil survey database for determining productivity of cool season grass seed mixtures. This database lists crop yields by the soil mapping units contained in the published county soil surveys for Kansas. Section A also discusses the USDA–NRCS database in Technical Guide Notice KS–145. This database is used for determining productivity of native grass seed mixtures. Section B contains information on methods of calculation using the Animal Unit Month (A.U.M.) values listed in the USDA–NRCS soil surveys for Kansas. Kansas reevaluated the A.U.M. value used in its previous guidance document for forage production. The A.U.M. value is the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas changed this value from 900 pounds to 760 pounds of dry forage based upon a recommendation by the Natural Resources Conservation Service (Administrative Record No. KS–622.8). Section C provides productivity standards for prime farmland forage crops. Section D covers the productivity standards for cropland forage crops. Section E covers the productivity standard for previously mined lands reconstructed to pasture and grazing land. Section F contains information on the productivity standards for pasture and grazing land. Section G discusses the methods of data collection, including use of representative areas with test plots or whole field harvesting. Kansas added whole field harvesting to the methods of data collection for forage. Section H contains specific forage crop production sampling criteria. Finally, Section I covers specific forage crop production sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2),

817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard.

Production for cropland, pasture land, and grazing land will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland, pasture land, and grazing land and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part II and found that Kansas' guidelines for forage production are no less effective than the requirements of these Federal regulations.

F. Part III. Productivity Standards for Row Crops

Kansas revised and consolidated the substantive provisions of its approved row crop production success standards for prime farmland and cropland in Part III. Kansas also added corn as an acceptable row crop under specified conditions. Section A discusses the acceptable row crops for revegetation productivity. Section B contains information on the method of row crop production success standard calculations. Section C provides row crop sampling criteria. Section D contains the following sampling methods for data collection involving representative areas: test plots, whole field sampling, and whole field harvesting. Section E provides productivity sampling criteria for prime farmland row crops. Section F discusses productivity sampling criteria for cropland row crops. Finally, Section G contains row crop sampling techniques involving test plots and whole field sampling for grain sorghum (milo), wheat, soybeans, and corn.

In response to deficiencies that we identified in the August 19, 1992, final decision on Kansas' current revegetation success guidelines, Kansas revised its row crop sampling techniques for grain sorghum and wheat. To address the deficiencies, Kansas added provisions that require operators to make determinations of statistical sample adequacy based on sample weights corrected to a standard moisture content.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard. Production for cropland will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part III and found that Kansas' guidelines for row crop production are no less effective than the requirements of these Federal regulations.

G. Part IV. Productivity Success Standards for Trees and Shrubs

Kansas consolidated its productivity success standards for trees and shrubs in Part IV. Section A discusses the general success standards for fish and wildlife habitat, recreation areas, forest products, and shelter belts. Section B contains the Phase II and Phase III productivity success standards for these land uses. Section C provides information on productivity sampling criteria. Section D contains stem density sampling techniques. Finally, Section E discusses previously mined areas that are reclaimed to fish and wildlife habitat, recreation, forest products, and shelter belts.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of stocking. Tree and shrub stocking will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) contain the minimum success standards for tree and shrub stocking for areas to be developed for fish and wildlife habitat, recreation, forest products, and shelter belts. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part IV and found that Kansas' guidelines for tree and shrub stocking are no less effective than the requirements of these Federal regulations.

H. Appendices

Kansas' revised revegetation guidance document contains seven appendices that support the provisions in Parts I through IV.

1. Appendix A, Plant Species List

Kansas revised its previously approved list of plant species. Appendix A lists the plant species that are unacceptable for all land uses with specified exceptions. It lists the acceptable tree species for fish and wildlife habitat, recreation areas, forest products, and shelter belts. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation areas, and shelter belts. In addition, it lists the acceptable legume species based on land use for revegetation productivity and ground cover. Finally, it lists the acceptable grass species based on land use for revegetation productivity and ground cover. By letter dated November 29, 2001 (Administrative Record No. KS–622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant species listed in Appendix A for determining revegetation productivity and ground cover success for the State of Kansas.

Based on our technical review and the concurrence letter from the Natural Resources Conservation Service, we are approving the revisions to Appendix A.

2. Appendix B, Animal Unit Month-Methods of Production Success Standard Calculations

As discussed in finding E, Kansas revised its A.U.M. value for use in calculating forage production. Kansas defines the A.U.M. as the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas submitted calculations and documentation in Appendix B that support an A.U.M. equal to 760 pounds of forage. Appendix B contains tables showing two methods of calculating the success standard for grain sorghum,

wheat, and corn by soil type. The documentation also includes two methods of calculating forage production based on A.U.M. per soil type for cool season grass seed mixtures and warm season grass seed mixtures. In a letter dated May 11, 1993, the Natural Resources Conservation Service recommended that Kansas use an average of 25 pounds of forage per day for a 1000 pound cow in calculating production requirements for forage. Kansas provided calculations to show that the monthly A.U.M. value would equal 760 pounds of forage.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Based on our technical review and the recommendation from the Natural Resources Conservation Service, we find that Appendix B in combination with Part II, Section B, meets the requirements of 30 CFR 816.116(a)(2) and 817.116(a)(2).

3. Appendix C (Production Data), Appendix D (Planting Reports), Appendix E (Reference Area Criteria), and Appendix G (Measuring Grain Moisture)

Kansas either proposed no revisions or nonsubstantive revisions to the previously approved information contained in Appendices C, D, E, and G. Therefore, we find that the information in these appendices continue to meet the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1).

4. Appendix F, Representative Sample Field Area Definition and Test Plot Criteria

Kansas allows permittees to use representative areas with test plots to assess row crop productivity. Kansas consolidated its criteria for representative sample field areas for cropland and prime farmland into Appendix F. Appendix F discusses the use of data from representative sample field areas to prove row crop production success. This data is obtained from individual row crop test plots. Kansas removed the requirement to describe the bulk density of each soil probe location. Kansas also removed the requirement for a secondary grouping of the field data.

We find that the removal of these requirements will not make Kansas' requirements for representative areas with test plots less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a).

IV. Summary and Disposition of Comments

Public Comments

By letter dated December 31, 2001 (Administrative Record No. KS–622.6), Triad Environmental Services (Triad) commented on several provisions in the amendment.

(1) Triad questioned why the minimum of 70 percent cover discussed in Part I, Section B, doesn't show up in Table 1 for ''No Topsoil'' areas.

Table 1 is just a summary of the vegetation requirements that are detailed in the guidance document. In the category of ''No Topsoil'' for each land use, Kansas summarizes the cover requirements as one year ground cover at 90 percent of the pre-mine cover and adequate to control erosion. Later in the document, Kansas provides the specific detailed guidance for measuring revegetation success by land use. In the detailed guidance Kansas specifies that a 70 percent ground cover is adequate to control erosion. There is no need to repeat all of the details provided in the land use specific guidance in the summary table.

(2) Triad commented that footnote (a) in Table 2 and footnote (b) in Table 3 should reference grain sorghum.

In response to Triad's comment, Kansas revised its terminology in Tables 2 and 3 to consistently refer to the row crop of grain sorghum.

(3) Triad questioned the meaning of the second paragraph in Part I that states ''a subjective analysis of the ground cover will be required and must consider the premined quality of each land use.'' Triad also stated that the proposed revegetation guidelines should be for postmine revegetation success determinations.

In response to the first comment, Kansas revised the language in the second paragraph of Part I to read, ''A detailed analysis of the premine ground cover will be required and must consider the premine quality of each land use.''

Triad is incorrect in its assertion that the revegetation guidelines should be restricted to postmining revegetation. Measurement of postmining revegetation success is dependent upon a comparison to the premining vegetation as required at 30 CFR 816.116(a).

(4) Triad questioned why the premine ground cover was used in the second paragraph of Part I, Section A.

Kansas has chosen to use the premine reference area as one way of developing a standard of vegetative cover for comparison to the postmine cover. This is consistent with the Federal regulation requirements at 30 CFR 816.116(a)(2).

(5) Triad commented that Kansas should add the language ''and shall be adequate to control erosion'' in Part I, Section B.

In response to this comment, Kansas revised the second sentence in Part I, Section B, to read, ''The ground cover success standards for previously mined areas will be the same as that of the premine ground cover, or at a minimum 70%, and shall be adequate to control erosion.''

(6) Triad questioned whether in Part I, Section C, the word ''and'' should be replaced by the word ''or'' in the phrase, ''will be the greater of the premine ground cover value and the ground cover value needed to meet the approved postmining land use.'' Triad also questioned whether the values in the Table 1 summary should be included in this section, i.e., ''90% or greater of the 100% standard.''

In response to Triad's first comment, Kansas added the word ''either'' after the words ''greater of'' and replaced the word ''and'' with the word ''or.'' The revised sentence reads, ''The ground cover success standards for fish and wildlife habitat, recreation, shelter belts and forest products land uses will be the greater of either the premine ground cover or the ground cover value need to meet the approved postmining land use.''

In response to Triad's second comment, we do not believe that the exact language in Table 1 needs to be included in Section C. Table 1 is just a summary of the general vegetation requirements that are detailed in the guidance document. However, Kansas does state the same standard in the first sentence of Section C in the phrase, ''all areas must meet 90% of the success standard.'' Unless otherwise stated, the success standard is always a ''100% standard.''

(7) Triad commented that the requirements in Part I, Section E, Premine Ground Cover Sampling Criteria Techniques, should be ''clarified to state that if a lower technical standard is proposed then this procedure will be used. There is no requirement under 816.116 or 779.19 to collect premine vegetation at a 90 percent statistical confidence interval.''

We disagree with the commenter. First, the Kansas regulations at K.A.R. 47–9–1(c) incorporate by reference 30 CFR Part 816. At 30 CFR 816.116(a)(1), all revegetation standards whether technical or reference area are required to be selected by the regulatory authority and included in an approved regulatory program. Any other standards

not included in the approved guidelines would have to be approved through the same regulatory selection and approval process as the existing approved guidelines. As such, the language suggested by the commenter would not meet the requirements of 30 CFR 816.116(a)(1). Second, 30 CFR 816.116(a)(2) does require the use of a 90 percent statistical confidence interval when the undisturbed premine ground cover data is used as a standard for comparison with postmining revegetation success data.

(8) Triad commented that in Part I, Section F.7, ''the premine sample dates should agree with the postmine sample dates (i.e. December 1).''

In response to Triad's comment, Kansas revised both the premine and postmine sample dates to read ''April 1 to November 1.''

(9) Triad questioned why the species list for fish and wildlife habitat, recreation, shelter belts, and forest products, including pasture or grazing land used as wildlife habitat enhancement at Part I, Section I.9(a)(1), is different than the other land uses.

For these particular land uses, Kansas requires that a minimum of certain plant species be included in the ground cover on a land use specific basis. Kansas requires different species for different land uses because different land uses require the plant species that are compatible with that use.

(10) Triad commented that at Part II, Section F, Kansas needed to clarify the requirements for Phase II revegetation bond release.

In response to this comment, Kansas clarified the requirements for successful revegetation establishment at Phase II bond release by revising the first paragraph. Kansas added the language, ''At Phase II'' to the beginning of the last sentence of the paragraph as shown below:

> At Phase II, successful revegetation establishment is attained when the revegetation success standards are achieved for one growing season in accordance with the requirements in K.A.R. 47–9–1(c), adopting by reference 30 CFR 816.111(a) and (b), and 816.116(b) and (c); and K.A.R. 47–9–1(e), adopting by reference 30 CFR 817.111(a) and (b), and 817.116(b) and (c).

(11) Triad questioned whether the stratification plan for forage crop production referred to in Part II, Section H, requires approval prior to initiation of sampling.

Kansas requires the operator to submit the plan for stratification before the initiation of sampling. However, Kansas does not require that the plan be approved before sampling. In the January 8, 2002, cover letter for its revised guidance document, Kansas clarified that approval of the plan does not take place until after initial sampling (Administrative Record No. KS–622.7).

(12) Triad commented that Kansas should include the language, ''meet or exceed the optional reference area'' in Part III, Section E.

In response to Triad's comment, Kansas added the suggested language to the last sentence of the first paragraph of Section E. The revised sentence reads as follows:

> This required year of row crops must meet the calculated row crop success standard, or meet or exceed a reference area, to obtain a phase II bond release as per K.A.R. 47–8–9(a)(13), adopting by reference 30 CFR 800.40(c)(2).

(13) Triad commented that Bermuda grass should be added to Appendix A as an acceptable species for pasture land use. Triad also submitted a December 18, 2001, letter from Mr. Gary Kilgore, Area Crops Specialist for Kansas State University Extension Service, who recommended that Bermuda grass be allowed.

In response to this comment, Kansas revised Appendix A to include Bermuda grass on the list of approved species for pasture land use.

(14) Finally, Triad commented, ''TRIBE 13—ANDROPOGONEAE—Little Bluestem, Big Bluestem, and Indian Grass should be allowed for pasture land use.''

In response to this comment, Kansas revised Appendix A to include these species on the list of approved species for pasture land use.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS–622.1). The Natural Resources Conservation Service (NRCS) responded on December 10, 2001 (Administrative Record No. (KS–622.5), with two comments.

(1) The NRCS commented that in Part I, Section I.9, ''the statement is made that a visual scan of each area will be made to determine compliance with diversity (number of species present). Instead of using a visual scan to determine species numbers, why not use the data developed from ground cover measurements to determine species numbers. This would provide more accurate information as well as reduce sampling time.''

In response to this comment, Kansas revised the text of Part I, Section I.9, to require that data developed from ground cover measurements in addition to a visual scan during the optimal growing season will be used to determine if each stratified sample area meets the criteria specified for the intended land use.

(2) The NRCS provided the following comments concerning Part II, Section B:

> The statement is made that Animal Unit Month (A.U.M.) Values listed in the USDA NRCS soil surveys are converted to lbs./acre of dry forage per growing season and that the guideline used is 760 lbs. of dry matter per A.U.M. A point of clarification is needed on this statement. The A.U.M. factors listed in soil surveys and technical notices are determined from the following procedure. The amount of total above ground forage production is multiplied by the harvest efficiency expected for that particular land use. This provides the amount of forage production allocated for animal consumption. This amount is then divided by the amount of forage allocated to an animal unit month (in this case, 760 lbs.). If the intent of the procedure covered under Section B is to arrive at a potential total production figure for the reclaimed land by multiplying the number of A.U.M.'s by 760, without taking into consideration the harvest efficiency factor, the potential productivity will be significantly underestimated.

Kansas did not make any changes in response to this comment. Kansas investigated the current USDA-NRCS soil surveys and discovered that the crop production values included compensation for loss due to livestock trampling, insect damage, and herbivore consumption (harvest efficiency factors).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KS–622.1). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 15, 2001, we

requested comments on Kansas' amendment (Administrative Record No. KS–622.1), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Kansas sent us on October 9, 2001, and as revised on January 8, 2002.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 916, which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 916 is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 9, 2001	February 26, 2002.	Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success dated January 2002.

[FR Doc. 02–4515 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[LA–021–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are approving an amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposed revisions to and additions of regulations concerning valid existing rights. Louisiana revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430, Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, '' * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the October 10, 1980, **Federal Register** (47 FR 23883). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.15 and 918.16.

II. Submission of the Amendment

By letter dated August 3, 2001 (Administrative Record No. LA–366.04), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to an August 23, 2000, letter (Administrative Record No. LA–366) that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed to amend the Louisiana Surface Mining Regulations (LSMR).

We announced receipt of the proposed amendment in the September 20, 2001, **Federal Register** (66 FR 48393). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 22, 2001. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about the definition of valid existing rights; areas where mining is prohibited or limited; exceptions for existing operations; procedures for permit application review; general requirements for development operations involving removal of more than 250 tons; valid existing rights determinations; criteria for permit approval or denial; and several cross-reference errors. We notified Louisiana of these concerns by letter dated November 16, 2001 (Administrative Record No. LA–366.08). By letter dated November 20, 2001 (Administrative Record No. LA–366.09), Louisiana sent us revisions to its proposed program amendment.

Based on Louisiana's revisions to its amendment, we reopened the public comment period in the December 26, 2001, **Federal Register** (66 FR 66377). The public comment period ended on January 10, 2002. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Louisiana's regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State regulation	Federal counterpart regulation
Definition of valid existing rights	§ 105	30 CFR 761.5.
Areas where mining is prohibited or limited	§ 1105	30 CFR 761.11.
Procedures for permit application review	§ 1107.B	30 CFR 761.17(b).
Location verification	§ 1107.C	30 CFR 761.17(c).
Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.	§ 1107.D	30 CFR 761.14.
Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.	§ 1107.E	30 CFR 761.15.
Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks and historic places.	§ 1107.F	30 CFR 761.17(d).
Exception for existing operations	§ 1109	30 CFR 761.12(a).
General requirements for development operations involving removal of more than 250 tons	§ 2111.A.8	30 CFR 772.12(b)(14).
Applications: approval or disapproval of development of more than 250 tons	§ 2113.B.4	30 CFR 772.12(d)(2)(iv).
Valid existing rights deterimations	§ 2323	30 CFR 761.16.

Because the above State regulations contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Louisiana program (Administrative Record Nos. LA–366.05 and LA–366.10). The U.S. Fish and Wildlife Service (FWS) responded on September 12, 2001 (Administrative Record No. LA–366.06), that it reviewed the amendment and concludes that the proposed changes would not result in significant adverse impacts to fish and wildlife resources within its trusteeship. The FWS also responded on December 21, 2001 (Administrative Record No. LA–366.11), that it reviewed the revisions to the amendment and concludes that the activity is not pertinent to those Federal-trust resources under its charge.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. LA–366.05 and LA–366.10). The EPA did not respond to our requests.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 15, 2001, and December 10, 2001, we requested comments on Louisiana's amendment (Administrative Record Nos. LA–366.05 and LA–366.10), but neither responded to our requests.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Louisiana on August 3, 2001, and as revised on November 20, 2001.

We approve the regulations proposed by Louisiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 918, which codify decisions concerning the Louisiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 25, 2002.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
August 3, 2001	February 26, 2002.	LSMR Sections 105, 1105, 1107.B through F, 1109, 2111.A.8, 2113.B.4, and 2323.

[FR Doc. 02–4516 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR PART 111

Price of Semipostal Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the *Domestic Mail Manual* (DMM) provisions relating to the pricing of semipostal stamps. This final rule implements legislative changes to the semipostal program and amends the Domestic Mail Manual provisions relating to the pricing and use of semipostal stamps.

DATES: This rule is effective on March 23, 2002.

Applicability date: DMM P022.1.6(b) and R000.4.0 (last paragraph) are applicable on the date when the *Heroes* semipostal stamp is made available for purchase.

ADDRESSES: Questions about this rule may be addressed to the Manager, Stamp Services, ATTN: Semipostal Stamp Program DMM Rules, 475

L'Enfant Plaza SW, Room 5670, Washington, DC 20260–2435.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett (202) 268–6555.

SUPPLEMENTARY INFORMATION: The Postal Service is amending Sections P014, P022, and R000 of the DMM to reflect the enactment of the following two acts: the Semipostal Authorization Act, Public Law No. 106–253, 114 Stat. 634 (2000) and the 9/11 Heroes Stamp Act of 2001, Public Law No. 107–67, § 652, 115 Stat. 514 (2001). This notice also adopts DMM standards implementing the decision of the Governors of the United States Postal Service on the prices of the *Breast Cancer Research* semipostal stamp (BCRS) and the *Heroes* semipostal stamp.

Background

The Semipostal Authorization Act authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The 10-year period begins on the date that the Postal Service begins to sell the selected semipostal stamps to the public.

Public Law No. 107–67 extends the sales period of the BCRS until the end of 2003 and directs the Postal Service to issue a semipostal stamp to provide assistance to families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001. The *Heroes* semipostal stamp is to be issued as soon as practicable and may remain on sale through December 31, 2004. Funds raised in connection with this semipostal stamp are to be transferred to the Federal Emergency Management Agency.

Under 39 U.S.C. 414 and 416, the Governors are authorized to determine the price of the BCRS stamp and other semipostal stamps. On January 8, 2002, the Governors voted to change the price of the BCRS from 40 cents to 45 cents. The Governors also voted to set the price of the *Heroes* semipostal stamp at 45 cents. The new price of the BCRS is effective on March 23, 2002. The price of the *Heroes* semipostal stamp is effective on the date of the stamp's issuance, which is yet to be determined.

The refund provisions of Section P014 of the DMM are amended to apply to all existing and future semipostal stamps. In addition, the provisions of DMM P022 are amended to reflect the price change for the BCRS and the introduction of the *Heroes* semipostal stamp. Certain provisions of DMM P022 are revised to apply to all semipostal stamps. DMM R000 is amended to reflect the prices and postage values of the BCRS and the *Heroes* semipostal stamp.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service hereby amends the following standards of the DMM, incorporated by reference into the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* as set forth below:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

* * * * *

P000 Basic Information

* * * * *

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

[*Revise the heading and text of 2.10 to read as follows:*]

2.10 Semipostal Stamps

Customers may exchange or convert semipostal stamps for their postage value (i.e., the price of the stamps less the contribution amount) to the extent exchange or conversion of postage stamps is permitted under P014. The postage the customer exchanges or converts is equal to the First-Class Mail single-piece rate in effect at the time of exchange. However, if the customer provides a receipt showing the date of purchase, the postage exchanged or converted is equal to the First-Class Mail single-piece rate in effect at the time of purchase. The contribution amount is not refundable and is not included in the exchange or conversion value.

* * * * *

P020 Postage Stamps and Stationery

P022 Postage Stamps

1.0 PURCHASE AND USE

* * * * *

[Revise the heading and text of 1.6 to read as follows:]

1.6 Semipostal Stamps

Semipostal stamps are subject to special limitations and conditions:

a. Semipostal stamps are stamps that are sold for a price that exceeds the postage value of the stamp. The difference between the price and postage value of semipostal stamps, also known as the differential, less an offset for the Postal Service's reasonable costs, as determined by the Postal Service, is a contribution for a specific cause. Semipostal stamps provide a means for customers to contribute to specific causes. Semipostal stamps are offered for sale for a limited time as provided by law or by the Postal Service.

b. A brief description of semipostal stamps follows:

1. The price of the *Breast Cancer Research* semipostal stamp (BCRS) is 45 cents. The difference between the purchase price and the First-Class Mail nonautomation single-piece first-ounce letter rate in effect at the time of purchase constitutes a contribution to breast cancer research and cannot be used to pay postage. Funds (net of the Postal Service's reasonable costs) raised in connection with the BCRS are transferred to the Department of Defense and the National Institutes of Health.

2. The price of the *Heroes* semipostal stamp is 45 cents. The difference between the purchase price and the First-Class Mail nonautomation single-piece first-ounce letter rate in effect at the time of purchase is a contribution to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001, and cannot be used to pay postage. Funds (net of the Postal Service's reasonable costs) raised in connection with the *Heroes* semipostal stamp are transferred to the Federal Emergency Management Agency.

c. The postage value of each semipostal stamp is the First-Class Mail nonautomation single-piece first-ounce letter rate in R100.1.2 that is in effect at the time of purchase. Additional postage must be affixed to pieces weighing in excess of 1 ounce, pieces subject to the nonstandard surcharge, or pieces for which special services have been elected. The postage value of semipostal stamps is fixed according to the First-Class Mail nonautomation single-piece

first-ounce letter rate in effect at the time of purchase; the postage value of semipostal stamps purchased before any subsequent change in the First-Class Mail nonautomation single-piece first-ounce letter rate is unaffected by any subsequent change in that rate.

* * * * *

R Rates and Fees

R000 Stamps and Stationery

* * * * *

[Revise the table in item 4.0 as follows:]

Form per purpose	Denomination
*	*
Breast Cancer Research, Panes of up to 20	Purchase price of $0.45; postage value equivalent to First-Class Mail nonautomation single-piece rate (currently $0.34); remainder is contribution to fund breast cancer research.
Heroes, Panes of up to 20	Purchase price of $0.45; postage value equivalent to First-Class Mail nonautomation single-piece rate (currently $0.34); remainder is contribution to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–4213 Filed 2–25–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0329; FRL–7146–7]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Bay Area Air Quality Management District's (BAAQMD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on September 12, 2001 and concerns volatile organic compound (VOC) emissions from adhesives and sealants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on March 28, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

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

I. Proposed Action

On September 12, 2001 (66 FR 47419), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8–51	Adhesive and Sealant Products	05/02/01	05/31/01
South Coast Air Quality Management District (SCAQMD).	443.1	Labeling of Materials Containing Organic Solvent.	12/05/86	06/09/97

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements.

On September 12, 2001 (66 FR 47392), we also published a direct final approval of the above rules because we believed that the rules were not controversial.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive comments on SCAQMD Rule 443.1. The direct final approval became effective and SCAQMD Rule 443.1 was incorporated into the SIP on November 13, 2001. During the comment period, we did receive comments regarding BAAQMD Rule 8–51. As a result, we removed our direct final action for BAAQMD Rule 8–51 on November 15, 2001 (66 FR 57387). We received comments from the following parties.

1. Mark Chytilo, Counsel for TRANSDEF, a Bay Area community group; letter dated October 12, 2001.

2. Julia May, Lead Scientist for Communities for a Better Environment (CBE); letter dated October 12, 2001.

The comments and our responses are summarized below.

Comment 1: Both parties comment that handheld aerosol adhesives, if exempted by the BAAQMD, will be exempt from emission controls because the Air Resources Board's (ARB) Consumer Products regulation (California Code of Regulations Title 17 Sections 94507–94528) has not been approved into the SIP. The provisions controlling these products are removed from the local regulation without adequate replacement provisions which violates CAA requirements regarding enforceability and backsliding. TRANSDEF also questioned BAAQMD's ability to regulate adhesives in general and requested clarification from EPA.

Response 1: On November 4, 1999 (64 FR 60109), EPA originally incorporated a version of BAAQMD Rule 8–51 into

the SIP. That version, adopted by the BAAQMD on January 7, 1998 and submitted to us by the ARB on June 23, 1998, contained two similar provisions exempting aerosol adhesive products from the requirements of Rule 8–51. Section 8–51–113 generally exempted all adhesives subject to the ARB's Consumer Products regulation, while Section 8–51–111 specifically exempted aerosol adhesive products. The current version of BAAQMD Rule 8–51, adopted by the BAAQMD on May 2, 2001 and submitted to us by the ARB on May 31, 2001, deletes Section 8–51–111 because that provision expired on January 1, 2000. However, the aerosol adhesive product category is still exempt under the SIP-approved exemption in Section 8–51–113. Because the SIP-approved version of 8–51 never regulated the aerosol adhesive product category, the removal of Section 8–51–111 does not violate CAA section 193 requirements regarding backsliding. Furthermore, the submitted version of the rule which still includes Section 8–51–113, is very clear that aerosol adhesives are exempt. There is no ambiguity about how this provision is to be enforced and, therefore, no conflict with the enforceability requirement of CAA section 110(a).

On January 1, 1997, Section 41712 of the California Health and Safety Code was amended by Assembly Bill 1849, to apply the ARB's aerosol adhesive standard statewide. On or after January 1, 2000, Assembly Bill 1849 allows local districts, like the BAAQMD, to adopt and enforce stricter standards for aerosol adhesives. Section 39002 of the California Health and Safety Code, in fact, specifically provides that ''local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources'' and that ''local and regional authorities may establish stricter standards than those set by law or by the state board.'' The local agency's ability to regulate the larger adhesives and sealants source category granted under Section 39002 was unaffected by Assembly Bill 1849. With the expiration of ARB's limited jurisdiction over the aerosol adhesive subcategory, the authority to regulate the entire adhesive and sealant source category, including aerosols, reverts back to the BAAQMD.

Comment 2: Because VOC is defined more narrowly in BAAQMD's Rule 8–51 than in the ARB's Consumer Products rule, the use of certain toxic compounds and/or environmentally harmful materials, including greenhouse gases, would not be allowed under Rule 8–51 but would be allowed under the ARB's Consumer Products rule. Both parties comment that EPA should not allow the use of these harmful compounds as replacements for ozone depletors and that EPA is, in fact, required by the Pollution Prevention Act to review regulations with source reduction in mind.

Response 2: This comment is only relevant if activities previously subject to Rule 8–51 are now subject to ARB's Consumer Products rule. As discussed in Response 1, this is not the case.

Comment 3: TRANSDEF noted that the BAAQMD has failed to complete the required RACT fix up which was due in 1992 because Rule 8–51 remains unapproved and urged EPA to impose sanctions pursuant to § 179.

Response 3: EPA proposed full approval of BAAQMD Rule 8–51 on September 12, 2001 partly because we believe it fulfills all RACT fix-up requirements. No comments were submitted that change that assessment. Therefore, there is no basis for imposing sanctions regarding this rule.

Comment 4: TRANSDEF requested that EPA convene a public hearing process to gain clarity about the rule citing confusion about Rule 8–51's overlap with ARB's Consumer Products regulation and compliance with RACT fix-up requirements.

Response 4: As discussed in Responses 1 and 3, overlap with ARB's Consumer Products regulation and RACT fix-up commitments are not substantive issues.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. This action permanently terminates all sanctions and FIP clocks associated with EPA's November 4, 1999 limited disapproval of a previous version of this rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have 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 29, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 30, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(282)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(282) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–51, revised on May 2, 2001.

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[FR Doc. 02–4402 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319c; FRL–7139–2]

Interim Final Determination That the State of California Has Corrected Deficiencies and Stay of Sanctions, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving the State of California's submittal of a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the State Implementation Plan (SIP). We have also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on our direct final action, we will withdraw our direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the full approval, we are making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on August 21, 2000. See 65 FR 45297. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment. If no comments are received on our approval of the State's submittal and on our interim final determination, the direct final action published in today's **Federal Register** will also finalize our determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on our approval or on this interim final determination, we will publish a final rule taking into consideration any comments received.

DATES: This document is effective February 26, 2002. Comments must be received by March 28, 2002.

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

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

I. Background

On August 21, 1998, the State of California submitted a revision to Rule 427 in the KCAPCD portion of the SIP, for which we finalized a limited approval and limited disapproval on July 21, 2000 (65 FR 45297). Our disapproval action started an 18-month clock beginning on August 21, 2000 for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised Rule 427 on December 14, 2001. We have taken direct final action on this submittal pursuant to our modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules and Regulations section of today's **Federal Register**, we have issued a direct final full approval of the State of California's submittal of its SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the State's submittal. Based on the direct final full approval set forth in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we

determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on August 21, 2000. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. 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. This action merely stays and defers federal sanctions. 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 only stays an imposed sanction and defers the imposition of another, 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 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 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 stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 26, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4397 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319a; FRL–7139–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of nitrogen oxides (NO_X) from internal combustion engines. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 29, 2002, without further notice, unless EPA receives adverse comments by March 28, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
KCAPCD	427	Stationary Piston Engines (Oxides of Nitrogen)	11/01/01	12/14/01

On January 22, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved into the SIP on July 21, 2000 (65 FR 45297) a version of Rule 427, adopted on July 2, 1998. We received but did not act on submittals of Rule 427, adopted on July 1, 1999 and May 4, 2000. While we can act on only the most recent submittal, we considered the information previously submitted.

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

The purpose of the submitted revised Rule 427 is to remedy the deficiencies cited in the limited approval and limited disapproval action on Rule 427 on July 21, 2000 (65 FR 45297).

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources of NO_X in ozone nonattainment areas (see sections 182(a)(2)(A) and 182(f) and must not relax existing requirements (see sections 110(l) and 193). The KCAPCD regulates a serious ozone nonattainment area. See 66 FR 56476 (November 8, 2001). Such areas must fulfill RACT for all major sources of NO_X pursuant to sections 107(d) and 182(f) of the CAA.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR Part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register Notice,** (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the ''NO_X Supplement to the General Preamble''), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT)*, U.S. EPA Office of Air Quality Planning and Standards (March 16, 1994).
- *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,* U.S. EPA, Office of Air Quality Planning and Standards (September 20, 1999).

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. All of the deficiencies identified in our previous limited approval and limited disapproval action on Rule 427 have been adequately addressed as follows:

- Section VIII.C.1.a: [The frequency of source testing to demonstrate compliance should be reduced from every two years to once every 8,760 hours or two years, whichever time period is shorter.] The District has revised section VIII.C.1 to correct the deficiency.
- Sections VIII.C.2.c and VIII.C.2.d: [The alternative of group-testing a representative sample of ⅓ of the engines each year to show compliance should be done with a 10% lower emissions limit than for each individual engine. The engines tested should be rotated in such a way that all engines are tested once every three years.] The District has revised section VIII.C.2 to correct the deficiency. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 28, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 29, 2002. This will incorporate this rule into the federally-enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit rules that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Clean Air Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have 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 CAA. 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 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(290) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(290) New and amended regulations for the following APCDs were submitted

on December 14, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 427, adopted on November 1, 2001.

* * * * *

[FR Doc. 02–4398 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN64–01–7289a; FRL–7139–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for the Northern States Power Company (NSP) Riverside Plant. By its submittal dated September 1, 1999, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve NSP Riverside's Title V Operating Permit into the Minnesota SO_2 SIP and remove the NSP Riverside Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective April 29, 2002, unless EPA receives adverse comment by March 28, 2002. If EPA receives adverse comments, 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.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking This action?
II. Background on Minnesota Submittal
1. What is the background for this action?
2. What information did Minnesota submit, and what were its requests?
3. What is a ''Title I Condition?''
III. Final Rulemaking Action
IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO_2 SIP certain portions of the Title V permit for NSP's Riverside plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is removing the NSP Riverside Plant Administrative Order from the state SO_2 SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP or their accompanying supportive documents, such as the SO_2 air dispersion modeling. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO_2 requirements of the Act. The only change to the SO_2 SIP is the enforceable document for the NSP Riverside Plant, from the Administrative Order to the federal Title V permit.

II. Background on Minnesota Submittal

1. What Is the Background for This Action?

NSP's Riverside Plant is located in Minneapolis, Hennepin County, Minnesota. Monitored violations of the primary SO_2 NAAQS from 1975 through 1977 led MPCA to recommend that EPA designate Air Quality Control Region (AQCR) 131 as nonattainment for SO_2. AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. EPA designated AQCR 131 as a primary SO_2 nonattainment area on March 3, 1978 (43 FR 8962). In response to Part D requirements of the Clean Air Act, MPCA submitted a final SO_2 plan on August 4, 1980. EPA approved the Minnesota Part D SO_2 SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

Subsequent monitored violations of the SO_2 NAAQS prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan for the area was further delayed by the passage of the CAA Amendments in 1990. MPCA submitted the final SO_2 SIP revisions to EPA in three parts. On May 29, 1992 MPCA submitted the plan for the majority of the AQCR 131 area, which included Hennepin County. EPA first approved the Administrative Order for the NSP Riverside Plant into the Minnesota SO_2 SIP on April 14, 1994 (59 FR 17703) and amended the order in the SIP on October 13, 1998 (63 FR 54585).

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on September 1, 1999, consists of a Title V operating permit issued to the NSP Riverside Plant. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO_2 SIP only the portions of the NSP Riverside Plant Title V permit cited as ''Title I condition: State Implementation Plan for SO_2''; and,

(2) The removal from the Minnesota SO_2 SIP of the Administrative Order for the NSP Riverside Plant previously approved into the SIP.

3. What Is a ''Title I Condition?''

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent.

A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permits submitted by MPCA are cited as ''Title I condition: State Implementation Plan for SO_2,'' therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the NSP Riverside Plant and included in the SIP submittal need to be revised in the future.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the NSP Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is approving into the SIP only those portions of NSP Riverside's Title V permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is also removing from the state SO_2 SIP the NSP Riverside Plant Administrative Order which had previously been approved into the SIP on April 14, 1994.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective April 29, 2002, without further notice unless we receive relevant adverse comments by March 28, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective April 29, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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 29, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(59) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(59) On September 1, 1999, the State of Minnesota submitted a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) SIP for the Northern States Power Company (NSP) Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is approving into the SO_2 SIP only those portions of the NSP Riverside Plant Title V Operating Permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is removing from the state SO_2 SIP the NSP Riverside Plant Administrative Order previously approved and amended in paragraphs (c)(30) and (c)(46) of this section respectively.

(i) Incorporation by reference.

(A) Air Emission Permit No. 05300015–001, issued by the Minnesota Pollution Control Agency (MPCA) to Northern States Power Company—Riverside Plant on May 11, 1999, Title I conditions only.

[FR Doc. 02–4400 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7147–1]

RIN 2060–AJ79

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Transition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action the Environmental Protection Agency (EPA) is taking action to improve flexibility of refiners and terminal operators during the springtime transition to summer grade reformulated gasoline (RFG). Specifically, we are eliminating the requirements for blendstock tracking and accounting. This change will increase refiners' flexibility to transfer gasoline blendstocks, and help to improve the responsiveness of the gasoline supply system, by removing some significant refinery compliance and reporting burdens that are no longer necessary.

Today's actions, in combination with other Agency actions, are intended to help ease the annual spring transition from winter grade RFG to summer grade RFG by promoting improved RFG inventories during this transition period. These actions include EPA's future extension of the 2% VOC enforcement tolerance to include the first turn of summer grade RFG tanks at terminals, and EPA's recent final rule regarding the procedures for using previously certified gasoline. In order to help the public understand the relationship between today's actions and these prior Agency actions, we briefly summarize these two related EPA actions in the preamble to today's final rule.

We are also making certain technical modifications to existing regulations. Specifically, we are updating certain ASTM designated analytical test methods for reformulated and conventional gasoline to their most recent ASTM version, and also updating several sampling methods to their most recent ASTM version. These updates will allow improvements in the test method procedures and sampling procedures that will ensure better operation for the user of the test methods and sampling procedures.

Finally, while EPA proposed to establish a new April 15 annual compliance date for reformulated gasoline (RFG) and reformulated blendstock for oxygenate blending (RBOB), we are not taking final action on that proposal today.

DATES: This rule is effective April 29, 2002, except for the amendments to 40 CFR 80.65, 80.92, 80.101, 80.102, 80.104, 80.105, 80.106, and 80.128 (sections dealing with the elimination of blendstock accounting) which are effective February 26, 2002. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.** The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of April 29, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Chris McKenna, Chemical Engineer, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9037 or *mckenna.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA believes that it is appropriate to make certain amendments in today's final rule effective immediately upon today's publication in the **Federal Register**. This rule will not impose an additional burden on regulated parties. By making these changes effective immediately, refiners and terminals will be able to maximize the opportunity to incorporate these changes within their operating procedures, which should promote the availability of summer RFG during this spring's transition period. These affected parties have stated that they needed changes to be effective no later than early February to allow sufficient lead time to affect this year's winter to summer transition. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The contents of today's preamble are listed in the following outline.

I. Regulated Entities
II. Rule Changes
A. Elimination of Blendstock Accounting Requirements
B. Updating ASTM Designated Analytical Test Methods for Reformulated and Conventional Gasoline to Their Most Recent ASTM Version
C. Corrections to Gasoline and Diesel Sample Testing Methodology

III. Description of Related Agency Actions
A. Extension of the 2 Percent Testing Tolerance
B. Promulgation of Provisions for Using Previously Certified Gasoline
IV. Provisions Not Finalized in Today's Rule
A. Proposed April 15 Terminal Receipt Date
B. Proposed Adjustment to the RVP Minimum for RFG
V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13132 (Federalism)
C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.
E. Paperwork Reduction Act
F. Unfunded Mandates Reform Act
G. Executive Order 13045: Children's Health Protection
H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
I. Executive Order 13211 (Energy Effects)
J. Congressional Review Act
VI. Statutory Provisions and Legal Authority

I. Regulated Entities

Entities potentially affected by this action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [1]	SIC codes [2]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

II. Rule Changes

A. Elimination of Blendstock Accounting Requirements

The current blendstock tracking and accounting requirements in § 80.102 were included in the RFG/anti-dumping regulations out of a concern that refineries with 1990 baselines cleaner than the anti-dumping statutory baseline might transfer dirty gasoline blendstocks to refineries with dirtier baselines because such refineries would be better able to use the dirty blendstocks while still meeting their anti-dumping baseline. Under the current regulations, if a cleaner refinery transfers large quantities of certain dirty blendstocks to another refinery, the cleaner refinery must account for all of the blendstocks it produces and transfers in its anti-dumping compliance calculations in specified subsequent annual averaging periods. Thus, the cleaner refinery would not be able to evade its more stringent baseline by transferring blendstocks.

In the Notice of Proposed Rulemaking (NPRM) (66 FR 6163, December 3, 2001), we determined, based on a recent analysis of the current blendstock tracking and accounting requirements in § 80.102 [1], that, under most circumstances, refineries today would have little or no incentive to transfer blendstocks to other refineries for the purpose of evading a more stringent baseline.[2] We also concluded that the current blendstock tracking and accounting requirements create significant additional compliance and reporting burdens, and, in some cases, may have the effect of deterring refiners or importers from transferring gasoline blendstocks that they otherwise would transfer in the normal course of business in response to legitimate supply concerns and other refinery needs. Therefore, we concluded that the existing blendstock tracking and accounting requirements were unnecessary and that eliminating those requirements may help to improve the responsiveness of the gasoline supply system by increasing refiners' flexibility to transfer gasoline blendstocks. As a result, we proposed to eliminate the current blendstock tracking and accounting requirements in § 80.102.

We continued to have concern that a refinery with a baseline more stringent than the anti-dumping statutory baseline could create an off-site terminal blending facility acting as a refinery for the sole purpose of certifying gasoline at the less stringent anti-dumping statutory baseline. To address this limited situation in which blendstock transfers could possibly be undertaken for the purpose of evading a more stringent baseline, we proposed to replace the existing provisions with a significantly less restrictive program for regulating blendstock transfers. Our proposed program would have required a refinery with a baseline that is more stringent than the anti-dumping statutory baseline, and that produces less gasoline than its 1990 baseline volume during the annual averaging period,[3] to petition

[1] See Draft Technical Support Document: Analysis of regulation to establish new date for receipt of summer grade RFG at terminals, Air Docket A–2001–21, Document Number II–B–1.

[2] When a refinery produces more total gasoline than that produced in 1990, the additional gasoline over and above the refinery's 1990 baseline volume must meet the statutory baseline regardless of the refinery's individual baseline. Since nearly all refineries currently produce significantly more gasoline than they produced in 1990, EPA believes that the blendstock transfers that are likely to occur today will be between donor and recipient refineries whose total production is well above 1990 baseline volume levels with or without a transfer. If transfers under these conditions occur between refiners producing only CG, there will be no net change in the quality of their combined CG pool because the donor refiner's gallons at the statutory baseline would be replaced by the recipient refiner's gallons at this same baseline. Thus, there would likely be no motivation or opportunity for ''gaming the system'' under these circumstances. Where either or both refiners make RFG and CG, there is some potential for meeting a slightly lower baseline by transferring blendstocks. However, it is unlikely that there would ever be any impact more significant than a small decrease in the stringency of compliance requirements, meaning that the gaming possibilities of such a transfer are very small, and thus any such transfers would produce only very small economic benefits which may be more than offset by the transactional costs associated with the transfer. As a result, the transfer of blendstocks from one refinery to another where both refineries produce more gasoline than they did in 1990 has very little potential to cause any adverse environmental impact.

Additionally, EPA has carefully examined individual refinery situations and has concluded that for the very limited number of refineries producing volumes where a transfer could result in some increased emissions, there is little possibility for gaming since clean/dirty refinery baseline pairs within a specific emission category (NO_X or toxics) are very uncommon. (i.e, for NO_X and toxics, almost all members of this refinery subset are clean for one pollutant and dirty for the other severely limiting any opportunity for gaming.

[3] As discussed in footnote 2 above, there is likely to be no motivation or opportunity to transfer blendstocks for the purpose of evading a more stringent baseline where the refinery produces more gasoline than its 1990 baseline volume during the annual averaging period. Only in situations where

EPA for approval to transfer specified dirty blendstocks in excess of five percent of the refinery's annual production. Under the proposal, the refinery would be required to demonstrate that such blendstock transfers were for a legitimate operational purpose.

We received several comments on the details of the proposed petition requirements. We also received a number of comments recommending that EPA totally eliminate any requirements relating to blendstock transfers. These commenters believe that restrictions on blendstock transfers are unnecessary, particularly in light of the new toxics requirements under the Mobile Source Air Toxics (MSAT) [4] rule and the new controls on sulfur under the Tier 2 Gasoline Sulfur (Tier 2) [5] rule. These commenters believe these rules will have the effect of imposing more stringent toxics and NO_X performance requirements on conventional gasoline (CG) than currently required under the anti-dumping program.

We have reconsidered our proposal in light of the comments we received. We agree that the MSAT and Tier 2 rules, in most situations, will result in more stringent toxics and NO_X performance for conventional gasoline than the current anti-dumping requirements. We believe that these rules, in combination with the fact that almost all refiners now produce greater volumes of gasoline than they did in 1990, will virtually eliminate any potential for refiners to engage in blendstock transfers that would degrade the quality of conventional gasoline. The recently promulgated MSAT rule for example, which is effective beginning in 2002, requires each refinery to meet a performance standard for toxic air emissions for CG and RFG equivalent to the actual performance of that refinery's CG or RFG during the baseline years 1998, 1999, and 2000. This rule also establishes a default toxics baseline, based on the national average for toxics emissions performance during the baseline years for refineries that are unable to establish an individual toxics baseline. Because the new MSAT default baseline is more stringent than the anti-dumping statutory exhaust toxics baseline, only a refinery with a toxics baseline that is more stringent than the MSAT default baseline would have any incentive to transfer dirty blendstocks to a newly created terminal/refinery facility (which would be subject to the MSAT default baseline) for the purpose of evading its more stringent toxics baseline.

We believe that the more stringent sulfur standards under the Tier 2 rule will have a similar effect with regard to the potential for refiners and importers to use blendstock transfers as a means of evading a more stringent NO_X anti-dumping baseline. Since all refiners and importers (with certain exceptions in the early years of the Tier 2 program) will be subject to an annual average sulfur standard of 30 ppm, and because removal of sulfur tends to reduce NO_X emissions from gasoline, generally under Tier 2 refiners are likely to produce gasoline that has better NO_X performance. Thus, we believe the low sulfur requirements also will tend to reduce the incentive to transfer dirty blendstocks to another refinery, including a new terminal/refinery facility, for the purpose of evading a more stringent NO_X baseline. In any event, we believe that the cost of creating a new terminal/refinery facility as described above for the purpose of evading a more stringent baseline would likely outweigh any possible economic benefit.

In light of these observations, we believe that the blendstock tracking and accounting provisions now have no significant independent utility in the context of the RFG/anti-dumping program. Because these provisions present a potentially significant burden for refiners, and may result unnecessarily in added rigidity in the gasoline production and distribution system, we have decided to eliminate these blendstock tracking and accounting provisions altogether.

Accordingly, today's final rule deletes the current blendstock tracking and accounting requirements in § 80.102, and does not replace them with any other restrictions on blendstock transfers. However, we intend to closely monitor situations in which new terminal/refinery facilities are created to determine if such facilities are being created for the purpose of evading a more stringent baseline. If we find that such facilities are being created for this purpose, we may reinstate the blendstock accounting requirements or impose other appropriate restrictions on blendstock transfers in the future.

B. Updating ASTM Designated Analytical Test Methods for Reformulated and Conventional Gasoline to Their Most Recent ASTM Version

Refiners, importers and oxygenate blenders producing gasoline are required to test RFG and CG for various fuel parameters like olefins, distillation points, benzene and RVP. During the federal RFG rulemaking, and in response to comments by the regulated industry, EPA designated analytical test methods that the Agency would use for enforcement and compliance purposes. See 40 CFR 80.46 (59 FR 7813 (February 16, 1994)). On December 3, 2001, the Agency proposed to update certain designated analytical test methods for measuring olefins, RVP, Distillation, and oxygen and oxygenate content analysis in reformulated and conventional gasoline.

The American Petroleum Institute (API), the National Petroleum Refiners Association (NPRA), and several refiners commented in support of updating certain analytical test methods in the proposal with caveats. One commenter also requested that an adequate transition time be provided for industry to become familiar with the ASTM test methods before they are required to implement them. Therefore, the Agency today is making the test method changes effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for industry to become familiar and implement these ASTM test methods. Table 3 lists the designated analytical test methods which are being updated for each gasoline parameter measured under RFG and CG fuels program in today's final rule. We have reviewed these newer versions of the ASTM test methods. We believe that the revisions in the newer versions of the ASTM designated test methods are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method.

a refinery produces less than its 1990 baseline volume would there be any incentive to transfer blendstocks for the purpose of evading a more stringent baseline.

[4] 66 FR 17230 (March 29, 2001).

[5] 65 FR 6698 (February 10, 2000).

TABLE 3.—DESIGNATED ANALYTICAL TEST METHOD UNDER RFG AND CG FUEL PROGRAMS

Fuel parameter	Designated analytical test method
Olefins	ASTM D 1319–98, entitled, ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption''.
Reid Vapor Pressure	ASTM D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)'', except that the following correlation equation be used with ASTM D 5191–01: RVP psi = (0.956*X)-0.347 RVP kPa = (0.956*X)-2.39 Where: X=total measured vapor pressure in psi or kPa
Distillation	ASTM D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure''.
Oxygen and Oxygen content analysis	ASTM D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection''.[1]
Aromatics	ASTM D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry'', except that the sample chilling requirements in section 8 of this method be optional.[2]

[1] Prior to September 1, 2004, and when oxygenates are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 and C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygenate content using ASTM standard method D 4815–99, entitled, ''Standard Test Method for Determination of MTBE, TAME, tertiary-amyl Alcohol and C_1 and C_4 Alcohols in Gasoline by Gas Chromatography'' provided the result is correlated to ASTM D 5599–00.

[2] Prior to September 1, 2004, any refiner, or importer may determine aromatics content using ASTM standard method D 1319–99, entitled, ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption'' provided the result is correlated to ASTM D 5769–98.

A detailed discussion of all the comments received on the testing methods, alternatives to those we are promulgating today, and our reasons for selection of the test methods in Table 3 are contained in the Response to Comments document for this rulemaking (see item V–C–1 in Docket A–2001–21).

C. Corrections to Gasoline and Diesel Sample Testing Methodology

40 CFR Part 80, Appendices D and G, specify sampling procedures for gasoline and diesel fuel for all motor vehicle fuel programs under 40 CFR Part 80, including the programs for unleaded gasoline, gasoline volatility, diesel sulfur, RFG, and anti-dumping. We proposed to replace the sampling procedures in Appendices D and G with the following ASTM standard practices:

- D 4057–95(2000), ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products;''
- D 4177–95(2000), ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products;''
- D 5842–95(2000), ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurements;'' and
- D 5854–96(2000), ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

These changes were formerly proposed in ''Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline—Proposed Rule,'' 62 FR 37338 (July 11, 1997), although these provisions were never finalized. Since we are updating various other test methods via this notice, it is logical to consider sampling methodologies here as well.

Appendices D and G of 40 CFR Part 80 were adopted from the 1981 version of D 4057. Over time, however, ASTM has updated D 4057, and these changes are not reflected in Appendices D and G.

EPA received several supportive comments for adopting the ASTM sampling methods as proposed. One commenter also requested that an adequate transition time be provided for industry to become familiar with the ASTM sampling methods before they are required to implement them. Therefore, the Agency today is making the sampling method changes effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for industry to become familiar and implement these ASTM sampling methods.

Thus, EPA is today adopting three ASTM methods in addition to D 4057–95(2000) as proposed in order to include procedures that address a broad scope of sampling situations that are relevant to EPA's motor vehicle fuels programs. D 4177–95(2000) deals with automatic sampling of petroleum products, which is relevant under the anti-dumping regulations for refiners who produce conventional gasoline using an in-line blending operation where automatic sampling is necessary. Similarly, D 5842–95(2000) deals with sampling and sample handling for volatility measurement, which is relevant to determining compliance with the volatility standards in § 80.27 and the RFG standards in § 80.41. Last, D 5854–96(2000) deals with the creation of composite samples, which is relevant under the RFG and anti-dumping programs in certain situations involving imported gasoline where the gasoline from multiple ship compartments is treated as a single batch.

We believe it is appropriate to replace Appendices D and G with ASTM standard practices. The current ASTM practices reflect up-to-date procedures, which if followed would result in improved sample quality for regulatory purposes. In addition, today's adoption of industry standard procedures reduces the regulatory burden because parties would be able to follow their customary practices when meeting regulatory requirements.

III. Description of Related Agency Actions

Two other actions by EPA, in combination with today's final actions, are also expected to help to facilitate the annual spring transition from winter grade RFG to summer grade RFG by increasing RFG inventories during this transition period. These are not final regulatory actions being taken in today's final rule, but are separate and independent Agency actions that are related to today's final actions in intent and effect.

A. Extension of the 2 Percent Testing Tolerance

RFG at facilities upstream of retail outlets must meet the standards for VOC emissions performance from May 1 through September 15 each year, and additionally at retail outlets from June 1 through September 15 each year. These standards are a minimum 25% reduction in VOC emissions in southern RFG areas and a minimum 23.4% reduction in northern RFG areas. EPA has allowed a 2% tolerance when evaluating compliance with these standards at locations downstream of refineries since, due to testing variability, a refiner's test results could show compliance for some particular RFG, yet a downstream party's test results could show noncompliance for that same RFG. This 2% tolerance has applied at terminals only after a terminal has obtained a test result showing compliance with the VOC standard without application of the tolerance.

Since it is not a regulatory provision, no mention was made in the NPRM of allowing use of the 2% testing tolerance for the VOC performance standard for the first tank of RFG at terminals classified as VOC controlled. Nonetheless, several commenters mentioned that such an extension of the existing enforcement tolerance would provide more help in easing the seasonal transition from winter to summer RFG than any of the actions that EPA proposed (including the terminal receipt date). Moreover, commenters pointed out that the 2% tolerance is already applied to subsequent tanks of summer RFG at terminals after the first tank of summer RFG, and its extension would have no adverse impact on the overall emission characteristics of summer grade RFG. EPA agrees, in general, with the commenters, and is planning to issue guidance to extend applicability of the 2% enforcement tolerance to cover the first tank of RFG classified as VOC controlled at terminals.

This extension of EPA's enforcement tolerance will help to increase flexibility for terminals during the crucial period of seasonal transitions for the first tank of RFG at terminals classified as VOC controlled, the tank for which terminals typically have the most difficulty meeting the VOC standard. This extension should help provide some relief in meeting the VOC standard for tanks which may contain a small amount of residual non-VOC controlled RFG (the tank ''heel'') prior to refilling the tank with VOC-controlled RFG, tanks which may have slightly missed meeting the VOC performance standards without the 2% tolerance.

B. Promulgation of Provisions for Using Previously Certified Gasoline

In December of 2001, EPA finalized a rule to permit reclassification of previously certified gasoline (PCG) (66 FR 67098, December 28, 2001). This rule allows extremely ''clean'' conventional gasoline (CG) to be reclassified as RFG, winter RFG to be reclassified as summer RFG, and VOC Region 2 RFG to be reclassified as Region 1 RFG in a manner that eliminates the potential for degrading the emissions performance of the various gasoline pools. The PCG rule will provide refiners with greater flexibility to potentially increase summer RFG production during the transition by allowing reclassification of winter RFG to summer RFG.

IV. Provisions Not Finalized in Today's Rule

A. Proposed April 15 Terminal Receipt Date

In EPA's December 3, 2001, notice of proposed rulemaking, EPA proposed a new April 15 date on or after which no persons except retailers and wholesale purchaser consumers would be able to accept receipt of any RFG or RBOB other than summer grade RFG or RBOB. We also solicited comment on (1) the elimination or delay of the May 1 up-stream compliance date, (2) establishment of April 1 as the terminal receipt date (rather than April 15), (3) establishment of a two step turnover process for terminals, and (4) establishing an April 15 terminal receipt date but limiting it to the Chicago/Milwaukee RFG areas.

EPA received numerous comments on this part of the proposal. Commenters generally believed that any such changes would be unlikely to have beneficial effects on gasoline supply during the seasonal transition period, and many commenters expressed concern that changes in the regulatory scheme too close to the beginning of the summer ozone season could actually complicate the transition. EPA recognizes that there are many complicated factors, in addition to EPA's compliance deadlines, that have an impact on gasoline supply during the seasonal transition period, including some EPA was unaware of when this rule was proposed. EPA wants to more fully understand these factors before making any final decisions about whether to adopt a different compliance deadline (or deadlines) for terminals or others. Therefore, EPA is not taking any final action today on the proposed April 15 terminal receipt date. A detailed discussion of EPA's decision is included in the response to comments (item V–C–1 in Docket A–2001–21).

B. Proposed Adjustment to the RVP Minimum for RFG

In the notice of proposed rulemaking, EPA asked for comment on reducing the minimum allowable RVP for summer RFG from 6.4 to 6.0 psi, as an additional means of helping ease the winter to summer RFG transition. EPA has decided not to take any final action on this item at this time. A more detailed discussion of EPA's decision is included in the response to comments (item V–C–1 in Docket A–2001–21).

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a significant regulatory action.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government.''

This final 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. The final rule eliminates the existing blendstock accounting requirements at 40 CFR 80.102 and updates ASTM test methods to their most recent version. Thus, Executive Order 13132 does not apply to this final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this final rule from State and local officials.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action modifies the Federal RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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 impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (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 final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. We have determined that no small entities will experience an impact from this proposal.

Although this final rule will not have a significant impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

The information collection requirements in this final rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (OMB # 2060–0277, EPA ICR No. 1591.15) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epamail.epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Today's action eliminates the current blendstock tracking and accounting provisions of the RFG/anti-dumping regulations. The information collection hour burden associated with the current blendstock tracking and accounting provisions is estimated to be 24 hours per respondent to track blendstock transfers and prepare each blendstock accounting report, and 80 hours per respondent to prepare a request for a waiver of the blendstock accounting requirements (under extreme or unusual circumstances). The respondent cost associated with the current blendstock tracking and accounting requirements is estimated to be $60 per hour for blendstock tracking and preparation of each blendstock accounting report and blendstock accounting waiver request. The total information collection hour burden associated with the current blendstock tracking and accounting provisions is estimated to be 4,880 hours per year. This is based on an estimate of 200 respondents at 24 hours for blendstock tracking and preparation of blendstock accounting reports, and one respondent at 80 hours for preparation of blendstock accounting waiver requests. This hour burden is eliminated by today's action. The total cost burden associated with the current blendstock tracking and accounting provisions is estimated to be $292,800 per year (4,880 hours × $60 per hour). This cost burden is eliminated by today's action.

Regarding recordkeeping and reporting burdens, in a letter dated December 12, 2000, the National Petrochemical & Refiners Association (NPRA) commented on EPA's draft Information Collection Request for reformulated and conventional gasoline reporting. 65 FR 60939 (October 13, 2000). In the letter, NPRA made several requests relating to the RFG program's current information collection burden. Although today's action does not address all of NPRA's requests, as discussed above, today's action eliminates all of the current burden associated with the RFG program's anti-dumping blendstock tracking and accounting requirements. The current blendstock provisions impose substantial recordkeeping and reporting burdens on refiners who transfer blendstocks. These recordkeeping and reporting burdens may have had the effect of deterring refiners from transferring such blendstocks. Today's action eliminates these burdens for all refiners. We believe this reduction in information collection burden will result in a more free exchange of blendstocks.

OMB has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking

(See 59 FR 7716 (February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.13). EPA ICR 1591.14 associated with this rule will be encompassed in the next renewal of ICR 1591.13.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. 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 the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The final rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This final rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas.

G. Executive Order 13045: Children's Health Protection

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

This final rule will update certain designated analytical test methods to their most recent ASTM version for the RFG program. Today's action does not establish new technical standards or analytical test methods, although it does update certain ASTM test methods and sampling methods to their current versions. To the extent that this action would allow the use of standards developed by voluntary consensus bodies (such as ASTM) this action would further the objectives of the NTTAA. The Agency plans to address the objectives of the NTTAA more broadly in an upcoming rulemaking to establish performance-based criteria for qualification of alternative analytical test methods.

I. Executive Order 13211 (Energy Effects)

This rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. EPA is allowing additional flexibility for refiners to transfer blendstocks, which should allow refiners to better respond to fluctuations in gasoline supply or demand.

J. Congressional Review Act

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

VI. Statutory Provisions and Legal Authority

Statutory authority for today's final rule comes from sections 211(c) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 11, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.8 is added to Subpart A to read as follows:

§ 80.8 Sampling methods for gasoline and diesel fuel.

The sampling methods specified in this section shall be used to collect samples of gasoline and diesel fuel for purposes of determining compliance with the requirements of this part.

(a) *Manual sampling.* Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in American Society for Testing and Materials (ASTM) method D 4057–95(2000), entitled ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products.''

(b) *Automatic sampling.* Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95(2000), entitled ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.''

(c) *Sampling and sample handling for volatility measurement.* Samples to be analyzed for Reid Vapor Pressure (RVP) shall be collected and handled according to the applicable procedures in ASTM method D 5842–95(2000), entitled ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurement.''

(d) *Sample compositing.* Composite samples shall be prepared using the applicable procedures in ASTM method D 5854–96(2000), entitled ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

(e) *Incorporations by reference.* ASTM standard practices D 4057–95(2000), D 4177–95(2000), D 5842–95(2000), and D 5854–96(2000), are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3. Section 80.27 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling methodologies specified in § 80.8 and the testing methodology specified in § 80.46(c).

* * * * *

(d) * * *

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by the use of one of the testing methodologies specified in § 80.46(g). The maximum ethanol content shall not exceed any applicable waiver conditions under section 211(f) of the Clean Air Act.

* * * * *

4. Section 80.28 is amended by revising paragraphs (g)(2)(ii) and (g)(4)(i) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) Test results using the sampling methodology set forth in § 80.8 and the testing methodology set forth in § 80.46(c), or any other test method where adequate correlation to § 80.46(c) is demonstrated, which show evidence that the gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

* * * * *

(4) * * *

(i) Test results using the sampling methodology set forth in § 80.8 and the testing methodology set forth in § 80.46(c), or any other test method where adequate correlation to § 80.46(c) is demonstrated, which show evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery.

* * * * *

5. Section 80.40 is amended by revising paragraph (c)(1) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) ''Adjusted VOC gasoline'' for purposes of the general requirements in § 80.65(d)(2)(ii), and the certification procedures in this section is gasoline

that contains 10 volume percent ethanol, or RBOB intended for blending with 10 volume percent ethanol, that is intended for use in the areas described at § 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to less stringent VOC standards in § 80.41(e) and (f). In order for ''adjusted VOC gasoline'' to qualify for the regulatory treatment specified in § 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in § 80.46(g).

* * * * *

6. Section 80.46 is amended by revising paragraphs (b), (c), (d), (f), (g) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D 1319–98, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.''

(c) *Reid vapor pressure (RVP).* Reid vapor pressure (RVP) shall be determined using ASTM standard method D 5191–01, entitled ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method),'' except that the following correlation equation must be used:

$$\text{RVP psi} = (0.956 * X) - 0.347$$

$$\text{RVP kPa} = (0.956 * X) - 2.39$$

Where:

X = total measured vapor pressure in psi or kPa.

(d) *Distillation.* Distillation parameters shall be determined using ASTM standard method D 86–01, entitled'' Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.''

* * * * *

(f)(1) Aromatic content shall be determined using ASTM D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry'', except that the sample chilling requirements in section 8 of this standard method are optional.

(2) [Reserved]

(3) (i) Prior to September 1, 2004, any refiner or importer may determine aromatics content using ASTM standard method D 1319–99, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) *Oxygen and oxygenate content analysis.* (1) Oxygen and oxygenate content shall be determined using ASTM standard method D 5599–00, entitled ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.''

(2) (i) Prior to September 1, 2004, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol and C_1 to C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D 4815–99 entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol, and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (g)(1) of this section.

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;'' D 1319–98, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;' D 1319–99, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;'' D 4815–99, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography;'' D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;'' D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);'' D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;'' D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry,'' and D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;'' are incorporated by reference in this section. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

7. Section 80.65 is amended by revising paragraph (d)(3) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility shall be assigned a number (the ''batch number''), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

* * * * *

§ 80.91 [Amended]

9. Section 80.91 is amended by removing paragraph (a)(1)(iii) and removing ''; and'' at the end of paragraph (a)(1)(ii) and adding a period.

10. Section 80.92 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 80.92 Baseline auditor requirements.

(a) * * *

(1) Each refiner or importer is required to have its individual baseline determination methodology, resulting baseline fuel parameter, volume and emissions values verified by an auditor which meets the requirements described in this section. * * *

* * * * *

11. Section 80.101 is amended by removing and reserving paragraphs (d)(2) and (e)(2), removing paragraph (h)(2)(iii), and revising paragraphs (h)(2)(i) and (h)(2)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(h) * * *

(2) * * *

(i) Be made as part of the report for the 1995 averaging period required by § 80.105; and

(ii) Apply for the 1995 averaging period and for each subsequent averaging period, and may not thereafter be changed.

* * * * *

§ 80.102 [Removed and Reserved]

12. Section 80.102 is removed and reserved.

13. Section 80.104 is amended by revising paragraphs (a)(1)(i) and removing and reserving paragraph (a)(2)(ix) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(1) * * *

(i) Each batch of conventional gasoline; and

* * * * *

§ 80.105 [Amended]

14. Section 80.105 is amended by removing and reserving paragraphs (a)(2) and (a)(3).

§ 80.106 [Amended]

15. Section 80.106 is amended by removing and reserving paragraph (b).

§ 80.128 [Amended]

16. Section 80.128 is amended by removing paragraphs (h) and (i).

Appendix D [Removed and Reserved]

17. Appendix D is removed and reserved.

Appendix E [Removed and Reserved]

18. Appendix E is removed and reserved.

Appendix F [Removed and Reserved]

19. Appendix F is removed and reserved.

Appendix G [Removed and Reserved]

20. Appendix G is removed and reserved.

[FR Doc. 02–4067 Filed 2–25–02; 8:45 am]

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Rules and Regulations

Federal Register

Vol. 67, No. 38

Tuesday, February 26, 2002

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD; Amendment 39–12662; AD 2002–04–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes, that requires repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Effective April 2, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 2002.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 2, 2002 (67 FR 40). That action proposed to continue to require repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections. Additionally, that action proposed to require that actions be done in accordance with newly revised service bulletins, and to revise the applicability.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It will take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–04–05 Airbus Industrie: Amendment 39–12662. Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model—	Excluding those modified per Airbus Modification—
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series airplanes	11349 and 12309.
A300 B4–600 series airplanes, A300 B4–600R series airplanes, and A300 F4–605R airplanes	11348 and 12303.
A310 series airplanes	11350 and 12310.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 600 flight hours after the effective date of this AD, perform a detailed visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

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

Note 3: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 07, dated August 9, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies, as specified by paragraphs (c)(1), (c)(2), or (c)(3) of this AD, as applicable, terminates the requirements of this AD.

(1) For Model A300 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done as specified by paragraph (c)(1)(i) or (c)(1)(ii) of this AD.

(i) For airplanes in the common pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001, or Revision 02, dated September 7, 2001.

(ii) For airplanes in the basic pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001.

(2) For Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001.

(3) For Model A310 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 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

(f) The actions required by paragraph (a) of this AD shall be done in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001; Airbus Service Bulletin A300–24–6011, Revision 05, dated May 18, 2001; or Airbus Service Bulletin A310–24–2021, Revision 06, dated May 18, 2001. The actions required by paragraph (b) of this AD shall be done in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001; Airbus Service Bulletin A300–24–6039, Revision 07, dated August 9, 2001; or Airbus Service Bulletin A310–24–2052, Revision 04, dated April 6, 2001; as applicable. The optional replacement provided in paragraph (c) of this AD, if accomplished, shall be done in accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001; Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001; Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001; or Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on April 2, 2002.

Issued in Renton, Washington, on February 12, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–4225 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30295; Amdt. No. 2093]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective April 18, 2002*

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D
Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-D
San Luis Obispo, CA, San Luis Obispo Co-McChesney Field, ILS RWY 11, Amdt 1
Santa Ana, CA, Santa Ana/John Wayne Airport-Orange County, NDB RWY 1L, Amdt 1B
Santa Ana, CA, Santa Ana/John Wayne Airport-Orange County, NDB RWY 19R, Amdt 1A
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, RNAV (GPS) RWY 12, Orig
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, VOR RWY 12, Amdt 14
Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt 2B, CANCELLED
Pittsfield, IL, Pittsfield Penstone Muni, VOR/DME RWY 13, Amdt 4
Pittsfield, IL, Pittsfield Penstone Muni, NDB RWY 31, Amdt 6
Pittsfield, IL, Pittsfield Penstone Muni, RNAV (GPS) RWY 13, Orig
Pittsfield, IL, Pittsfield Penstone Muni, RNAV (GPS) RWY 31, Orig
Manhattan, KS, Manhattan Regional, VOR RWY 3, Amdt 17C
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 12L (SIMULTANEOUS CLOSE PARALLEL), Amdt, 3C
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 12R (SIMULTANEOUS CLOSE PARALLEL), Amdt, 2D
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 30L (SIMULTANEOUS CLOSE PARALLEL), Amdt, 4B
Minneapolis, MN, Minneapolis-St. Paul/Wold-Chamberlain, ILS PRM RWY 30R (SIMULTANEOUS CLOSE PARALLEL), Amdt, 5C
Warren, MN, Warren Muni, RNAV (GPS) RWY 30, Orig
Winona, MN, Winona Muni-Max Conrad Fld, VOR–A, Amdt 13
Winona, MN, Winona Muni-Max Conrad Fld, VOR RWY 29, Amdt 16
Winona, MN, Winona Muni-Max Conrad Fld, RNAV (GPS) RWY 29, Orig
Winona, MN, Winona Muni-Max Conrad Fld, GPS RWY 29, Amdt 1A
Lakewood, NJ, Lakewood, VOR RWY 6, Amdt 6
Lakewood, NJ, Lakewood, RNAV (GPS) RWY 6, Orig
Lakewood, NJ, Lakewood, GPS RWY 6, Orig, CANCELLED
Lakewood, NJ, Lakewood, RNAV (GPS) RWY 24, Orig
Lakewood, NJ, Lakewood, GPS RWY 24, Orig, CANCELLED
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RWY 7, Amdt 4
Jamestown, NY, Chautauqua County/Jamestown, VOR RWY 25, Amdt 8
Jamestown, NY, Chautauqua County/Jamestown, ILS RWY 25, Amdt 6
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 7, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 13, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) Y RWY 25, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) Z RWY 25, Orig
Jamestown, NY, Chautauqua County/Jamestown, RNAV (GPS) RWY 31, Orig
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RNAV OR GPS RWY 13, Amdt 3, CANCELLED
Jamestown, NY, Chautauqua County/Jamestown, VOR/DME RNAV OR GPS RWY 31, Amdt 2A, CANCELLED
Ocracoke, NC, Ocracoke Island, RNAV (GPS) RWY 6, Orig
Ocracoke, NC, Ocracoke Island, RNAV (GPS) RW 24, Orig
Jackson, OH, James A. Rhodes, RNAV (GPS) RWY 1, Orig
Jackson, OH, James A. Rhodes, RNAV (GPS) RWY 19, Orig
Allentown, PA, Lehigh Valley Intl, VOR/DME RWY 24, Orig, CANCELLED
Bedford, PA, Bedford County, GPS RWY 14, Orig-C
Galeton, PA, Cherry Springs, VOR/DME–A, Orig-A
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt 12A
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26, Amdt 1B (Simultaneous Close Parallel)
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 27L, Amdt 1B (Simultaneous Close Parallel)
Philadelphia, PA, Philadelphia Intl, COPTER ILS RWY 17, Orig-B, CANCELLED
Roosevelt, UT, Roosevelt Muni, VOR/DME RNAV RWY 25, Amdt 2
Roosevelt, UT, Roosevelt Muni, VOR OR GPS–A, Amdt 3
Roosevelt, UT, Roosevelt Muni, GPS RWY 25, Orig, CANCELLED
Roosevelt, UT, Roosevelt Muni, RNAV (GPS) RWY 25, Orig
Vernal, UT, Vernal, VOR RWY 34, Amdt 8
Vernal, UT, Vernal, RNAV (GPS) RWY 34, Orig
Melfa, VA, Accomack County, VOR/DME RWY 3, Amdt 1
Melfa, VA, Accomack County, LOC RWY 3, Orig
Melfa, VA, Accomack County, NDB RWY 3, Orig
Melfa, VA, Accomack County, NDB RWY 3, Amdt 8A, CANCELLED
Melfa, VA, Accomack County, RNAV (GPS) RWY 3, Orig
Fort Bridger, WY, Fort Bridger, VOR RWY 22, Amdt 2
Fort Bridger, WY, Fort Bridger, RNAV (GPS) RWY 22, Orig

The FAA published the following procedure in Docket No. 30290, Amdt. No. 2088 to Part 97 of the Federal Aviation Regulations (Vol. 67 FR No. 17 Page 3612: dated January 25, 2002) under section 97.23 effective 18 April 2002 is hereby rescinded.

Tecumseh, MI, Meyers-Diver's, VOR OR GPS–A, Amdt 7

The FAA published an Amendment in Docket No. 30293, Amdt. No. 2091 to Part 97 of the Federal Aviation Regulations (Vol 67 FR No. 28 Page 6167: dated February 11, 2002) under section 97.33 effective 21 March 2002, which is hereby amended as follows:

Warren, MN, Warren Muni, RNAV (GPS) RWY 30, Orig is hereby effective 18 April 2002.

Note: The FAA published the following procedure in Docket No. 30293, Amdt. No. 2091 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 28, Page 6167; dated Monday, February 11, 2002) under

section 97.23, 97.33 effective December 27, 2001 is hereby rescinded.

Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig is hereby rescinded.

Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig is hereby rescinded.

[FR Doc. 02–4287 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30296; Amdt. No. 2094]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

. . . EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC Number	Subject
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0835	ILS Rwy 34R, Amdt 1
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0836	ILS Rwy 34L, Orig
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0837	ILS Rwy 16R, Amdt 1
01/30/02	UT	Salt Lake City	Salt Lake City Intl	2/0838	ILS Rwy 16L, Amdt 1
02/01/02	UT	Delta	Delta Muni	2/0908	VOR/DME or GPS Rwy 16, Amdt 1A
02/05/02	SD	Mitchell	Mitchell Muni	2/0979	VOR or GPS Rwy 12, Amdt 10A
02/05/02	SD	Mitchell	Mitchell Muni	2/0985	VOR or GPS Rwy 30, Amdt 4A
02/06/02	AZ	Yuma	Yuma MCAS-Yuma Intl	2/0989	VOR/DME or TACAN–1 Rwy 17, Amdt 1B
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0991	VOR/DME RNAV Rwy 21R, Amdt 4
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0994	GPS Rwy 21R, Orig
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0995	VOR Rwy 17, Amdt 5
02/06/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/0996	GPS Rwy 17, Orig–A
02/08/02	FL	Orlando	Orlando Intl	2/1044	VOR/DME Rwy 36L, Amdt 4B
02/08/02	FL	Orlando	Orlando Intl	2/1045	VOR/DME or GPS Rwy 36R, Amdt 9A
02/08/02	FL	Orlando	Orlando Intl	2/1048	GPS Rwy 36L, Amdt 1A
02/08/02	FL	Orlando	Orlando Intl	2/1049	VOR Rwy 18R, Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1050	VOR Rwy 18L, Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1051	VOR/DME or GPS Rwy 18L, Amdt 5A
02/08/02	FL	Orlando	Orlando Intl	2/1052	ILS Rwy 18R, Amdt 5A
02/08/02	FL	Orlando	Orlando Intl	2/1053	ILS Rwy 17 (Cat I, II), Amdt 2A
02/08/02	FL	Orlando	Orlando Intl	2/1054	ILS Rwy 35 (Cat I, II, III), Amdt 3A
02/08/02	FL	Orlando	Orlando Intl	2/1055	ILS Rwy 36R (Cat I, II, III), Amdt 6A
02/08/02	FL	Orlando	Orlando Intl	2/1057	VOR/DME or GPS Rwy 18R, Amdt 5A
02/08/02	TN	Oneida	Scott Muni	2/1098	SDF Rwy 23, Amdt 4A
02/08/02	TN	Oneida	Scott Muni	2/1099	VOR/DME–A, Amdt 5
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1155	VOR Rwy 13, Amdt 19
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1156	RNAV (GPS) Rwy 31, Orig
02/11/02	NE	Grand Island	Central Nebraska Regional	2/1157	RNAV (GPS) Rwy 13, Orig
02/11/02	AR	Fort Smith	Fort Smith Regional	2/1169	VOR or TACAN Rwy 25, Amdt 20B
02/12/02	IA	Pella	Pella Muni	2/1220	NDB or GPS Rwy 34, Amdt 7
02/12/02	IA	Pella	Pella Muni	2/1221	RNAV (GPS) Z Rwy 34, Orig
02/12/02	IA	Pella	Pella Muni	2/1222	RNAV (GPS) Z Rwy 16, Orig
02/13/02	AZ	Yuma	Yuma MCAS–Yuma Intl	2/1245	ILS Rwy 21R, Amdt 5

FDC date	State	City	Airport	FDC Number	Subject
02/14/02 ...	KS	Kingman	Kingman Muni	2/1252	GPS Rwy 18, Orig–A This Replaces FDC NOTAM 2/0313 Published in TL 02–05.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[KS–022–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Kansas Department of Health and Environment, Surface Mining Section (Kansas) proposed to consolidate and revise its approved revegetation guidance document. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning Kansas' program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

II. Submission of the Proposed Amendment

By letter dated October 9, 2001 (Administrative Record No. KS–622), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to deficiencies that we identified in Kansas' revegetation guidance document in a previous final rule on August 19, 1992 (57 FR 37430). The amendment also included changes made at Kansas' own initiative. Kansas amended the Kansas revegetation guidance document entitled ''Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success.''

We announced receipt of the amendment in the November 30, 2001, **Federal Register** (66 FR 59751). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 31, 2001. We received comments from one industry group and one Federal agency.

During our review of the amendment, we identified concerns at Part I, Section I.6.b, about other plant species (species not approved in the permit) that are allowed for determining the acceptable percentage of ground cover for various postmine land uses. The other plant species are listed in Appendix A of Kansas' revegetation success guidelines. We notified Kansas of this concern in a telephone conference on November 6, 2001 (Administrative Record No. KS–622.1A).

By letter dated November 29, 2001 (Administrative Record No. KS–622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant specifies listed in Appendix A for determining ground cover success. Appendix A lists the acceptable plant species by land use (including legume, grass, tree, shrub, and vine) that permittees may use to meet Kansas' productivity and ground cover success standards when reclaiming mined land.

Kansas also submitted revisions to its revegetation guidance document on January 8, 2002 (Administrative Record No. 622.7), in response to comments received from Triad Environmental Services and the Natural Resources Conservation Service. These revisions are discussed in section IV, ''Summary and Disposition of Comments.''

Because the additional information and revisions merely clarified certain provisions of Kansas' amendment, we did not reopen the public comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid techniques for determining revegetation success and include them in its approved regulatory program. Kansas sent us its revised revegetation guidance document to satisfy this requirement. As required by the Federal regulations at 30 CFR 816.116(a)(2), 817.117(a)(2), and 823.15(b), Kansas prescribed success standards in its guidance document that include criteria representative of unmined lands in the area being reclaimed, using parameters of ground cover, production, or stocking relevant to the approved postmining land use. The standards, criteria, and parameters reflect the extent of cover, species composition, and soil stabilization requirements of the Federal regulations at 30 CFR 816.111 and 817.111. The

revised guidance document also specifies the procedures to be used for sampling, measuring, and analyzing vegetation parameters. Use of these procedures will ensure consistent, objective collection of vegetation data. Therefore, we are approving the revisions to Kansas' revegetation guidance document as described below.

A. Preface

The preface to Kansas' guidance document discusses the purpose of the document, the geographic region the document concentrates on, and the State regulations covered by the document. Kansas removed language from the preface that we did not approve in the August 19, 1992, final rule decision. This language appeared to exempt specific permits from certain requirements of Kansas' guidance document.

We find that with the removal of the disapproved language, the preface to Kansas' guidance document meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

B. Definitions

Kansas defined the following terms that are specific to the Kansas revegetation guidance document: Animal Unit Month (A.U.M.); Cropland; Desirable; Diverse; Effective; Forage; Global Positioning System (GPS); Historically Cropped; Kansas Department of Wildlife and Parks (KDWP); Kansas State University (KSU); Natural Resources Conservation Service (NRCS); Permanent; Previously Mined; Prime Farmland; Surface Mining Section (SMS); and Total Cover.

The Federal regulations do not contain all of the definitions proposed by Kansas. However, we find that Kansas' definitions for cropland, historically cropped, previously mined, and prime farmland are substantively the same as the counterpart Federal definitions at 30 CFR 701.5. We further find that the other definitions are not inconsistent with other Federal definitions or the requirements for revegetation success at 30 CFR 816.116(a)(2), 817.116(a)(2), 816.111, or 817.111.

C. Tables

Kansas added three new tables that contain a summary of the vegetation requirements that are detailed in the guidance document. Table 1 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of pasture land and grazing land; wildlife habitat, recreation, shelter belts, and forest products; and industrial, commercial, or residential land uses. Table 2 lists a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of prime farmland. Table 3 contains a summary of the productivity and ground cover vegetation requirements for Phase II and Phase III bond release of cropland.

We find that these summary tables meet the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

D. Part I. Ground Cover Success

Kansas consolidated the substantive provisions of its approved ground cover success standards for all land uses in Part I. Section A provides the standard for ground cover on prime farmland, cropland, and pasture/grazing land. Section B discusses the standard for ground cover on previously mined areas. Section C provides the standard for ground cover on wildlife habitat, recreation, shelter belt, and forest product land use areas that have topsoil. Section D contains standards for ground cover on industrial, commercial, or residential land use areas that have topsoil. Sections E and F provide general information on pre-mining ground cover sampling criteria and techniques. Section G contains specific pre-mining ground cover sampling techniques. Section H provides specific post-mining ground cover sampling criteria. Finally, Section I covers specific post-mining ground cover sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover. Ground cover will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for ground cover for each land use. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part I and found that Kansas' guidelines for ground cover are no less effective than the requirements of these Federal regulations.

E. Part II. Forage Production Success Standard

Kansas revised and consolidated the substantive provisions of its approved forage production success standards for prime farmland, cropland, pasture land, and grazing land in Part II. Section A discusses the use of the United States Department of Agriculture, Natural Resources Conservation Service (USDA–NRCS) soil survey database for determining productivity of cool season grass seed mixtures. This database lists crop yields by the soil mapping units contained in the published county soil surveys for Kansas. Section A also discusses the USDA–NRCS database in Technical Guide Notice KS–145. This database is used for determining productivity of native grass seed mixtures. Section B contains information on methods of calculation using the Animal Unit Month (A.U.M.) values listed in the USDA–NRCS soil surveys for Kansas. Kansas reevaluated the A.U.M. value used in its previous guidance document for forage production. The A.U.M. value is the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas changed this value from 900 pounds to 760 pounds of dry forage based upon a recommendation by the Natural Resources Conservation Service (Administrative Record No. KS–622.8). Section C provides productivity standards for prime farmland forage crops. Section D covers the productivity standards for cropland forage crops. Section E covers the productivity standard for previously mined lands reconstructed to pasture and grazing land. Section F contains information on the productivity standards for pasture and grazing land. Section G discusses the methods of data collection, including use of representative areas with test plots or whole field harvesting. Kansas added whole field harvesting to the methods of data collection for forage. Section H contains specific forage crop production sampling criteria. Finally, Section I covers specific forage crop production sampling techniques.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2),

817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard.

Production for cropland, pasture land, and grazing land will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland, pasture land, and grazing land and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part II and found that Kansas' guidelines for forage production are no less effective than the requirements of these Federal regulations.

F. Part III. Productivity Standards for Row Crops

Kansas revised and consolidated the substantive provisions of its approved row crop production success standards for prime farmland and cropland in Part III. Kansas also added corn as an acceptable row crop under specified conditions. Section A discusses the acceptable row crops for revegetation productivity. Section B contains information on the method of row crop production success standard calculations. Section C provides row crop sampling criteria. Section D contains the following sampling methods for data collection involving representative areas: test plots, whole field sampling, and whole field harvesting. Section E provides productivity sampling criteria for prime farmland row crops. Section F discusses productivity sampling criteria for cropland row crops. Finally, Section G contains row crop sampling techniques involving test plots and whole field sampling for grain sorghum (milo), wheat, soybeans, and corn.

In response to deficiencies that we identified in the August 19, 1992, final decision on Kansas' current revegetation success guidelines, Kansas revised its row crop sampling techniques for grain sorghum and wheat. To address the deficiencies, Kansas added provisions that require operators to make determinations of statistical sample adequacy based on sample weights corrected to a standard moisture content.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15(b) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Production for prime farmland must meet 100 percent of the success standard. Production for cropland will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland and 30 CFR 823.15(b) contains the success standards for prime farmland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part III and found that Kansas' guidelines for row crop production are no less effective than the requirements of these Federal regulations.

G. Part IV. Productivity Success Standards for Trees and Shrubs

Kansas consolidated its productivity success standards for trees and shrubs in Part IV. Section A discusses the general success standards for fish and wildlife habitat, recreation areas, forest products, and shelter belts. Section B contains the Phase II and Phase III productivity success standards for these land uses. Section C provides information on productivity sampling criteria. Section D contains stem density sampling techniques. Finally, Section E discusses previously mined areas that are reclaimed to fish and wildlife habitat, recreation, forest products, and shelter belts.

The counterpart Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success must be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of stocking. Tree and shrub stocking will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) contain the minimum success standards for tree and shrub stocking for areas to be developed for fish and wildlife habitat, recreation, forest products, and shelter belts. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Part IV and found that Kansas' guidelines for tree and shrub stocking are no less effective than the requirements of these Federal regulations.

H. Appendices

Kansas' revised revegetation guidance document contains seven appendices that support the provisions in Parts I through IV.

1. Appendix A, Plant Species List

Kansas revised its previously approved list of plant species. Appendix A lists the plant species that are unacceptable for all land uses with specified exceptions. It lists the acceptable tree species for fish and wildlife habitat, recreation areas, forest products, and shelter belts. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation areas, and shelter belts. In addition, it lists the acceptable legume species based on land use for revegetation productivity and ground cover. Finally, it lists the acceptable grass species based on land use for revegetation productivity and ground cover. By letter dated November 29, 2001 (Administrative Record No. KS–622.2), Kansas sent us a letter from the Natural Resources Conservation Service that stated it concurred with the use of the plant species listed in Appendix A for determining revegetation productivity and ground cover success for the State of Kansas.

Based on our technical review and the concurrence letter from the Natural Resources Conservation Service, we are approving the revisions to Appendix A.

2. Appendix B, Animal Unit Month-Methods of Production Success Standard Calculations

As discussed in finding E, Kansas revised its A.U.M. value for use in calculating forage production. Kansas defines the A.U.M. as the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas submitted calculations and documentation in Appendix B that support an A.U.M. equal to 760 pounds of forage. Appendix B contains tables showing two methods of calculating the success standard for grain sorghum,

wheat, and corn by soil type. The documentation also includes two methods of calculating forage production based on A.U.M. per soil type for cool season grass seed mixtures and warm season grass seed mixtures. In a letter dated May 11, 1993, the Natural Resources Conservation Service recommended that Kansas use an average of 25 pounds of forage per day for a 1000 pound cow in calculating production requirements for forage. Kansas provided calculations to show that the monthly A.U.M. value would equal 760 pounds of forage.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Based on our technical review and the recommendation from the Natural Resources Conservation Service, we find that Appendix B in combination with Part II, Section B, meets the requirements of 30 CFR 816.116(a)(2) and 817.116(a)(2).

3. Appendix C (Production Data), Appendix D (Planting Reports), Appendix E (Reference Area Criteria), and Appendix G (Measuring Grain Moisture)

Kansas either proposed no revisions or nonsubstantive revisions to the previously approved information contained in Appendices C, D, E, and G. Therefore, we find that the information in these appendices continue to meet the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1).

4. Appendix F, Representative Sample Field Area Definition and Test Plot Criteria

Kansas allows permittees to use representative areas with test plots to assess row crop productivity. Kansas consolidated its criteria for representative sample field areas for cropland and prime farmland into Appendix F. Appendix F discusses the use of data from representative sample field areas to prove row crop production success. This data is obtained from individual row crop test plots. Kansas removed the requirement to describe the bulk density of each soil probe location. Kansas also removed the requirement for a secondary grouping of the field data.

We find that the removal of these requirements will not make Kansas' requirements for representative areas with test plots less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a).

IV. Summary and Disposition of Comments

Public Comments

By letter dated December 31, 2001 (Administrative Record No. KS–622.6), Triad Environmental Services (Triad) commented on several provisions in the amendment.

(1) Triad questioned why the minimum of 70 percent cover discussed in Part I, Section B, doesn't show up in Table 1 for ''No Topsoil'' areas.

Table 1 is just a summary of the vegetation requirements that are detailed in the guidance document. In the category of ''No Topsoil'' for each land use, Kansas summarizes the cover requirements as one year ground cover at 90 percent of the pre-mine cover and adequate to control erosion. Later in the document, Kansas provides the specific detailed guidance for measuring revegetation success by land use. In the detailed guidance Kansas specifies that a 70 percent ground cover is adequate to control erosion. There is no need to repeat all of the details provided in the land use specific guidance in the summary table.

(2) Triad commented that footnote (a) in Table 2 and footnote (b) in Table 3 should reference grain sorghum.

In response to Triad's comment, Kansas revised its terminology in Tables 2 and 3 to consistently refer to the row crop of grain sorghum.

(3) Triad questioned the meaning of the second paragraph in Part I that states ''a subjective analysis of the ground cover will be required and must consider the premined quality of each land use.'' Triad also stated that the proposed revegetation guidelines should be for postmine revegetation success determinations.

In response to the first comment, Kansas revised the language in the second paragraph of Part I to read, ''A detailed analysis of the premine ground cover will be required and must consider the premine quality of each land use.''

Triad is incorrect in its assertion that the revegetation guidelines should be restricted to postmining revegetation. Measurement of postmining revegetation success is dependent upon a comparison to the premining vegetation as required at 30 CFR 816.116(a).

(4) Triad questioned why the premine ground cover was used in the second paragraph of Part I, Section A.

Kansas has chosen to use the premine reference area as one way of developing a standard of vegetative cover for comparison to the postmine cover. This is consistent with the Federal regulation requirements at 30 CFR 816.116(a)(2).

(5) Triad commented that Kansas should add the language ''and shall be adequate to control erosion'' in Part I, Section B.

In response to this comment, Kansas revised the second sentence in Part I, Section B, to read, ''The ground cover success standards for previously mined areas will be the same as that of the premine ground cover, or at a minimum 70%, and shall be adequate to control erosion.''

(6) Triad questioned whether in Part I, Section C, the word ''and'' should be replaced by the word ''or'' in the phrase, ''will be the greater of the premine ground cover value and the ground cover value needed to meet the approved postmining land use.'' Triad also questioned whether the values in the Table 1 summary should be included in this section, i.e., ''90% or greater of the 100% standard.''

In response to Triad's first comment, Kansas added the word ''either'' after the words ''greater of'' and replaced the word ''and'' with the word ''or.'' The revised sentence reads, ''The ground cover success standards for fish and wildlife habitat, recreation, shelter belts and forest products land uses will be the greater of either the premine ground cover or the ground cover value need to meet the approved postmining land use.''

In response to Triad's second comment, we do not believe that the exact language in Table 1 needs to be included in Section C. Table 1 is just a summary of the general vegetation requirements that are detailed in the guidance document. However, Kansas does state the same standard in the first sentence of Section C in the phrase, ''all areas must meet 90% of the success standard.'' Unless otherwise stated, the success standard is always a ''100% standard.''

(7) Triad commented that the requirements in Part I, Section E, Premine Ground Cover Sampling Criteria Techniques, should be ''clarified to state that if a lower technical standard is proposed then this procedure will be used. There is no requirement under 816.116 or 779.19 to collect premine vegetation at a 90 percent statistical confidence interval.''

We disagree with the commenter. First, the Kansas regulations at K.A.R. 47–9–1(c) incorporate by reference 30 CFR Part 816. At 30 CFR 816.116(a)(1), all revegetation standards whether technical or reference area are required to be selected by the regulatory authority and included in an approved regulatory program. Any other standards

not included in the approved guidelines would have to be approved through the same regulatory selection and approval process as the existing approved guidelines. As such, the language suggested by the commenter would not meet the requirements of 30 CFR 816.116(a)(1). Second, 30 CFR 816.116(a)(2) does require the use of a 90 percent statistical confidence interval when the undisturbed premine ground cover data is used as a standard for comparison with postmining revegetation success data.

(8) Triad commented that in Part I, Section F.7, ''the premine sample dates should agree with the postmine sample dates (i.e. December 1).''

In response to Triad's comment, Kansas revised both the premine and postmine sample dates to read ''April 1 to November 1.''

(9) Triad questioned why the species list for fish and wildlife habitat, recreation, shelter belts, and forest products, including pasture or grazing land used as wildlife habitat enhancement at Part I, Section I.9(a)(1), is different than the other land uses.

For these particular land uses, Kansas requires that a minimum of certain plant species be included in the ground cover on a land use specific basis. Kansas requires different species for different land uses because different land uses require the plant species that are compatible with that use.

(10) Triad commented that at Part II, Section F, Kansas needed to clarify the requirements for Phase II revegetation bond release.

In response to this comment, Kansas clarified the requirements for successful revegetation establishment at Phase II bond release by revising the first paragraph. Kansas added the language, ''At Phase II'' to the beginning of the last sentence of the paragraph as shown below:

> At Phase II, successful revegetation establishment is attained when the revegetation success standards are achieved for one growing season in accordance with the requirements in K.A.R. 47–9–1(c), adopting by reference 30 CFR 816.111(a) and (b), and 816.116(b) and (c); and K.A.R. 47–9–1(e), adopting by reference 30 CFR 817.111(a) and (b), and 817.116(b) and (c).

(11) Triad questioned whether the stratification plan for forage crop production referred to in Part II, Section H, requires approval prior to initiation of sampling.

Kansas requires the operator to submit the plan for stratification before the initiation of sampling. However, Kansas does not require that the plan be approved before sampling. In the January 8, 2002, cover letter for its revised guidance document, Kansas clarified that approval of the plan does not take place until after initial sampling (Administrative Record No. KS–622.7).

(12) Triad commented that Kansas should include the language, ''meet or exceed the optional reference area'' in Part III, Section E.

In response to Triad's comment, Kansas added the suggested language to the last sentence of the first paragraph of Section E. The revised sentence reads as follows:

> This required year of row crops must meet the calculated row crop success standard, or meet or exceed a reference area, to obtain a phase II bond release as per K.A.R. 47–8–9(a)(13), adopting by reference 30 CFR 800.40(c)(2).

(13) Triad commented that Bermuda grass should be added to Appendix A as an acceptable species for pasture land use. Triad also submitted a December 18, 2001, letter from Mr. Gary Kilgore, Area Crops Specialist for Kansas State University Extension Service, who recommended that Bermuda grass be allowed.

In response to this comment, Kansas revised Appendix A to include Bermuda grass on the list of approved species for pasture land use.

(14) Finally, Triad commented, ''TRIBE 13—ANDROPOGONEAE—Little Bluestem, Big Bluestem, and Indian Grass should be allowed for pasture land use.''

In response to this comment, Kansas revised Appendix A to include these species on the list of approved species for pasture land use.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS–622.1). The Natural Resources Conservation Service (NRCS) responded on December 10, 2001 (Administrative Record No. (KS–622.5), with two comments.

(1) The NRCS commented that in Part I, Section I.9, ''the statement is made that a visual scan of each area will be made to determine compliance with diversity (number of species present). Instead of using a visual scan to determine species numbers, why not use the data developed from ground cover measurements to determine species numbers. This would provide more accurate information as well as reduce sampling time.''

In response to this comment, Kansas revised the text of Part I, Section I.9, to require that data developed from ground cover measurements in addition to a visual scan during the optimal growing season will be used to determine if each stratified sample area meets the criteria specified for the intended land use.

(2) The NRCS provided the following comments concerning Part II, Section B:

> The statement is made that Animal Unit Month (A.U.M.) Values listed in the USDA NRCS soil surveys are converted to lbs./acre of dry forage per growing season and that the guideline used is 760 lbs. of dry matter per A.U.M. A point of clarification is needed on this statement. The A.U.M. factors listed in soil surveys and technical notices are determined from the following procedure. The amount of total above ground forage production is multiplied by the harvest efficiency expected for that particular land use. This provides the amount of forage production allocated for animal consumption. This amount is then divided by the amount of forage allocated to an animal unit month (in this case, 760 lbs.). If the intent of the procedure covered under Section B is to arrive at a potential total production figure for the reclaimed land by multiplying the number of A.U.M.'s by 760, without taking into consideration the harvest efficiency factor, the potential productivity will be significantly underestimated.

Kansas did not make any changes in response to this comment. Kansas investigated the current USDA-NRCS soil surveys and discovered that the crop production values included compensation for loss due to livestock trampling, insect damage, and herbivore consumption (harvest efficiency factors).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KS–622.1). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 15, 2001, we

requested comments on Kansas' amendment (Administrative Record No. KS–622.1), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Kansas sent us on October 9, 2001, and as revised on January 8, 2002.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 916, which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 1, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 916 is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 9, 2001	February 26, 2002.	Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success dated January 2002.

[FR Doc. 02–4515 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[LA–021–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are approving an amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposed revisions to and additions of regulations concerning valid existing rights. Louisiana revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430, Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, '' * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the October 10, 1980, **Federal Register** (47 FR 23883). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.15 and 918.16.

II. Submission of the Amendment

By letter dated August 3, 2001 (Administrative Record No. LA–366.04), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to an August 23, 2000, letter (Administrative Record No. LA–366) that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed to amend the Louisiana Surface Mining Regulations (LSMR).

We announced receipt of the proposed amendment in the September 20, 2001, **Federal Register** (66 FR 48393). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 22, 2001. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about the definition of valid existing rights; areas where mining is prohibited or limited; exceptions for existing operations; procedures for permit application review; general requirements for development operations involving removal of more than 250 tons; valid existing rights determinations; criteria for permit approval or denial; and several cross-reference errors. We notified Louisiana of these concerns by letter dated November 16, 2001 (Administrative Record No. LA–366.08). By letter dated November 20, 2001 (Administrative Record No. LA–366.09), Louisiana sent us revisions to its proposed program amendment.

Based on Louisiana's revisions to its amendment, we reopened the public comment period in the December 26, 2001, **Federal Register** (66 FR 66377). The public comment period ended on January 10, 2002. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Louisiana's regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State regulation	Federal counterpart regulation
Definition of valid existing rights	§ 105	30 CFR 761.5.
Areas where mining is prohibited or limited	§ 1105	30 CFR 761.11.
Procedures for permit application review	§ 1107.B	30 CFR 761.17(b).
Location verification	§ 1107.C	30 CFR 761.17(c).
Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.	§ 1107.D	30 CFR 761.14.
Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.	§ 1107.E	30 CFR 761.15.
Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks and historic places.	§ 1107.F	30 CFR 761.17(d).
Exception for existing operations	§ 1109	30 CFR 761.12(a).
General requirements for development operations involving removal of more than 250 tons	§ 2111.A.8	30 CFR 772.12(b)(14).
Applications: approval or disapproval of development of more than 250 tons	§ 2113.B.4	30 CFR 772.12(d)(2)(iv).
Valid existing rights deterimations	§ 2323	30 CFR 761.16.

Because the above State regulations contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Louisiana program (Administrative Record Nos. LA–366.05 and LA–366.10). The U.S. Fish and Wildlife Service (FWS) responded on September 12, 2001 (Administrative Record No. LA–366.06), that it reviewed the amendment and concludes that the proposed changes would not result in significant adverse impacts to fish and wildlife resources within its trusteeship. The FWS also responded on December 21, 2001 (Administrative Record No. LA–366.11), that it reviewed the revisions to the amendment and concludes that the activity is not pertinent to those Federal-trust resources under its charge.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. LA–366.05 and LA–366.10). The EPA did not respond to our requests.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 15, 2001, and December 10, 2001, we requested comments on Louisiana's amendment (Administrative Record Nos. LA–366.05 and LA–366.10), but neither responded to our requests.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Louisiana on August 3, 2001, and as revised on November 20, 2001.

We approve the regulations proposed by Louisiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 918, which codify decisions concerning the Louisiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 25, 2002.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
August 3, 2001	February 26, 2002.	LSMR Sections 105, 1105, 1107.B through F, 1109, 2111.A.8, 2113.B.4, and 2323.

[FR Doc. 02–4516 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR PART 111

Price of Semipostal Stamps

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the *Domestic Mail Manual* (DMM) provisions relating to the pricing of semipostal stamps. This final rule implements legislative changes to the semipostal program and amends the Domestic Mail Manual provisions relating to the pricing and use of semipostal stamps.

DATES: This rule is effective on March 23, 2002.

Applicability date: DMM P022.1.6(b) and R000.4.0 (last paragraph) are applicable on the date when the *Heroes* semipostal stamp is made available for purchase.

ADDRESSES: Questions about this rule may be addressed to the Manager, Stamp Services, ATTN: Semipostal Stamp Program DMM Rules, 475

L'Enfant Plaza SW, Room 5670, Washington, DC 20260–2435.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett (202) 268–6555.

SUPPLEMENTARY INFORMATION: The Postal Service is amending Sections P014, P022, and R000 of the DMM to reflect the enactment of the following two acts: the Semipostal Authorization Act, Public Law No. 106–253, 114 Stat. 634 (2000) and the 9/11 Heroes Stamp Act of 2001, Public Law No. 107–67, § 652, 115 Stat. 514 (2001). This notice also adopts DMM standards implementing the decision of the Governors of the United States Postal Service on the prices of the *Breast Cancer Research* semipostal stamp (BCRS) and the *Heroes* semipostal stamp.

Background

The Semipostal Authorization Act authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The 10-year period begins on the date that the Postal Service begins to sell the selected semipostal stamps to the public.

Public Law No. 107–67 extends the sales period of the BCRS until the end of 2003 and directs the Postal Service to issue a semipostal stamp to provide assistance to families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001. The *Heroes* semipostal stamp is to be issued as soon as practicable and may remain on sale through December 31, 2004. Funds raised in connection with this semipostal stamp are to be transferred to the Federal Emergency Management Agency.

Under 39 U.S.C. 414 and 416, the Governors are authorized to determine the price of the BCRS stamp and other semipostal stamps. On January 8, 2002, the Governors voted to change the price of the BCRS from 40 cents to 45 cents. The Governors also voted to set the price of the *Heroes* semipostal stamp at 45 cents. The new price of the BCRS is effective on March 23, 2002. The price of the *Heroes* semipostal stamp is effective on the date of the stamp's issuance, which is yet to be determined.

The refund provisions of Section P014 of the DMM are amended to apply to all existing and future semipostal stamps. In addition, the provisions of DMM P022 are amended to reflect the price change for the BCRS and the introduction of the *Heroes* semipostal stamp. Certain provisions of DMM P022 are revised to apply to all semipostal stamps. DMM R000 is amended to reflect the prices and postage values of the BCRS and the *Heroes* semipostal stamp.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service hereby amends the following standards of the DMM, incorporated by reference into the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* as set forth below:

Domestic Mail Manual (DMM)

* * * * *

P Postage and Payment Methods

* * * * *

P000 Basic Information

* * * * *

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

[*Revise the heading and text of 2.10 to read as follows:*]

2.10 Semipostal Stamps

Customers may exchange or convert semipostal stamps for their postage value (i.e., the price of the stamps less the contribution amount) to the extent exchange or conversion of postage stamps is permitted under P014. The postage the customer exchanges or converts is equal to the First-Class Mail single-piece rate in effect at the time of exchange. However, if the customer provides a receipt showing the date of purchase, the postage exchanged or converted is equal to the First-Class Mail single-piece rate in effect at the time of purchase. The contribution amount is not refundable and is not included in the exchange or conversion value.

* * * * *

P020 Postage Stamps and Stationery

P022 Postage Stamps

1.0 PURCHASE AND USE

* * * * *

[Revise the heading and text of 1.6 to read as follows:]

1.6 Semipostal Stamps

Semipostal stamps are subject to special limitations and conditions:

a. Semipostal stamps are stamps that are sold for a price that exceeds the postage value of the stamp. The difference between the price and postage value of semipostal stamps, also known as the differential, less an offset for the Postal Service's reasonable costs, as determined by the Postal Service, is a contribution for a specific cause. Semipostal stamps provide a means for customers to contribute to specific causes. Semipostal stamps are offered for sale for a limited time as provided by law or by the Postal Service.

b. A brief description of semipostal stamps follows:

1. The price of the *Breast Cancer Research* semipostal stamp (BCRS) is 45 cents. The difference between the purchase price and the First-Class Mail nonautomation single-piece first-ounce letter rate in effect at the time of purchase constitutes a contribution to breast cancer research and cannot be used to pay postage. Funds (net of the Postal Service's reasonable costs) raised in connection with the BCRS are transferred to the Department of Defense and the National Institutes of Health.

2. The price of the *Heroes* semipostal stamp is 45 cents. The difference between the purchase price and the First-Class Mail nonautomation single-piece first-ounce letter rate in effect at the time of purchase is a contribution to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001, and cannot be used to pay postage. Funds (net of the Postal Service's reasonable costs) raised in connection with the *Heroes* semipostal stamp are transferred to the Federal Emergency Management Agency.

c. The postage value of each semipostal stamp is the First-Class Mail nonautomation single-piece first-ounce letter rate in R100.1.2 that is in effect at the time of purchase. Additional postage must be affixed to pieces weighing in excess of 1 ounce, pieces subject to the nonstandard surcharge, or pieces for which special services have been elected. The postage value of semipostal stamps is fixed according to the First-Class Mail nonautomation single-piece

first-ounce letter rate in effect at the time of purchase; the postage value of semipostal stamps purchased before any subsequent change in the First-Class Mail nonautomation single-piece first-ounce letter rate is unaffected by any subsequent change in that rate.

* * * * *

R Rates and Fees

R000 Stamps and Stationery

* * * * *

[Revise the table in item 4.0 as follows:]

Form per purpose	Denomination
*	*
Breast Cancer Research, Panes of up to 20	Purchase price of $0.45; postage value equivalent to First-Class Mail nonautomation single-piece rate (currently $0.34); remainder is contribution to fund breast cancer research.
Heroes, Panes of up to 20	Purchase price of $0.45; postage value equivalent to First-Class Mail nonautomation single-piece rate (currently $0.34); remainder is contribution to provide assistance to the families of the emergency relief personnel killed or permanently disabled in connection with the terrorist attacks of September 11, 2001.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–4213 Filed 2–25–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0329; FRL–7146–7]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Bay Area Air Quality Management District's (BAAQMD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on September 12, 2001 and concerns volatile organic compound (VOC) emissions from adhesives and sealants. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on March 28, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

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

I. Proposed Action

On September 12, 2001 (66 FR 47419), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	8–51	Adhesive and Sealant Products	05/02/01	05/31/01
South Coast Air Quality Management District (SCAQMD).	443.1	Labeling of Materials Containing Organic Solvent.	12/05/86	06/09/97

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements.

On September 12, 2001 (66 FR 47392), we also published a direct final approval of the above rules because we believed that the rules were not controversial.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive comments on SCAQMD Rule 443.1. The direct final approval became effective and SCAQMD Rule 443.1 was incorporated into the SIP on November 13, 2001. During the comment period, we did receive comments regarding BAAQMD Rule 8–51. As a result, we removed our direct final action for BAAQMD Rule 8–51 on November 15, 2001 (66 FR 57387). We received comments from the following parties.

1. Mark Chytilo, Counsel for TRANSDEF, a Bay Area community group; letter dated October 12, 2001.

2. Julia May, Lead Scientist for Communities for a Better Environment (CBE); letter dated October 12, 2001.

The comments and our responses are summarized below.

Comment 1: Both parties comment that handheld aerosol adhesives, if exempted by the BAAQMD, will be exempt from emission controls because the Air Resources Board's (ARB) Consumer Products regulation (California Code of Regulations Title 17 Sections 94507–94528) has not been approved into the SIP. The provisions controlling these products are removed from the local regulation without adequate replacement provisions which violates CAA requirements regarding enforceability and backsliding. TRANSDEF also questioned BAAQMD's ability to regulate adhesives in general and requested clarification from EPA.

Response 1: On November 4, 1999 (64 FR 60109), EPA originally incorporated a version of BAAQMD Rule 8–51 into

the SIP. That version, adopted by the BAAQMD on January 7, 1998 and submitted to us by the ARB on June 23, 1998, contained two similar provisions exempting aerosol adhesive products from the requirements of Rule 8–51. Section 8–51–113 generally exempted all adhesives subject to the ARB's Consumer Products regulation, while Section 8–51–111 specifically exempted aerosol adhesive products. The current version of BAAQMD Rule 8–51, adopted by the BAAQMD on May 2, 2001 and submitted to us by the ARB on May 31, 2001, deletes Section 8–51–111 because that provision expired on January 1, 2000. However, the aerosol adhesive product category is still exempt under the SIP-approved exemption in Section 8–51–113. Because the SIP-approved version of 8–51 never regulated the aerosol adhesive product category, the removal of Section 8–51–111 does not violate CAA section 193 requirements regarding backsliding. Furthermore, the submitted version of the rule which still includes Section 8–51–113, is very clear that aerosol adhesives are exempt. There is no ambiguity about how this provision is to be enforced and, therefore, no conflict with the enforceability requirement of CAA section 110(a).

On January 1, 1997, Section 41712 of the California Health and Safety Code was amended by Assembly Bill 1849, to apply the ARB's aerosol adhesive standard statewide. On or after January 1, 2000, Assembly Bill 1849 allows local districts, like the BAAQMD, to adopt and enforce stricter standards for aerosol adhesives. Section 39002 of the California Health and Safety Code, in fact, specifically provides that ''local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources'' and that ''local and regional authorities may establish stricter standards than those set by law or by the state board.'' The local agency's ability to regulate the larger adhesives and sealants source category granted under Section 39002 was unaffected by Assembly Bill 1849. With the expiration of ARB's limited jurisdiction over the aerosol adhesive subcategory, the authority to regulate the entire adhesive and sealant source category, including aerosols, reverts back to the BAAQMD.

Comment 2: Because VOC is defined more narrowly in BAAQMD's Rule 8–51 than in the ARB's Consumer Products rule, the use of certain toxic compounds and/or environmentally harmful materials, including greenhouse gases, would not be allowed under Rule 8–51 but would be allowed under the ARB's Consumer Products rule. Both parties comment that EPA should not allow the use of these harmful compounds as replacements for ozone depletors and that EPA is, in fact, required by the Pollution Prevention Act to review regulations with source reduction in mind.

Response 2: This comment is only relevant if activities previously subject to Rule 8–51 are now subject to ARB's Consumer Products rule. As discussed in Response 1, this is not the case.

Comment 3: TRANSDEF noted that the BAAQMD has failed to complete the required RACT fix up which was due in 1992 because Rule 8–51 remains unapproved and urged EPA to impose sanctions pursuant to § 179.

Response 3: EPA proposed full approval of BAAQMD Rule 8–51 on September 12, 2001 partly because we believe it fulfills all RACT fix-up requirements. No comments were submitted that change that assessment. Therefore, there is no basis for imposing sanctions regarding this rule.

Comment 4: TRANSDEF requested that EPA convene a public hearing process to gain clarity about the rule citing confusion about Rule 8–51's overlap with ARB's Consumer Products regulation and compliance with RACT fix-up requirements.

Response 4: As discussed in Responses 1 and 3, overlap with ARB's Consumer Products regulation and RACT fix-up commitments are not substantive issues.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. This action permanently terminates all sanctions and FIP clocks associated with EPA's November 4, 1999 limited disapproval of a previous version of this rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have 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 29, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 30, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(282)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(282) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–51, revised on May 2, 2001.

* * * * *

[FR Doc. 02–4402 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319c; FRL–7139–2]

Interim Final Determination That the State of California Has Corrected Deficiencies and Stay of Sanctions, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving the State of California's submittal of a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the State Implementation Plan (SIP). We have also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on our direct final action, we will withdraw our direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the full approval, we are making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on August 21, 2000. See 65 FR 45297. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment. If no comments are received on our approval of the State's submittal and on our interim final determination, the direct final action published in today's **Federal Register** will also finalize our determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on our approval or on this interim final determination, we will publish a final rule taking into consideration any comments received.

DATES: This document is effective February 26, 2002. Comments must be received by March 28, 2002.

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

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

I. Background

On August 21, 1998, the State of California submitted a revision to Rule 427 in the KCAPCD portion of the SIP, for which we finalized a limited approval and limited disapproval on July 21, 2000 (65 FR 45297). Our disapproval action started an 18-month clock beginning on August 21, 2000 for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted revised Rule 427 on December 14, 2001. We have taken direct final action on this submittal pursuant to our modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules and Regulations section of today's **Federal Register**, we have issued a direct final full approval of the State of California's submittal of its SIP revision. In addition, in the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the State's submittal. Based on the direct final full approval set forth in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we

determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on August 21, 2000. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. 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. This action merely stays and defers federal sanctions. 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 only stays an imposed sanction and defers the imposition of another, 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 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 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 stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 26, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4397 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319a; FRL–7139–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of nitrogen oxides (NO_X) from internal combustion engines. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 29, 2002, without further notice, unless EPA receives adverse comments by March 28, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
KCAPCD	427	Stationary Piston Engines (Oxides of Nitrogen)	11/01/01	12/14/01

On January 22, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved into the SIP on July 21, 2000 (65 FR 45297) a version of Rule 427, adopted on July 2, 1998. We received but did not act on submittals of Rule 427, adopted on July 1, 1999 and May 4, 2000. While we can act on only the most recent submittal, we considered the information previously submitted.

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

The purpose of the submitted revised Rule 427 is to remedy the deficiencies cited in the limited approval and limited disapproval action on Rule 427 on July 21, 2000 (65 FR 45297).

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources of NO_X in ozone nonattainment areas (see sections 182(a)(2)(A) and 182(f) and must not relax existing requirements (see sections 110(l) and 193). The KCAPCD regulates a serious ozone nonattainment area. See 66 FR 56476 (November 8, 2001). Such areas must fulfill RACT for all major sources of NO_X pursuant to sections 107(d) and 182(f) of the CAA.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR Part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987* **Federal Register Notice,** (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the ''NO_X Supplement to the General Preamble''), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT)*, U.S. EPA Office of Air Quality Planning and Standards (March 16, 1994).
- *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,* U.S. EPA, Office of Air Quality Planning and Standards (September 20, 1999).

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. All of the deficiencies identified in our previous limited approval and limited disapproval action on Rule 427 have been adequately addressed as follows:

- Section VIII.C.1.a: [The frequency of source testing to demonstrate compliance should be reduced from every two years to once every 8,760 hours or two years, whichever time period is shorter.] The District has revised section VIII.C.1 to correct the deficiency.
- Sections VIII.C.2.c and VIII.C.2.d: [The alternative of group-testing a representative sample of ⅓ of the engines each year to show compliance should be done with a 10% lower emissions limit than for each individual engine. The engines tested should be rotated in such a way that all engines are tested once every three years.] The District has revised section VIII.C.2 to correct the deficiency. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 28, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 29, 2002. This will incorporate this rule into the federally-enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit rules that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Clean Air Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have 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 CAA. 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 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(290) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(290) New and amended regulations for the following APCDs were submitted

on December 14, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 427, adopted on November 1, 2001.

* * * * *

[FR Doc. 02–4398 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN64–01–7289a; FRL–7139–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for the Northern States Power Company (NSP) Riverside Plant. By its submittal dated September 1, 1999, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve NSP Riverside's Title V Operating Permit into the Minnesota SO_2 SIP and remove the NSP Riverside Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective April 29, 2002, unless EPA receives adverse comment by March 28, 2002. If EPA receives adverse comments, 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.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking This action?
II. Background on Minnesota Submittal
1. What is the background for this action?
2. What information did Minnesota submit, and what were its requests?
3. What is a ''Title I Condition?''
III. Final Rulemaking Action
IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO_2 SIP certain portions of the Title V permit for NSP's Riverside plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is removing the NSP Riverside Plant Administrative Order from the state SO_2 SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP or their accompanying supportive documents, such as the SO_2 air dispersion modeling. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO_2 requirements of the Act. The only change to the SO_2 SIP is the enforceable document for the NSP Riverside Plant, from the Administrative Order to the federal Title V permit.

II. Background on Minnesota Submittal

1. What Is the Background for This Action?

NSP's Riverside Plant is located in Minneapolis, Hennepin County, Minnesota. Monitored violations of the primary SO_2 NAAQS from 1975 through 1977 led MPCA to recommend that EPA designate Air Quality Control Region (AQCR) 131 as nonattainment for SO_2. AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. EPA designated AQCR 131 as a primary SO_2 nonattainment area on March 3, 1978 (43 FR 8962). In response to Part D requirements of the Clean Air Act, MPCA submitted a final SO_2 plan on August 4, 1980. EPA approved the Minnesota Part D SO_2 SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

Subsequent monitored violations of the SO_2 NAAQS prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan for the area was further delayed by the passage of the CAA Amendments in 1990. MPCA submitted the final SO_2 SIP revisions to EPA in three parts. On May 29, 1992 MPCA submitted the plan for the majority of the AQCR 131 area, which included Hennepin County. EPA first approved the Administrative Order for the NSP Riverside Plant into the Minnesota SO_2 SIP on April 14, 1994 (59 FR 17703) and amended the order in the SIP on October 13, 1998 (63 FR 54585).

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on September 1, 1999, consists of a Title V operating permit issued to the NSP Riverside Plant. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO_2 SIP only the portions of the NSP Riverside Plant Title V permit cited as ''Title I condition: State Implementation Plan for SO_2''; and,

(2) The removal from the Minnesota SO_2 SIP of the Administrative Order for the NSP Riverside Plant previously approved into the SIP.

3. What Is a ''Title I Condition?''

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term ''Title I condition'' which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent.

A ''Title I condition'' is defined as ''any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *.'' The rule also states that ''Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit.'' Further, ''any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit.''

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permits submitted by MPCA are cited as ''Title I condition: State Implementation Plan for SO_2,'' therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the NSP Riverside Plant and included in the SIP submittal need to be revised in the future.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the NSP Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is approving into the SIP only those portions of NSP Riverside's Title V permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is also removing from the state SO_2 SIP the NSP Riverside Plant Administrative Order which had previously been approved into the SIP on April 14, 1994.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective April 29, 2002, without further notice unless we receive relevant adverse comments by March 28, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective April 29, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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 29, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(59) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(59) On September 1, 1999, the State of Minnesota submitted a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) SIP for the Northern States Power Company (NSP) Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. Specifically, EPA is approving into the SO_2 SIP only those portions of the NSP Riverside Plant Title V Operating Permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In this same action, EPA is removing from the state SO_2 SIP the NSP Riverside Plant Administrative Order previously approved and amended in paragraphs (c)(30) and (c)(46) of this section respectively.

(i) Incorporation by reference.

(A) Air Emission Permit No. 05300015–001, issued by the Minnesota Pollution Control Agency (MPCA) to Northern States Power Company—Riverside Plant on May 11, 1999, Title I conditions only.

[FR Doc. 02–4400 Filed 2–25–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7147–1]

RIN 2060–AJ79

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Transition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action the Environmental Protection Agency (EPA) is taking action to improve flexibility of refiners and terminal operators during the springtime transition to summer grade reformulated gasoline (RFG). Specifically, we are eliminating the requirements for blendstock tracking and accounting. This change will increase refiners' flexibility to transfer gasoline blendstocks, and help to improve the responsiveness of the gasoline supply system, by removing some significant refinery compliance and reporting burdens that are no longer necessary.

Today's actions, in combination with other Agency actions, are intended to help ease the annual spring transition from winter grade RFG to summer grade RFG by promoting improved RFG inventories during this transition period. These actions include EPA's future extension of the 2% VOC enforcement tolerance to include the first turn of summer grade RFG tanks at terminals, and EPA's recent final rule regarding the procedures for using previously certified gasoline. In order to help the public understand the relationship between today's actions and these prior Agency actions, we briefly summarize these two related EPA actions in the preamble to today's final rule.

We are also making certain technical modifications to existing regulations. Specifically, we are updating certain ASTM designated analytical test methods for reformulated and conventional gasoline to their most recent ASTM version, and also updating several sampling methods to their most recent ASTM version. These updates will allow improvements in the test method procedures and sampling procedures that will ensure better operation for the user of the test methods and sampling procedures.

Finally, while EPA proposed to establish a new April 15 annual compliance date for reformulated gasoline (RFG) and reformulated blendstock for oxygenate blending (RBOB), we are not taking final action on that proposal today.

DATES: This rule is effective April 29, 2002, except for the amendments to 40 CFR 80.65, 80.92, 80.101, 80.102, 80.104, 80.105, 80.106, and 80.128 (sections dealing with the elimination of blendstock accounting) which are effective February 26, 2002. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.** The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of April 29, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Chris McKenna, Chemical Engineer, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9037 or *mckenna.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA believes that it is appropriate to make certain amendments in today's final rule effective immediately upon today's publication in the **Federal Register**. This rule will not impose an additional burden on regulated parties. By making these changes effective immediately, refiners and terminals will be able to maximize the opportunity to incorporate these changes within their operating procedures, which should promote the availability of summer RFG during this spring's transition period. These affected parties have stated that they needed changes to be effective no later than early February to allow sufficient lead time to affect this year's winter to summer transition. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The contents of today's preamble are listed in the following outline.

I. Regulated Entities
II. Rule Changes
A. Elimination of Blendstock Accounting Requirements
B. Updating ASTM Designated Analytical Test Methods for Reformulated and Conventional Gasoline to Their Most Recent ASTM Version
C. Corrections to Gasoline and Diesel Sample Testing Methodology

III. Description of Related Agency Actions
A. Extension of the 2 Percent Testing Tolerance
B. Promulgation of Provisions for Using Previously Certified Gasoline
IV. Provisions Not Finalized in Today's Rule
A. Proposed April 15 Terminal Receipt Date
B. Proposed Adjustment to the RVP Minimum for RFG
V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13132 (Federalism)
C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.
E. Paperwork Reduction Act
F. Unfunded Mandates Reform Act
G. Executive Order 13045: Children's Health Protection
H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
I. Executive Order 13211 (Energy Effects)
J. Congressional Review Act
VI. Statutory Provisions and Legal Authority

I. Regulated Entities

Entities potentially affected by this action include those involved with the production, importation, distribution, sale and storage of gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [1]	SIC codes [2]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

II. Rule Changes

A. Elimination of Blendstock Accounting Requirements

The current blendstock tracking and accounting requirements in § 80.102 were included in the RFG/anti-dumping regulations out of a concern that refineries with 1990 baselines cleaner than the anti-dumping statutory baseline might transfer dirty gasoline blendstocks to refineries with dirtier baselines because such refineries would be better able to use the dirty blendstocks while still meeting their anti-dumping baseline. Under the current regulations, if a cleaner refinery transfers large quantities of certain dirty blendstocks to another refinery, the cleaner refinery must account for all of the blendstocks it produces and transfers in its anti-dumping compliance calculations in specified subsequent annual averaging periods. Thus, the cleaner refinery would not be able to evade its more stringent baseline by transferring blendstocks.

In the Notice of Proposed Rulemaking (NPRM) (66 FR 6163, December 3, 2001), we determined, based on a recent analysis of the current blendstock tracking and accounting requirements in § 80.102 [1], that, under most circumstances, refineries today would have little or no incentive to transfer blendstocks to other refineries for the purpose of evading a more stringent baseline.[2] We also concluded that the current blendstock tracking and accounting requirements create significant additional compliance and reporting burdens, and, in some cases, may have the effect of deterring refiners or importers from transferring gasoline blendstocks that they otherwise would transfer in the normal course of business in response to legitimate supply concerns and other refinery needs. Therefore, we concluded that the existing blendstock tracking and accounting requirements were unnecessary and that eliminating those requirements may help to improve the responsiveness of the gasoline supply system by increasing refiners' flexibility to transfer gasoline blendstocks. As a result, we proposed to eliminate the current blendstock tracking and accounting requirements in § 80.102.

We continued to have concern that a refinery with a baseline more stringent than the anti-dumping statutory baseline could create an off-site terminal blending facility acting as a refinery for the sole purpose of certifying gasoline at the less stringent anti-dumping statutory baseline. To address this limited situation in which blendstock transfers could possibly be undertaken for the purpose of evading a more stringent baseline, we proposed to replace the existing provisions with a significantly less restrictive program for regulating blendstock transfers. Our proposed program would have required a refinery with a baseline that is more stringent than the anti-dumping statutory baseline, and that produces less gasoline than its 1990 baseline volume during the annual averaging period,[3] to petition

[1] See Draft Technical Support Document: Analysis of regulation to establish new date for receipt of summer grade RFG at terminals, Air Docket A–2001–21, Document Number II–B–1.

[2] When a refinery produces more total gasoline than that produced in 1990, the additional gasoline over and above the refinery's 1990 baseline volume must meet the statutory baseline regardless of the refinery's individual baseline. Since nearly all refineries currently produce significantly more gasoline than they produced in 1990, EPA believes that the blendstock transfers that are likely to occur today will be between donor and recipient refineries whose total production is well above 1990 baseline volume levels with or without a transfer. If transfers under these conditions occur between refiners producing only CG, there will be no net change in the quality of their combined CG pool because the donor refiner's gallons at the statutory baseline would be replaced by the recipient refiner's gallons at this same baseline. Thus, there would likely be no motivation or opportunity for ''gaming the system'' under these circumstances. Where either or both refiners make RFG and CG, there is some potential for meeting a slightly lower baseline by transferring blendstocks. However, it is unlikely that there would ever be any impact more significant than a small decrease in the stringency of compliance requirements, meaning that the gaming possibilities of such a transfer are very small, and thus any such transfers would produce only very small economic benefits which may be more than offset by the transactional costs associated with the transfer. As a result, the transfer of blendstocks from one refinery to another where both refineries produce more gasoline than they did in 1990 has very little potential to cause any adverse environmental impact.

Additionally, EPA has carefully examined individual refinery situations and has concluded that for the very limited number of refineries producing volumes where a transfer could result in some increased emissions, there is little possibility for gaming since clean/dirty refinery baseline pairs within a specific emission category (NO_X or toxics) are very uncommon. (i.e, for NO_X and toxics, almost all members of this refinery subset are clean for one pollutant and dirty for the other severely limiting any opportunity for gaming.

[3] As discussed in footnote 2 above, there is likely to be no motivation or opportunity to transfer blendstocks for the purpose of evading a more stringent baseline where the refinery produces more gasoline than its 1990 baseline volume during the annual averaging period. Only in situations where

EPA for approval to transfer specified dirty blendstocks in excess of five percent of the refinery's annual production. Under the proposal, the refinery would be required to demonstrate that such blendstock transfers were for a legitimate operational purpose.

We received several comments on the details of the proposed petition requirements. We also received a number of comments recommending that EPA totally eliminate any requirements relating to blendstock transfers. These commenters believe that restrictions on blendstock transfers are unnecessary, particularly in light of the new toxics requirements under the Mobile Source Air Toxics (MSAT) [4] rule and the new controls on sulfur under the Tier 2 Gasoline Sulfur (Tier 2) [5] rule. These commenters believe these rules will have the effect of imposing more stringent toxics and NO_X performance requirements on conventional gasoline (CG) than currently required under the anti-dumping program.

We have reconsidered our proposal in light of the comments we received. We agree that the MSAT and Tier 2 rules, in most situations, will result in more stringent toxics and NO_X performance for conventional gasoline than the current anti-dumping requirements. We believe that these rules, in combination with the fact that almost all refiners now produce greater volumes of gasoline than they did in 1990, will virtually eliminate any potential for refiners to engage in blendstock transfers that would degrade the quality of conventional gasoline. The recently promulgated MSAT rule for example, which is effective beginning in 2002, requires each refinery to meet a performance standard for toxic air emissions for CG and RFG equivalent to the actual performance of that refinery's CG or RFG during the baseline years 1998, 1999, and 2000. This rule also establishes a default toxics baseline, based on the national average for toxics emissions performance during the baseline years for refineries that are unable to establish an individual toxics baseline. Because the new MSAT default baseline is more stringent than the anti-dumping statutory exhaust toxics baseline, only a refinery with a toxics baseline that is more stringent than the MSAT default baseline would have any incentive to transfer dirty blendstocks to a newly created terminal/refinery facility (which would be subject to the MSAT default baseline) for the purpose of evading its more stringent toxics baseline.

We believe that the more stringent sulfur standards under the Tier 2 rule will have a similar effect with regard to the potential for refiners and importers to use blendstock transfers as a means of evading a more stringent NO_X anti-dumping baseline. Since all refiners and importers (with certain exceptions in the early years of the Tier 2 program) will be subject to an annual average sulfur standard of 30 ppm, and because removal of sulfur tends to reduce NO_X emissions from gasoline, generally under Tier 2 refiners are likely to produce gasoline that has better NO_X performance. Thus, we believe the low sulfur requirements also will tend to reduce the incentive to transfer dirty blendstocks to another refinery, including a new terminal/refinery facility, for the purpose of evading a more stringent NO_X baseline. In any event, we believe that the cost of creating a new terminal/refinery facility as described above for the purpose of evading a more stringent baseline would likely outweigh any possible economic benefit.

In light of these observations, we believe that the blendstock tracking and accounting provisions now have no significant independent utility in the context of the RFG/anti-dumping program. Because these provisions present a potentially significant burden for refiners, and may result unnecessarily in added rigidity in the gasoline production and distribution system, we have decided to eliminate these blendstock tracking and accounting provisions altogether.

Accordingly, today's final rule deletes the current blendstock tracking and accounting requirements in § 80.102, and does not replace them with any other restrictions on blendstock transfers. However, we intend to closely monitor situations in which new terminal/refinery facilities are created to determine if such facilities are being created for the purpose of evading a more stringent baseline. If we find that such facilities are being created for this purpose, we may reinstate the blendstock accounting requirements or impose other appropriate restrictions on blendstock transfers in the future.

B. Updating ASTM Designated Analytical Test Methods for Reformulated and Conventional Gasoline to Their Most Recent ASTM Version

Refiners, importers and oxygenate blenders producing gasoline are required to test RFG and CG for various fuel parameters like olefins, distillation points, benzene and RVP. During the federal RFG rulemaking, and in response to comments by the regulated industry, EPA designated analytical test methods that the Agency would use for enforcement and compliance purposes. See 40 CFR 80.46 (59 FR 7813 (February 16, 1994)). On December 3, 2001, the Agency proposed to update certain designated analytical test methods for measuring olefins, RVP, Distillation, and oxygen and oxygenate content analysis in reformulated and conventional gasoline.

The American Petroleum Institute (API), the National Petroleum Refiners Association (NPRA), and several refiners commented in support of updating certain analytical test methods in the proposal with caveats. One commenter also requested that an adequate transition time be provided for industry to become familiar with the ASTM test methods before they are required to implement them. Therefore, the Agency today is making the test method changes effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for industry to become familiar and implement these ASTM test methods. Table 3 lists the designated analytical test methods which are being updated for each gasoline parameter measured under RFG and CG fuels program in today's final rule. We have reviewed these newer versions of the ASTM test methods. We believe that the revisions in the newer versions of the ASTM designated test methods are not significant changes that would cause a user of an older version of the same method to incur significant costs. All of the revisions were deemed necessary by ASTM so that improvements in the test method's procedures would ensure better operation for the user of the test method.

a refinery produces less than its 1990 baseline volume would there be any incentive to transfer blendstocks for the purpose of evading a more stringent baseline.

[4] 66 FR 17230 (March 29, 2001).

[5] 65 FR 6698 (February 10, 2000).

TABLE 3.—DESIGNATED ANALYTICAL TEST METHOD UNDER RFG AND CG FUEL PROGRAMS

Fuel parameter	Designated analytical test method
Olefins	ASTM D 1319–98, entitled, ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption''.
Reid Vapor Pressure	ASTM D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)'', except that the following correlation equation be used with ASTM D 5191–01: RVP psi = (0.956*X)-0.347 RVP kPa = (0.956*X)-2.39 Where: X=total measured vapor pressure in psi or kPa
Distillation	ASTM D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure''.
Oxygen and Oxygen content analysis	ASTM D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection''.[1]
Aromatics	ASTM D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry'', except that the sample chilling requirements in section 8 of this method be optional.[2]

[1] Prior to September 1, 2004, and when oxygenates are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 and C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygenate content using ASTM standard method D 4815–99, entitled, ''Standard Test Method for Determination of MTBE, TAME, tertiary-amyl Alcohol and C_1 and C_4 Alcohols in Gasoline by Gas Chromatography'' provided the result is correlated to ASTM D 5599–00.

[2] Prior to September 1, 2004, any refiner, or importer may determine aromatics content using ASTM standard method D 1319–99, entitled, ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption'' provided the result is correlated to ASTM D 5769–98.

A detailed discussion of all the comments received on the testing methods, alternatives to those we are promulgating today, and our reasons for selection of the test methods in Table 3 are contained in the Response to Comments document for this rulemaking (see item V–C–1 in Docket A–2001–21).

C. Corrections to Gasoline and Diesel Sample Testing Methodology

40 CFR Part 80, Appendices D and G, specify sampling procedures for gasoline and diesel fuel for all motor vehicle fuel programs under 40 CFR Part 80, including the programs for unleaded gasoline, gasoline volatility, diesel sulfur, RFG, and anti-dumping. We proposed to replace the sampling procedures in Appendices D and G with the following ASTM standard practices:

- D 4057–95(2000), ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products;''
- D 4177–95(2000), ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products;''
- D 5842–95(2000), ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurements;'' and
- D 5854–96(2000), ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

These changes were formerly proposed in ''Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline—Proposed Rule,'' 62 FR 37338 (July 11, 1997), although these provisions were never finalized. Since we are updating various other test methods via this notice, it is logical to consider sampling methodologies here as well.

Appendices D and G of 40 CFR Part 80 were adopted from the 1981 version of D 4057. Over time, however, ASTM has updated D 4057, and these changes are not reflected in Appendices D and G.

EPA received several supportive comments for adopting the ASTM sampling methods as proposed. One commenter also requested that an adequate transition time be provided for industry to become familiar with the ASTM sampling methods before they are required to implement them. Therefore, the Agency today is making the sampling method changes effective sixty (60) days after publication of the final rule in the **Federal Register**. We are confident that sixty (60) days is sufficient lead time for industry to become familiar and implement these ASTM sampling methods.

Thus, EPA is today adopting three ASTM methods in addition to D 4057–95(2000) as proposed in order to include procedures that address a broad scope of sampling situations that are relevant to EPA's motor vehicle fuels programs. D 4177–95(2000) deals with automatic sampling of petroleum products, which is relevant under the anti-dumping regulations for refiners who produce conventional gasoline using an in-line blending operation where automatic sampling is necessary. Similarly, D 5842–95(2000) deals with sampling and sample handling for volatility measurement, which is relevant to determining compliance with the volatility standards in § 80.27 and the RFG standards in § 80.41. Last, D 5854–96(2000) deals with the creation of composite samples, which is relevant under the RFG and anti-dumping programs in certain situations involving imported gasoline where the gasoline from multiple ship compartments is treated as a single batch.

We believe it is appropriate to replace Appendices D and G with ASTM standard practices. The current ASTM practices reflect up-to-date procedures, which if followed would result in improved sample quality for regulatory purposes. In addition, today's adoption of industry standard procedures reduces the regulatory burden because parties would be able to follow their customary practices when meeting regulatory requirements.

III. Description of Related Agency Actions

Two other actions by EPA, in combination with today's final actions, are also expected to help to facilitate the annual spring transition from winter grade RFG to summer grade RFG by increasing RFG inventories during this transition period. These are not final regulatory actions being taken in today's final rule, but are separate and independent Agency actions that are related to today's final actions in intent and effect.

A. Extension of the 2 Percent Testing Tolerance

RFG at facilities upstream of retail outlets must meet the standards for VOC emissions performance from May 1 through September 15 each year, and additionally at retail outlets from June 1 through September 15 each year. These standards are a minimum 25% reduction in VOC emissions in southern RFG areas and a minimum 23.4% reduction in northern RFG areas. EPA has allowed a 2% tolerance when evaluating compliance with these standards at locations downstream of refineries since, due to testing variability, a refiner's test results could show compliance for some particular RFG, yet a downstream party's test results could show noncompliance for that same RFG. This 2% tolerance has applied at terminals only after a terminal has obtained a test result showing compliance with the VOC standard without application of the tolerance.

Since it is not a regulatory provision, no mention was made in the NPRM of allowing use of the 2% testing tolerance for the VOC performance standard for the first tank of RFG at terminals classified as VOC controlled. Nonetheless, several commenters mentioned that such an extension of the existing enforcement tolerance would provide more help in easing the seasonal transition from winter to summer RFG than any of the actions that EPA proposed (including the terminal receipt date). Moreover, commenters pointed out that the 2% tolerance is already applied to subsequent tanks of summer RFG at terminals after the first tank of summer RFG, and its extension would have no adverse impact on the overall emission characteristics of summer grade RFG. EPA agrees, in general, with the commenters, and is planning to issue guidance to extend applicability of the 2% enforcement tolerance to cover the first tank of RFG classified as VOC controlled at terminals.

This extension of EPA's enforcement tolerance will help to increase flexibility for terminals during the crucial period of seasonal transitions for the first tank of RFG at terminals classified as VOC controlled, the tank for which terminals typically have the most difficulty meeting the VOC standard. This extension should help provide some relief in meeting the VOC standard for tanks which may contain a small amount of residual non-VOC controlled RFG (the tank ''heel'') prior to refilling the tank with VOC-controlled RFG, tanks which may have slightly missed meeting the VOC performance standards without the 2% tolerance.

B. Promulgation of Provisions for Using Previously Certified Gasoline

In December of 2001, EPA finalized a rule to permit reclassification of previously certified gasoline (PCG) (66 FR 67098, December 28, 2001). This rule allows extremely ''clean'' conventional gasoline (CG) to be reclassified as RFG, winter RFG to be reclassified as summer RFG, and VOC Region 2 RFG to be reclassified as Region 1 RFG in a manner that eliminates the potential for degrading the emissions performance of the various gasoline pools. The PCG rule will provide refiners with greater flexibility to potentially increase summer RFG production during the transition by allowing reclassification of winter RFG to summer RFG.

IV. Provisions Not Finalized in Today's Rule

A. Proposed April 15 Terminal Receipt Date

In EPA's December 3, 2001, notice of proposed rulemaking, EPA proposed a new April 15 date on or after which no persons except retailers and wholesale purchaser consumers would be able to accept receipt of any RFG or RBOB other than summer grade RFG or RBOB. We also solicited comment on (1) the elimination or delay of the May 1 up-stream compliance date, (2) establishment of April 1 as the terminal receipt date (rather than April 15), (3) establishment of a two step turnover process for terminals, and (4) establishing an April 15 terminal receipt date but limiting it to the Chicago/Milwaukee RFG areas.

EPA received numerous comments on this part of the proposal. Commenters generally believed that any such changes would be unlikely to have beneficial effects on gasoline supply during the seasonal transition period, and many commenters expressed concern that changes in the regulatory scheme too close to the beginning of the summer ozone season could actually complicate the transition. EPA recognizes that there are many complicated factors, in addition to EPA's compliance deadlines, that have an impact on gasoline supply during the seasonal transition period, including some EPA was unaware of when this rule was proposed. EPA wants to more fully understand these factors before making any final decisions about whether to adopt a different compliance deadline (or deadlines) for terminals or others. Therefore, EPA is not taking any final action today on the proposed April 15 terminal receipt date. A detailed discussion of EPA's decision is included in the response to comments (item V–C–1 in Docket A–2001–21).

B. Proposed Adjustment to the RVP Minimum for RFG

In the notice of proposed rulemaking, EPA asked for comment on reducing the minimum allowable RVP for summer RFG from 6.4 to 6.0 psi, as an additional means of helping ease the winter to summer RFG transition. EPA has decided not to take any final action on this item at this time. A more detailed discussion of EPA's decision is included in the response to comments (item V–C–1 in Docket A–2001–21).

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a significant regulatory action.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government.''

This final 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. The final rule eliminates the existing blendstock accounting requirements at 40 CFR 80.102 and updates ASTM test methods to their most recent version. Thus, Executive Order 13132 does not apply to this final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this final rule from State and local officials.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action modifies the Federal RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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 impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (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 final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. We have determined that no small entities will experience an impact from this proposal.

Although this final rule will not have a significant impact on a substantial number of small entities, EPA has nonetheless tried to reduce the impact of this rule on small entities. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

The information collection requirements in this final rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (OMB # 2060–0277, EPA ICR No. 1591.15) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epamail.epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Today's action eliminates the current blendstock tracking and accounting provisions of the RFG/anti-dumping regulations. The information collection hour burden associated with the current blendstock tracking and accounting provisions is estimated to be 24 hours per respondent to track blendstock transfers and prepare each blendstock accounting report, and 80 hours per respondent to prepare a request for a waiver of the blendstock accounting requirements (under extreme or unusual circumstances). The respondent cost associated with the current blendstock tracking and accounting requirements is estimated to be $60 per hour for blendstock tracking and preparation of each blendstock accounting report and blendstock accounting waiver request. The total information collection hour burden associated with the current blendstock tracking and accounting provisions is estimated to be 4,880 hours per year. This is based on an estimate of 200 respondents at 24 hours for blendstock tracking and preparation of blendstock accounting reports, and one respondent at 80 hours for preparation of blendstock accounting waiver requests. This hour burden is eliminated by today's action. The total cost burden associated with the current blendstock tracking and accounting provisions is estimated to be $292,800 per year (4,880 hours × $60 per hour). This cost burden is eliminated by today's action.

Regarding recordkeeping and reporting burdens, in a letter dated December 12, 2000, the National Petrochemical & Refiners Association (NPRA) commented on EPA's draft Information Collection Request for reformulated and conventional gasoline reporting. 65 FR 60939 (October 13, 2000). In the letter, NPRA made several requests relating to the RFG program's current information collection burden. Although today's action does not address all of NPRA's requests, as discussed above, today's action eliminates all of the current burden associated with the RFG program's anti-dumping blendstock tracking and accounting requirements. The current blendstock provisions impose substantial recordkeeping and reporting burdens on refiners who transfer blendstocks. These recordkeeping and reporting burdens may have had the effect of deterring refiners from transferring such blendstocks. Today's action eliminates these burdens for all refiners. We believe this reduction in information collection burden will result in a more free exchange of blendstocks.

OMB has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking

(See 59 FR 7716 (February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.13). EPA ICR 1591.14 associated with this rule will be encompassed in the next renewal of ICR 1591.13.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. 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 the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The final rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This final rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas.

G. Executive Order 13045: Children's Health Protection

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

This final rule will update certain designated analytical test methods to their most recent ASTM version for the RFG program. Today's action does not establish new technical standards or analytical test methods, although it does update certain ASTM test methods and sampling methods to their current versions. To the extent that this action would allow the use of standards developed by voluntary consensus bodies (such as ASTM) this action would further the objectives of the NTTAA. The Agency plans to address the objectives of the NTTAA more broadly in an upcoming rulemaking to establish performance-based criteria for qualification of alternative analytical test methods.

I. Executive Order 13211 (Energy Effects)

This rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. EPA is allowing additional flexibility for refiners to transfer blendstocks, which should allow refiners to better respond to fluctuations in gasoline supply or demand.

J. Congressional Review Act

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

VI. Statutory Provisions and Legal Authority

Statutory authority for today's final rule comes from sections 211(c) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 11, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.8 is added to Subpart A to read as follows:

§ 80.8 Sampling methods for gasoline and diesel fuel.

The sampling methods specified in this section shall be used to collect samples of gasoline and diesel fuel for purposes of determining compliance with the requirements of this part.

(a) *Manual sampling.* Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in American Society for Testing and Materials (ASTM) method D 4057–95(2000), entitled ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products.''

(b) *Automatic sampling.* Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM method D 4177–95(2000), entitled ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.''

(c) *Sampling and sample handling for volatility measurement.* Samples to be analyzed for Reid Vapor Pressure (RVP) shall be collected and handled according to the applicable procedures in ASTM method D 5842–95(2000), entitled ''Standard Practice for Sampling and Handling of Fuels for Volatility Measurement.''

(d) *Sample compositing.* Composite samples shall be prepared using the applicable procedures in ASTM method D 5854–96(2000), entitled ''Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products.''

(e) *Incorporations by reference.* ASTM standard practices D 4057–95(2000), D 4177–95(2000), D 5842–95(2000), and D 5854–96(2000), are incorporated by reference. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3. Section 80.27 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling methodologies specified in § 80.8 and the testing methodology specified in § 80.46(c).

* * * * *

(d) * * *

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by the use of one of the testing methodologies specified in § 80.46(g). The maximum ethanol content shall not exceed any applicable waiver conditions under section 211(f) of the Clean Air Act.

* * * * *

4. Section 80.28 is amended by revising paragraphs (g)(2)(ii) and (g)(4)(i) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) Test results using the sampling methodology set forth in § 80.8 and the testing methodology set forth in § 80.46(c), or any other test method where adequate correlation to § 80.46(c) is demonstrated, which show evidence that the gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

* * * * *

(4) * * *

(i) Test results using the sampling methodology set forth in § 80.8 and the testing methodology set forth in § 80.46(c), or any other test method where adequate correlation to § 80.46(c) is demonstrated, which show evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery.

* * * * *

5. Section 80.40 is amended by revising paragraph (c)(1) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) ''Adjusted VOC gasoline'' for purposes of the general requirements in § 80.65(d)(2)(ii), and the certification procedures in this section is gasoline

that contains 10 volume percent ethanol, or RBOB intended for blending with 10 volume percent ethanol, that is intended for use in the areas described at § 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to less stringent VOC standards in § 80.41(e) and (f). In order for ''adjusted VOC gasoline'' to qualify for the regulatory treatment specified in § 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in § 80.46(g).

* * * * *

6. Section 80.46 is amended by revising paragraphs (b), (c), (d), (f), (g) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(b) *Olefins.* Olefin content shall be determined using ASTM standard method D 1319–98, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.''

(c) *Reid vapor pressure (RVP).* Reid vapor pressure (RVP) shall be determined using ASTM standard method D 5191–01, entitled ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method),'' except that the following correlation equation must be used:

$$\text{RVP psi} = (0.956 * X) - 0.347$$

$$\text{RVP kPa} = (0.956 * X) - 2.39$$

Where:

X = total measured vapor pressure in psi or kPa.

(d) *Distillation.* Distillation parameters shall be determined using ASTM standard method D 86–01, entitled'' Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.''

* * * * *

(f)(1) Aromatic content shall be determined using ASTM D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry'', except that the sample chilling requirements in section 8 of this standard method are optional.

(2) [Reserved]

(3) (i) Prior to September 1, 2004, any refiner or importer may determine aromatics content using ASTM standard method D 1319–99, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) *Oxygen and oxygenate content analysis.* (1) Oxygen and oxygenate content shall be determined using ASTM standard method D 5599–00, entitled ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.''

(2) (i) Prior to September 1, 2004, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol and C_1 to C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D 4815–99 entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol, and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (g)(1) of this section.

(h) *Incorporations by reference.* ASTM standard methods D 3606–99, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;'' D 1319–98, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;' D 1319–99, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;'' D 4815–99, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 to C_4 Alcohols in Gasoline by Gas Chromatography;'' D 2622–98, entitled ''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;'' D 5191–01, entitled, ''Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);'' D 5599–00, entitled, ''Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;'' D 5769–98, entitled, ''Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry,'' and D 86–01, entitled, ''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure;'' are incorporated by reference in this section. These incorporations by reference were 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 the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

7. Section 80.65 is amended by revising paragraph (d)(3) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility shall be assigned a number (the ''batch number''), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

* * * * *

§ 80.91 [Amended]

9. Section 80.91 is amended by removing paragraph (a)(1)(iii) and removing ''; and'' at the end of paragraph (a)(1)(ii) and adding a period.

10. Section 80.92 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

§ 80.92 Baseline auditor requirements.

(a) * * *

(1) Each refiner or importer is required to have its individual baseline determination methodology, resulting baseline fuel parameter, volume and emissions values verified by an auditor which meets the requirements described in this section. * * *

* * * * *

11. Section 80.101 is amended by removing and reserving paragraphs (d)(2) and (e)(2), removing paragraph (h)(2)(iii), and revising paragraphs (h)(2)(i) and (h)(2)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(h) * * *

(2) * * *

(i) Be made as part of the report for the 1995 averaging period required by § 80.105; and

(ii) Apply for the 1995 averaging period and for each subsequent averaging period, and may not thereafter be changed.

* * * * *

§ 80.102 [Removed and Reserved]

12. Section 80.102 is removed and reserved.

13. Section 80.104 is amended by revising paragraphs (a)(1)(i) and removing and reserving paragraph (a)(2)(ix) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(1) * * *

(i) Each batch of conventional gasoline; and

* * * * *

§ 80.105 [Amended]

14. Section 80.105 is amended by removing and reserving paragraphs (a)(2) and (a)(3).

§ 80.106 [Amended]

15. Section 80.106 is amended by removing and reserving paragraph (b).

§ 80.128 [Amended]

16. Section 80.128 is amended by removing paragraphs (h) and (i).

Appendix D [Removed and Reserved]

17. Appendix D is removed and reserved.

Appendix E [Removed and Reserved]

18. Appendix E is removed and reserved.

Appendix F [Removed and Reserved]

19. Appendix F is removed and reserved.

Appendix G [Removed and Reserved]

20. Appendix G is removed and reserved.

[FR Doc. 02–4067 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 38
Tuesday, February 26, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125 and 126

RIN: 3245–AE66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Notice of proposed rule; notice of extension of the comment period.

SUMMARY: The proposed rule proposes to amend its regulations for the Historically Underutilized Business Zone Program (HUBZone Program). On December 21, 2000, the Small Business Reauthorization Act of 2000 made several changes to the HUBZone Program, including changes to the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. This proposed rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to website addresses. In addition, SBA proposes to amend its regulations, which address subcontracting limitations and to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. The proposed rule was published on January 28, 2002, 67 FR 3826. The comment period closes on February 27, 2002. We are extending the comment period because the Small Business Administration believes that affected businesses need more time to adequately respond.

DATES: The comment period for the proposed rule published on January 28, 2002 (67 FR 3826) is extended through March 29, 2002.

ADDRESSES: Address all comments to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program (AA/HUB), U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail to or *hubzone@sba.gov.*

Fred C. Armendariz,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 02–4531 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535E4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to RR RB211–535E4 series turbofan engines. This proposal would require disassembling and inspecting all engine mounts for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. This proposal is prompted by reports of corrosion and fatigue cracks in the mount pins, the spherical bearings, and the support links and their respective spherical bearings. The actions specified by the proposed AD are intended to prevent failure of the engine mounts due to cracks that could result in loss of an engine.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9–ane–adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–13–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for

the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on RR RB211–535E4 series turbofan engines. The CAA advises that there have been reports of stress and fatigue cracks found in engine mount assemblies, part numbers (P/N's) B71210101 (front) and B71210201 (rear). There were two instances of rear mount pin cracking, two instances of front mount spherical bearing cracking, corrosion of the rear mount support links and their respective spherical bearings, and a number of instances of cracking in the center spherical bearing of the front mount thrust link. Because this condition could cause failure of the engine mounts due to cracks that could result in loss of an engine, the CAA considers it necessary to make disassembly and inspection of these engine mounts mandatory. The CAA has issued AD 004–08–2000, dated March 31, 2001, in order to assure the airworthiness of these Rolls-Royce engines in the UK.

Bilateral Agreement Information

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

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211–535E4 series turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require complete disassembling of the engine mounts, P/N's B71201101 and B71210201, inspecting for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. These actions would be required to be done before accumulating 12,000 cycles-since-new (CSN) or 36,000 engine-hours-since-new (EHSN), whichever is earlier, if engine cycles at next shop visit exceeds 5,000 cycles, and thereafter within every 12,000 cycles-since-last-compliance or 36,000 hours-since-last-compliance, whichever is earlier. For engines with greater than 12,000 CSN or 36,000 EHSN, these actions would be required to be done within 500 cycles-in-service, or 1,500 engine-hours-in-service, whichever is earlier.

Economic Analysis

There are approximately 1,128 engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 32 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $491 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,205,500.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2001–NE–13–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) Model RB211–535E4–37, –535E4–B–37 and –535E4–B–75 turbofan engines with engine mount assemblies, part numbers (P/N's) B71210101 and B71210201, installed. These engines are installed on, but not limited to Boeing 757 series and Tupolev Tu204–120 airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the engine mounts due to cracks that could result in loss of an engine, do the following:

Inspection of Engine Mounts for Cracks

(a) Using the compliance times specified in the following Table, do the following actions:

Number of Cycles-Since-New (CSN) or Engine-Hours-Since-New (EHSN) on the effective date of this AD	Initial compliance	Repetitive compliance by the earlier of—
(1) Fewer than 5,000 CSN	At the next shop visit after accumulating 5,000 CSN, but not to exceed 12,000 CSN or 36,000 EHSN.	(i) 12,000 cycles-since-last-compliance (CSLC), or (ii) 36,000 engine-hours-since-last-compliance (EHSLC).
(2) 5,000 to 12,000 CSN or 12,000 to 36,000 EHSN.	At the next shop visit, but not to exceed 12,000 CSN or 36,000 EHSN.	(i) 12,000 CSLC, or (ii) 36,000 EHSLC.
(3) Greater than 12,000 CSN or 36,000 EHSN.	Within 500 cycles-in-service or 1,500 engine hours-in-service, whichever is earlier, after the effective date of the AD.	(i) 12,000 CSLC, or (ii) 36,000 EHSLC.

(4) Disassemble front engine mounts, P/N 71210101, and rear engine mounts, P/N 71210201. Procedures for disassembly and inspection/check of the engine mounts can be found in sections 71–21–01 and 71–21–02 of the engine manual (EM).

(5) Inspect for cracks using the Fluorescent Penetrant or Magnetic Particle inspection methods.

(6) Assemble the engine mounts, insuring application of OMat 4/23 Neverseez. Procedures for assembling the engine mounts can be found in sections 71–21–01 and 71–21–02 of the EM.

Credit for Previous Compliance

(b) Compliance with RR Service Bulletin (SB) RB.211–71–5291 constitutes compliance with the initial compliance requirements or repetitive compliance requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA airworthiness directive 004–08–2000, dated March 13, 2001, and in RR SB No. RB.211–71–5291, Revision 14, dated March 13, 2001.

Issued in Burlington, Massachusetts, on February 19, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–4367 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–392–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200CB, and –300 series airplanes. This proposal would require determining the part numbers of the master control valve on the pressure bottles that activate the off-wing escape slides, and corrective action, if necessary. This action is necessary to prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–392–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Victor Wicklund, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1426; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–392–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that during certification testing of an off-wing emergency escape slide on a Boeing Model 757 series airplane, the escape slide failed to automatically deploy. The failure occurred because the master control valve installed on a pressure bottle that activates the off-wing escape slide did not actuate when the over-wing exit was opened. When the valve is not triggered by the electronically fired squib (pyrotechnic cartridge), the escape slide will not deploy until the system is manually activated. Subsequent functional tests of other off-wing escape slides revealed the same malfunction in the master control valve, which prevented slide deployment. Failure of an escape slide to deploy or inflate correctly could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletins 757–25–0214 and 757–25–0216, both dated April 6, 2000. The service bulletins describe procedures for determining the part numbers of the master control valve installed on each of the two pressure bottles that activate the off-wing escape slides, and corrective action, if necessary. The corrective action includes replacement of the master control valve with a new valve, or rework of any valve with part number (P/N) S416N207–6 (supplier P/N 42000802–1), and replacement of the placard on that pressure bottle assembly with a new placard. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Bulletins

Although the service bulletins recommend determining the P/Ns of the master control valves at the earliest maintenance period when manpower and parts are available, the FAA has determined that this compliance time may not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed AD. In light of all of these factors, the FAA finds a compliance time of 18 months after the effective date of this AD to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 435 airplanes of the affected design in the worldwide fleet. The FAA estimates that 360 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,600, or $60 per airplane.

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

Should an operator be required to accomplish the replacement of the valve and placard, it would take approximately 2 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Currently, the required parts would be provided at no cost to the operator. Based on these figures, the cost impact of the replacement is estimated to be $120 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–392–AD.

Applicability: Model 757–200, –200CB, and –300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–25–0214 or 757–25–0216, both dated April 6, 2000, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers, accomplish the following:

Inspection/Corrective Action

(a) Within 18 months after the effective date of this AD: Determine the part numbers (P/N) of the master control valve installed on each of the two pressure bottles located in the forward end of the aft cargo compartment that activate the off-wing escape slides, per Boeing Special Attention Service Bulletin 757–25–0214 (for Model 757–200 and 200CB series airplanes), or 757–25–0216 (for Model 757–300 series airplanes), both dated April 6, 2000, as applicable.

(1) If any P/N found on any valve is P/N S416N207–6, (supplier P/N 42000802–1), before further flight, replace the affected valve with a new valve or rework the valve, as applicable; and replace the placard on the corresponding pressure bottle assembly with a new placard, per the applicable service bulletin.

(2) If the P/N shown on both valves is not P/N S416N207–6, (supplier P/N 42000802–1), no further action is required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install a master control valve, P/N S416N207–6 (supplier P/N 42000802–1), on any airplane.

Alternative Methods of Compliance

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

Note 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 Permit

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

Issued in Renton, Washington, on February 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–4506 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10980; Airspace Docket No. 01–AWP–21]

RIN 2120–AA66

Proposed Revision of Jet Route 10

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Jet Route 10 (J–10) between the Farmington, NM, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC), and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This proposal realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. The proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

DATES: Comments must be received on or before April 12, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–10980/Airspace Docket No. 01–AWP–21, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–10980/Airspace Docket No. 01–AWP–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently

published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise J–10 between the Farmington, NM, VORTAC, and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This proposal realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. The proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004, 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 jet route listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 2004–Jet Routes

* * * * *

J–10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075°and Flagstaff 251T (237M), radials; Flagstaff, AZ; Farmington, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

Issued in Washington, DC, on February 1, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–3127 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 99P–5332]

Substances Affirmed as Generally Recognized as Safe: Menhaden Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on menhaden oil which has been affirmed as generally recognized as safe (GRAS) as a direct human food ingredient with specific limitations. FDA is proposing to reallocate the uses of menhaden oil in food that currently are established in FDA's regulations. This proposal responds to a citizen petition on menhaden oil from the National Fish Meal and Oil Association (NFMOA).

DATES: Submit written or electronic comments by May 13, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3103.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 5, 1997 (62 FR 30751), FDA published a final rule to affirm that menhaden oil is GRAS for use as a direct human food ingredient with specific limitations (hereinafter referred to as the June 1997 final rule). FDA published the June 1997 final rule in response to a GRAS petition (GRASP 6G0316) submitted by the NFMOA. FDA concluded in the June 1997 final rule that, based on scientific procedures (including published and other information), the use of menhaden oil as a direct human food ingredient is safe, provided that the combined daily intake of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) from menhaden oil does not exceed 3.0 grams per person per day (g/p/d).

Affirming the GRAS status of menhaden oil with specific limitations (§ 184.1(b)(2) (21 CFR 184.1(b)(2))) was necessary because of the agency's concerns over possible adverse effects of fish oils on bleeding time (the time taken for bleeding from a standardized skin wound to cease), glycemic control, and low-density lipoprotein cholesterol. These issues were discussed fully in the June 1997 final rule.

II. The Citizen Petition

The NFMOA has submitted a citizen petition (Docket No. 99P–5332) under 21 CFR 10.20 and 10.30 requesting that the agency amend § 184.1472 *Menhaden oil* (21 CFR 184.1472) by reallocating the

uses of menhaden oil in food, while maintaining the total daily intake of EPA and DHA from menhaden oil at a level not exceeding 3.0 g/p/d. The maximum limit of 3.0 g/p/d on the total daily intake of EPA and DHA has been considered a reasonable safeguard against the possible adverse effects stated above and to date no new information available has caused the agency to alter this limit. The reallocation is performed by: (1) Reducing the maximum levels of use of menhaden oil in some of the currently listed food categories; (2) adding additional food categories along with assigning maximum levels of use in these new categories; and (3) eliminating the listing of subcategories, for example, cookies and crackers, breads and rolls, fruit pies and custard pies, and cakes, and including them under broader food categories, i.e., baked goods and baking mixes.

Table 1 shows the current maximum levels of use of menhaden oil in the currently listed food categories as established in § 184.1472(a)(3).

TABLE 1.—CURRENT MAXIMUM LEVELS OF USE OF MENHADEN OIL

Category of food[1]	Current maximum level of use in food (as served)
Cookies and crackers (1)	5.0 percent
Breads and rolls (white and dark) (1)	1.0 percent
Fruit pies and custard pies (1)	7.0 percent
Cakes (1)	10.0 percent
Cereals (4)	4.0 percent
Fats and oils (12), but not in infant formula	20.0 percent
Yogurt (31)	4.0 percent
Cheese products (5)	5.0 percent
Frozen dairy products (20)	5.0 percent
Meat products (29)	10.0 percent
Egg products (11)	5.0 percent
Fish products (13)	20.0 percent
Condiments (8)	5.0 percent
Soup mixes (40)	3.0 percent
Snack foods (37)	5.0 percent
Nut products (32)	5.0 percent
Gravies and sauces (24)	5.0 percent

[1]The number in parenthesis following each food category is the paragraph listing of that food category in § 170.3(n) (21 CFR 170.3(n)).

Table 2 shows the new maximum levels of use of menhaden oil in the currently listed food categories plus new food categories, as proposed by the NFMOA.

TABLE 2.—NEW MAXIMUM LEVELS OF USE OF MENHADEN OIL

Category of food[1]	Proposed maximum level of use
Baked goods and baking mixes (1)	5.0 percent
Cereals (4)	4.0 percent
Cheese products (5)	5.0 percent
Condiments (8)	5.0 percent
Egg products (11)	5.0 percent
Fats and oils (12), but not in infant formula	12.0 percent
Fish products (13)	5.0 percent
Frozen dairy desserts (20)	5.0 percent
Gravies and sauces (24)	5.0 percent
Meat products (29)	5.0 percent
Milk products (31)	5.0 percent
Nut products (32)	5.0 percent
Snack foods (37)	5.0 percent
Soup mixes (40)	3.0 percent
Nonalcoholic beverages (3)	0.5 percent
Chewing gum (6)	3.0 percent
Confections and frostings (9)	5.0 percent
Dairy product analogs (10)	5.0 percent
Gelatins and puddings (22)	1.0 percent
Pastas (23)	2.0 percent
Hard candy (25)	10.0 percent
Jams and jellies (28)	7.0 percent
Plant protein products (33)	5.0 percent
Poultry products (34)	3.0 percent
Processed fruit juices (35)	1.0 percent
Processed vegetable juices (36)	1.0 percent
Soft candy (38)	4.0 percent
White granulated sugar (41)	4.0 percent

TABLE 2.—NEW MAXIMUM LEVELS OF USE OF MENHADEN OIL—Continued

Category of food[1]	Proposed maximum level of use
Sugar substitutes (42)	10.0 percent
Sweet sauces, toppings, and syrups (43)	5.0 percent

[1]The number in parenthesis following each food category is the paragraph listing of that food category in § 170.3(n).

As shown in table 1, the currently listed food categories include several subcategories, such as cookies and crackers, breads and rolls, fruit pies and custard pies, and cakes. These items are subcategories of baked goods and baking mixes as described under § 170.3(n)(1). The proposed reallocation (in table 2) does not list any subcategory, but rather includes the food category baked goods and baking mixes, which would include all of these items. Also, the currently listed food categories include another subcategory, i.e., yogurt, a subcategory of milk product as described under § 170.3(n)(31). Similarly, the proposed reallocation does not list yogurt, but rather includes the food category milk products, which would include yogurt.

Although each food category in the proposed reallocation (table 2) is associated with a paragraph in § 170.3(n), menhaden oil may not be added to all foods included in that paragraph, unless such food is listed in table 2. For example, § 170.3(n)(23) includes grain products and pastas, but menhaden oil only could be added to pastas (not grain products) under this proposed reallocation in table 2. In other words, only the food categories that are listed in table 2 are those that the NFMOA is requesting for the amendment of the regulation on menhaden oil.

The NFMOA has provided exposure analyses that contain estimates of EPA and DHA intake from menhaden oil for the revised uses of the currently listed food categories and the proposed uses of the new food categories. The NFMOA states that the estimated daily exposure to EPA and DHA from those uses of menhaden oil is 2.7 g/p/d. The NFMOA concludes that menhaden oil is GRAS for the revised uses of the currently listed food categories and the proposed uses of the new food categories, because the total daily intake of EPA and DHA from those uses of menhaden oil would not exceed 3.0 g/p/d, consistent with the June 1997 final rule.

III. Proposed Action

Based on information in the citizen petition and other relevant material, FDA tentatively has determined that the GRAS status of menhaden oil with specific limitations remains unchanged if uses of menhaden oil in food are reallocated, because the total daily intake of EPA and DHA from menhaden oil from the revised uses of the currently listed food categories and the proposed uses of the new food categories would not exceed 3.0 g/p/d. Because not all foods in the marketplace within those food categories in table 2 would contain menhaden oil that substitutes for other edible fat or oil, and because not all foods that a consumer chooses daily would be those with menhaden oil used as a substitute oil, the actual total daily intake of EPA and DHA from menhaden oil for an average person should be significantly below 3.0 g/p/d. Further, because the total daily intake of EPA and DHA from menhaden oil based on the uses proposed in this rulemaking would not exceed 3.0 g/p/d, and the agency is not aware of any new data and information that would prompt the agency to change the upper limit of safety of 3.0 g/p/d, FDA intends to rely on its safety determination from its prior GRAS affirmation for finding these uses safe. Therefore, the agency is proposing to amend the regulation on menhaden oil to reallocate its use in food.

IV. Environmental Impact

The agency carefully has considered the potential environmental effects of this action. FDA tentatively has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Analysis of Economic Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation also is considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

FDA is proposing to amend its regulation on menhaden oil, which the agency believes is GRAS with specific limitations. This proposed rule would reallocate the uses of menhaden oil in food, without causing the combined daily intake of EPA and DHA from menhaden oil to exceed 3.0 g/p/d.

The main benefit of this proposed rule would be the expansion of the potential uses of menhaden oil as proposed in table 2. Firms choosing to use menhaden oil would bear labeling and other costs. Because these costs are voluntary, they will be borne only if doing so is anticipated to be advantageous to the firm.

FDA proposes to reduce maximum use levels of menhaden oil for pies, cakes, fats, oils, fish products, and meat products. The potential compliance costs of this proposed rule would be borne by firms making products that now use menhaden oil at levels below the current maximum but above the proposed maximum. The proposed rule would force them to either reformulate their products or cease production. Although the potential cost of both reformulation and ceasing production may be large, FDA does not know of any products that would be forced to bear these costs. Using menhaden oil in pies, cakes, fats, oils, fish products, and meat products at the current maximum levels leads to products with undesirable flavors. Based on both market observations and taste, FDA assumes that no products currently contain levels of menhaden oil above the proposed maximum levels and thus

there are no costs associated with reformulation or ceasing production based on this proposal. We request comments on this assumption.

B. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities.

FDA is proposing to amend the GRAS affirmation for menhaden oil by establishing new maximum levels of use. The use of the menhaden oil by any small business is voluntary and is undertaken only if anticipated to be advantageous to the small business. Small businesses would only bear a compliance cost if, as stated above, they make products that are below the current maximum but above the proposed maximum levels of use. The proposed rule would force them to either reformulate their products or cease production. Although the potential cost of both reformulation and ceasing production to small businesses may be large, FDA does not know of any small businesses that would be forced to bear these costs. Using menhaden oil in pies, cakes, fats, oils, fish products, and meat products at the current maximum levels leads to products with undesirable flavors. Based on both market observations and taste, FDA assumes that no products currently contain levels of menhaden oil above the proposed maximum levels and thus there are no costs associated with reformulation or ceasing production based on this proposal. The agency therefore tentatively concludes that the new maximum levels proposed would not impose significant costs on a substantial number of small entities. The agency requests comments from small businesses on this assumption. Based on the assumption that no small businesses make products that would be affected by reducing the maximum levels of menhaden oil in pies, cakes, fats, oils, fish products, and meat products, FDA finds that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $110 million. FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995.

VI. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism Impact

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has tentatively determined that the proposed 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. The agency invites comments on its tentative conclusion that the proposed rule does not contain policies that have federalism implications as defined in the order, and consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposed rule by May 13, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. 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.

List of Subjects in 21 CFR Part 184

Food additives, Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1472 is amended by revising paragraph (a)(3) to read as follows:

§ 184.1472 Menhaden oil.

(a) * * *

(3) In accordance with § 184.1(b)(2), the ingredient may be used in food only within the following specific limitations:

Category of food	Maximum level of use in food (as served)
Baked goods, baking mixes, § 170.3(n)(1) of this chapter.	5.0 percent
Cereals, § 170.3(n)(4) of this chapter.	4.0 percent
Cheese products, § 170.3(n)(5) of this chapter.	5.0 percent
Chewing gum, § 170.3(n)(6) of this chapter.	3.0 percent
Condiments, § 170.3(n)(8) of this chapter.	5.0 percent
Confections, frostings, § 170.3(n)(9) of this chapter.	5.0 percent
Dairy product analogs, § 170.3(n)(10) of this chapter.	5.0 percent
Egg products, § 170.3(n)(11) of this chapter.	5.0 percent
Fats, oils, § 170.3(n)(12) of this chapter, but not in infant formula.	12.0 percent
Fish products, § 170.3(n)(13) of this chapter.	5.0 percent
Frozen dairy desserts, § 170.3(n)(20) of this chapter.	5.0 percent
Gelatins, puddings, § 170.3(n)(22) of this chapter.	1.0 percent
Gravies, sauces, § 170.3(n)(24) of this chapter.	5.0 percent
Hard candy, § 170.3(n)(25) of this chapter.	10.0 percent
Jams, jellies, § 170.3(n)(28) of this chapter.	7.0 percent
Meat products, § 170.3(n)(29) of this chapter.	5.0 percent

Category of food	Maximum level of use in food (as served)
Milk products, § 170.3(n)(31) of this chapter.	5.0 percent
Nonalcoholic beverages, § 170.3(n)(3) of this chapter.	0.5 percent
Nut products, § 170.3(n)(32) of this chapter.	5.0 percent
Pastas, § 170.3(n)(23) of this chapter.	2.0 percent
Plant protein products, § 170.3(n)(33) of this chapter.	5.0 percent
Poultry products, § 170.3(n)(34) of this chapter.	3.0 percent
Processed fruit juices, § 170.3(n)(35) of this chapter.	1.0 percent
Processed vegetable juices, § 170.3(n)(36) of this chapter.	1.0 percent
Snack foods, § 170.3(n)(37) of this chapter.	5.0 percent
Soft candy, § 170.3(n)(38) of this chapter.	4.0 percent
Soup mixes, § 170.3(n)(40) of this chapter.	3.0 percent
Sugar substitutes, § 170.3(n)(42) of this chapter.	10.0 percent
Sweet sauces, toppings, syrups, § 170.3(n)(43) of this chapter.	5.0 percent
White granulated sugar, § 170.3(n)(41) of this chapter.	4.0 percent

* * * * *

Dated: January 11, 2002.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–4327 Filed 2–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to revise its regulations to reflect current policy, add features required by the Water Resources Development Act of 1996 (WRDA 96) (Pub. L. 104–303), and streamline certain procedures concerning Corps authority addressing disaster preparedness, response, and recovery activities. WRDA 96 additions include the option to provide nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and the provision of a levee owner's manual. Other significant changes include a change in the cost share provision for rehabilitation of both Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Send comments to HQUSACE, ATTN: CECW–OE, 441 G Street, NW., Washington, DC 20314–1000. See Supplementary Information section for electronic filing addresses.

FOR FURTHER ASSISTANCE CONTACT: Mr. Robert K. Grubbs, P.E., Headquarters, U.S. Army Corps of Engineers, Civil Emergency Management Branch, CECW–OE, at (202) 761–4561.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in 33 U.S.C. 701n (commonly and hereinafter referred to as Pub. L. 84–99), the Corps proposes to revise 33 CFR part 203. Public Law 84–99 authorizes the Corps to undertake preparedness, response, and recovery activities for natural disasters. The Water Resources Development Act of 1996 amended Public Law 84–99 to add the authority to provide, at the option of the non-Federal sponsor, nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and also added the requirement to provide a levee owner's manual. Other significant changes include a change in the cost share provision for rehabilitation of both Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures activities, and a streamlined approach for requests for assistance from Federally recognized Native American tribes and Alaska Native Corporations. In addition, these changes will modify and streamline policy involving the Corps policy concerning assistance for ice jams, and the Corps policy requiring reimbursement in kind or in cash for certain loaned supplies and materials. Subpart D clarifies the definition and inspection of ''Active'' flood control works (i.e., those flood control works eligible for consideration to receive Corps assistance when damaged in a flood, hurricane, or coastal storm), provides clarification concerning Corps inspections of non-Federal flood control works, and adds a new section that addresses inspections and rehabilitation of Federal flood control works that merely incorporates existing Corps policy. A new section (§ 203.49) incorporates existing Corps policy on the use of Public Law 84–99 funds for rehabilitation of Hurricane/Shore Protection Projects, and, when undertaking such a rehabilitation effort, requires incorporation of the existing Project Cooperation Agreement to have the project sponsor cost share the renourishment/repair effort. In addition, Corps policy is revised to specify that, during droughts, water is provided for human consumption only, not for livestock. The revised rule is anticipated to go into effect 60 days after publication of the final rule in the **Federal Register**, except that all requests for assistance received by the Corps, for emergencies declared by the appropriate District Engineer prior to the effective date of the final rule, will be ''grandfathered'' under the previous rule for any assistance provided.

Electronic Access and Filing Addresses. You may submit comments by E-mail to robert.k.grubbs@usace.army.mil. Comments should be in one of the following formats: Word, WordPerfect, or ASCII. The subject line for submission of comments should begin with ''33 CFR 203 Comments from (insert name of agency, organization, or individual).''

Procedural Requirements

a. *Review under the National Environmental Policy Act.* This revision is not a major Federal action. There are no significant changes to any aspects of this regulation that may impact on the human environment. When a specific action (e.g., a proposal to rehabilitate a damaged levee) occurs, appropriate environmental documentation, to include an Environmental Assessment/Environmental Impact Statement when required, is prepared by the Corps.

b. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private

sector and therefore, is not a Federal private sector mandate, and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The Corps has also found, under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood control, Technical assistance, Water resources.

Dated: February 7, 2002.

Approved:

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

Accordingly, 33 CFR Part 203 is proposed to be revised as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

Subpart A—Introduction

Sec.
203.11 Purpose.
203.12 Authority.
203.13 Available Assistance.
203.14 Responsibilities of Non-Federal Interests.
203.15 Definitions.
203.16 Federally Recognized Indian Tribes and the Alaska Native Corporations.

Subpart B—Disaster Preparedness

203.21 Disaster Preparedness Responsibilities of Non-Federal Interests.

Subpart C—Emergency Operations

203.31 Authority.
203.32 Policy.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

203.41 General.
203.42 Inspection of Non-Federal Flood Control Works.
203.43 Inspection of Federal Flood Control Works.
203.44 Rehabilitation of Non-Federal Flood Control Works.
203.45 Rehabilitation of Federal Flood Control Works.
203.46 Restrictions.
203.47 Modifications to Non-Federal Flood Control Works.
203.48 Inspection Guidelines for Non-Federal Flood Control Works.
203.49 Rehabilitation of Hurricane/Shoreline Protection Projects.
203.50 Nonstructural Alternatives to Rehabilitation of Flood Control Works
203.51 Levee Owner's Manual
203.52 (Reserved)

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

203.61 Emergency Water Supplies Due to Contaminated Water Sources.
203.62 Drought Assistance.

Subpart F—Advance Measures

203.71 Policy.
203.72 Eligibility Criteria and Procedures.

Subpart G—Local Interests/Cooperation Agreements

203.81 General.
203.82 Requirements of Local Cooperation.
203.83 Additional Requirements.
203.84 Forms of Local Participation—Cost Sharing.
203.85 Rehabilitation of Federal Flood Control Projects.
203.86 Transfer of Completed Work to Local Interests.

Authority: 33 U.S.C. 701n.

Subpart A—Introduction

§ 203.11 Purpose.

This regulation prescribes administrative policies, guidance, and operating procedures for natural disaster preparedness, response, and recovery activities of the United States Army Corps of Engineers.

§ 203.12 Authority.

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n) (69 Stat. 186), commonly and hereinafter referred to as Public Law 84–99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: Preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood, or nonstructural alternatives thereto; emergency protection of federally authorized hurricane or shore protection projects which are threatened, when such protection is warranted to protect against imminent and substantial loss to life and property; and repair and restoration of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature. The law includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality, and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. This law authorizes the Secretary of the Army (Secretary) to construct wells and to transport water within areas determined by the Secretary to be drought-distressed. The Secretary of the Army has delegated the authority vested in the Secretary under Public Law 84–99 through the Assistant Secretary of the Army (Civil Works) to the Chief of Engineers, subject to such further direction as the Secretary may provide.

§ 203.13 Available Assistance.

Corps assistance provided under authority of Public Law 84–99 is intended to be supplemental to State and local efforts. The principal assistance programs and activities of the Corps are described below.

(a) *Disaster preparedness.* Technical assistance for many types of disasters is available to State and local interests. Primary Corps efforts are focused on technical assistance for, and inspections of, flood control works, and related flood fight preparedness and training activities. Technical assistance for specialized studies, project development, and related activities, and requirements for long term assistance, are normally beyond the scope of disaster preparedness assistance, and are appropriately addressed by other Corps authorities and programs. Subpart B of this part addresses disaster preparedness responsibilities and activities.

(b) *Emergency operations.* Emergency operations, consisting of Flood Response (flood fight and rescue operations) and Post Flood Response assistance, may be provided to supplement State and local emergency operations efforts. Subpart C of this part addresses emergency operations assistance.

(c) *Rehabilitation.* The Corps may rehabilitate flood control works damaged or destroyed by floods and coastal storms. The Corps Rehabilitation and Inspection Program (RIP) incorporates both disaster preparedness activities and Rehabilitation Assistance. The RIP consists of a process to inspect flood control works; a status determination, i.e., an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event. Subpart D of this part addresses Rehabilitation Assistance and the RIP.

(d) *Emergency water supplies due to contaminated water source.* The Corps may provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality. Subpart E of this part addresses emergency water supply assistance.

(e) *Drought assistance.* Corps assistance may be provided to drought-distressed areas (as declared by the

Secretary of the Army) to construct wells and to transport water for human consumption. Subpart E of this part addresses drought assistance.

(f) *Advance Measures.* Advance Measures assistance may be provided to protect against imminent threats of predicted, but unusual, floods. Advance Measures projects must be justified from an engineering and economic standpoint, and must be capable of completion in a timely manner. Advance Measures assistance may be provided only to protect against loss of life and/or significant damages to improved property due to flooding. Subpart F of this part addresses Advance Measures assistance.

§ 203.14 Responsibilities of Non-Federal interests.

Non-Federal interests, which include State, County and local governments; Federally recognized Indian tribes; and Alaska Native Corporations, are required to make full use of their own resources before Federal assistance can be furnished. The National Guard, as part of the State's resources when it is under State control, must be fully utilized as part of the non-Federal response. Non-Federal responsibilities include the following:

(a) *Disaster preparedness.* Disaster preparedness is a basic tenet of State and local responsibility. Disaster preparedness responsibilities of non-Federal interests include:

(1) Operation and maintenance of flood control works;

(2) Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations;

(3) Training personnel to operate, maintain, and patrol projects during crisis situations, and preparation of plans to address emergency situations;

(4) Taking those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part; and,

(5) Responsible regulation, management, and use of floodplain areas.

(b) *Emergency operations.* During emergency operations, non-Federal interests must commit available resources, to include work force, supplies, equipment, and funds. Requests for Corps emergency operations assistance will be in writing from the appropriate State, tribal, or local official. For flood fight direct assistance and Post Flood Response assistance, non-Federal interests must furnish formal written assurances of local cooperation by entering into Cooperation Agreements (CA's), as detailed in subpart G of this part. (For Corps work authorized under Public Law 84–99, the term ''Cooperation Agreement'' is used to differentiate this agreement from a Project Cooperation Agreement (PCA) that addresses the original construction of a project.) Following Flood Response or Post Flood Response assistance, it is a non-Federal responsibility to remove expedient flood control structures and similar works installed by the Corps under Public Law 84–99.

(c) *Rehabilitation of non-Federal Flood Control Projects.* Prior to Corps rehabilitation of non-Federal flood control projects, non-Federal interests must furnish formal written assurances of local cooperation by entering into a CA, as detailed in subpart G of this part. Requirements of local participation include such items as provision of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD's), applicable cost-sharing, and costs attributable to deficient and/or deferred maintenance.

(d) *Rehabilitation of Federal Flood Control Projects.* Sponsors of Federal flood control projects are usually not required to furnish written assurances of local cooperation, if the PCA for the original construction of the project is sufficient.

Note: The PCA may also be referred to as a local cooperation agreement (LCA), cooperation and participation agreement (C&P), or similar terms.

In lieu of a new PCA, the Corps will notify the sponsor of the sponsor's standing requirements, including such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, relocations, and any cost-sharing requirements contained in subpart G, § 203.82. Modifications to the existing Operation and Maintenance Manual may be required based on the Rehabilitation Assistance required.

(e) *Emergency Water Supplies Due to Contaminated Water Source.* Except for Federally recognized Indian tribes or Alaska Native Corporations, Non-Federal interests must first seek emergency water assistance through the Governor of the affected State. If the State is unable to provide the needed assistance, then the Governor or his or her authorized representative must request Corps assistance in writing. Similarly, requests for Corps assistance for Indian tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(f) *Drought assistance.* Except for Federally recognized Indian tribes or Alaska Native Corporations, non-Federal interests must first seek emergency drinking water assistance through the Governor of the affected State. Requests for Corps assistance will be in writing from the Governor or his or her authorized representative. Similarly, requests for Corps assistance for Indian tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Assistance can be provided to those drought-distressed areas (as declared by the Secretary of the Army) to construct wells and to transport water for human consumption. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(g) *Advance Measures.* Advance Measures assistance should complement the maximum non-Federal capability. Requests for assistance must be made by the Governor of the affected State, except requests for assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian tribe or Alaska Native Corporation, or through the regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. A CA (see subpart G of this part) is required prior to assistance being rendered. Non-Federal participation may include either financial contribution or commitment of non-Federal physical resources, or both.

§ 203.15 Definitions.

The following definitions are applicable throughout this regulation.

(a) *Federal Project.* A project constructed by the Corps, and subsequently turned over to a local sponsor for operations and maintenance responsibility. This definition also includes any project specifically designated as a Federal project by an Act of Congress.

(b) *Flood Control Project:* A project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multipurpose project, only those components that are necessary for the flood control function are considered eligible for Rehabilitation Assistance.

(c) *Governor.* All references in this part 203 to the Governor of a State also refer to: the Governors of United States commonwealths, territories, and possessions; and the Mayor of Washington, DC.

(d) *Hurricane/Shore Protection Project (HSPP).* A flood control project designed and constructed to have appreciable and predictable effects in preventing damage to developed areas from the impacts of hurricanes, tsunamis, and coastal storms. These effects are primarily to protect against wave action, storm surge, wind, and the complicating factors of extraordinary high tides. HSPP's include projects known as shore protection projects, shore protection structures, periodic nourishment projects, shore enhancement projects, and similar terms. Components of an HSPP may include both hard (permanent construction) and soft (sacrificial, i.e., sand) features.

(e) *Non-Federal Project.* A project constructed with non-Federal funds, or a project constructed by tribal, state, local, or private interests, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Public Law 84–99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, et.seq) (hereinafter referred to as the Stafford Act), is a non-Federal project unless it repairs or replaces an existing Federal project. Works Progress Administration (WPA) projects, and projects funded completely or partially by other (non-Corps) Federal agencies, are considered non-Federal projects for the application of Public Law 84–99 authority.

(f) *Non-Federal Sponsor.* A non-Federal sponsor is a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A non-Federal sponsor may be a State, County, City, Town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and LERRD's necessary for the project.

(g) *Repair and Rehabilitation.* The term *repair* and *rehabilitation* means the repair or rebuilding of a flood control structure, after the structure has been damaged by a flood, hurricane, or coastal storm, to the level of protection provided by the structure prior to the flood, hurricane, or coastal storm. ''Repair and rehabilitation'' does not include improvements (betterments) to the structure, nor does ''repair and rehabilitation'' include any repair or rebuilding of a flood control structure that, in the normal course of usage, has become structurally unsound and is no longer fit to provide the level of protection for which it was designed.

§ 203.16 Federally Recognized Indian Tribes and the Alaska Native Corporations.

Requests for Public Law 84–99 assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State.

Subpart B—Disaster Preparedness

§ 203.21 Disaster Preparedness Responsibilities of Non-Federal Interests.

Disaster preparedness is a basic tenet of State and local responsibility. Assistance provided under authority of Public Law 84–99 is intended to be supplemental to the maximum efforts of State and local interests. Assistance under Public Law 84–99 will not be provided when non-Federal interests have made insufficient efforts to address the situation for which assistance is requested. Assistance under Public Law 84–99 will not be provided when a request for such assistance is based entirely on a lack of fiscal resources with which to address the situation. Non-Federal interests' responsibilities are addressed in detail as follows:

(a) *Operation and maintenance of flood control works.* Flood control works must be operated and maintained by non-Federal interests. Maintenance includes both short-term activities (normally done on an annual cycle, or more frequently) such as vegetation control and control of burrowing animals, and longer term activities such as repair or replacement of structural components (e.g., culverts) of the project.

(b) *Procurement/Stockpiling.* Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations is a non-Federal responsibility. The Corps is normally a last resort option for obtaining such materials. Local interests should request such materials from State assets prior to seeking Corps assistance. Local interests are responsible for reimbursing (either in kind or in cash) the Corps for flood fight supplies and materials.

(c) *Training and Plans.* Training personnel to operate, maintain, and patrol flood control projects during crisis situations is a non-Federal responsibility. Specific plans should be developed and in place to address known problem areas. For instance, the non-Federal sponsor of a levee reach prone to boils should have personnel specifically trained in flood fighting boils. In addition, contingency plans must be made when needed to address short term situations. For instance, if a culvert through a levee is being replaced, then the contingency plan should address all actions needed should a flood event occur during the construction period when levee integrity is lacking.

(d) *Corps Rehabilitation and Inspection Program for Flood Control Works.* To be eligible for Rehabilitation Assistance under Public Law 84–99, it is a non-Federal responsibility to take those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part.

Subpart C—Emergency Operations

§ 203.31 Authority.

Emergency operations under Public Law 84–99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane and shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

(a) *Flood Response.* Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, state, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or state and local interests, may include the following: technical advice and assistance; lending

of flood fight supplies, e.g., sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.

(b) *Post Flood Response.* The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include the following: Provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy.

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement state and local activities. Corps assistance is limited to the preservation of life and property, i.e., residential/commercial/industrial developments, and public facilities/service. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of state or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84–99, and will not prevent state or local governments from receiving other Federal assistance for which they are eligible.

(a) *Flood Response.* Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, state, or local official will be accepted, followed by a written confirmation.

(1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, state, or local official. However, legal responsibility always remains with the tribal, state, and local officials.

(2) Corps assistance will be terminated when the flood waters recede below bankfull, absent a short term threat (e.g., a significant storm front expected to arrive within a day or two) likely to cause additional flooding.

(3) Removal of ice jams is a local responsibility. Corps technical advice and assistance, as well as assistance with flood fight operations, can be provided to supplement state and local efforts. The Corps will not perform ice jam blasting operations for local interests.

(b) *Post Flood Response.* A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement state and local efforts. Corps assistance is limited to 10 days following receipt of the Governor's written request, or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period, or trigger a new 10-day period. The Corps will deny any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* (1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.

(2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Presidential disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.

(3) Expendable supplies that are lent, such as sandbags, will be replaced in kind, or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

§ 203.41 General.

(a) *Authority.* Public Law 84–99 authorizes repair and restoration of the following types of projects to ensure their continued function:

(1) Flood control projects.

(2) Federally authorized and constructed hurricane/shore protection projects.

(b) *Implementation of Authority.* The Rehabilitation and Inspection Program (RIP) implements Public Law 84–99 authority to repair and rehabilitate flood control projects damaged by floods and coastal storm events. The RIP consists of a process to inspect flood control work; a status determination, i.e., an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event.

(c) *Active status.* In order for a flood control work to be eligible for Rehabilitation Assistance, it must be in an Active status at the time of damage from a flood or coastal storm event. To gain an Active status, a non-Federal flood control work must meet certain engineering, maintenance, and

qualification criteria, as determined by the Corps during an Initial Eligibility Inspection (IEI). To retain an Active status, Federal and non-Federal flood control works must continue to meet inspection criteria set by the Corps, as determined by the Corps during a Continuing Eligibility Inspection (CEI). All flood control works not in an Active status are considered to be Inactive, regardless of whether or not they have previously received a Corps inspection, or Corps assistance.

(d) *Modification of flood control projects.* Modification of a flood control project to increase the level of protection, or to provide protection to a larger area, is beyond the scope of Public Law 84–99 assistance. Such modifications to Federal projects are normally accomplished under Congressional authorization and appropriation, or under Continuing Authorities Programs of the Corps. Such modifications to non-Federal projects are normally accomplished by the non-Federal sponsor and local interests. Modifications necessary to preserve the structural integrity of an existing non-Federal flood control project may be funded by the RIP, but such work must meet the criteria established in § 203.47 to be eligible for funding under Public Law 84–99.

§ 203.42 Inspection of Non-Federal Flood Control Works.

(a) *Required inspections.* The Corps will conduct inspections of non-Federal flood control works. These inspections are IEI's and CEI's. Conduct of IEI's and CEI's will be as provided for in § 203.48.

(1) Corps involvement with any non-Federal flood control work normally begins when the sponsor requests an IEI. The Corps will conduct an IEI to determine if the flood control work meets minimum engineering and maintenance standards and is capable of providing the intended degree of flood protection. An Acceptable or Minimally Acceptable rating (see § 203.48) on the IEI is required to allow the project to gain an Active status in the RIP.

(2) CEI's are conducted periodically to ensure that projects Active in the RIP continue to meet Corps standards, and to determine if the sponsor's maintenance program is adequate. A rating of Acceptable or Minimally Acceptable (see § 203.48) on a CEI is required in order to retain an Active status in the RIP.

(b) *Advice and reporting.* Information on the results of IEI and CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices.

(1) Non-Federal sponsors will be informed that an IEI rating of Unacceptable will cause the flood control work to remain in an Inactive status, and ineligible for Rehabilitation Assistance.

(2) Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and ineligible for Rehabilitation Assistance.

(3) Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.43 Inspection of Federal Flood Control Works.

(a) *Required inspections.* A completed Federal flood control project, or completed functional portions thereof, is granted Active status in the RIP upon transfer of the operation and maintenance of the project (or functional portion thereof) to the non-Federal sponsor. Federal flood control works will be periodically inspected in accordance with 33 CFR 208.10 and Engineer Regulation (ER) 1130–2–530, Flood Control Operations and Maintenance Policies. These periodic inspections of Federal flood control works are also, for simplicity, known as CEI's. If a Federal project is found to be inadequately maintained on a CEI, then it will be placed in an Inactive status in the RIP.

(**Note:** This is a separate and distinct action from project deauthorization, which is not within the scope of Public Law 84–99 activities.)

A Federal project will remain in an Inactive status until such time as an adequate maintenance program is restored, and the project is determined by the Corps to be adequately maintained.

(b) *Advice and reporting.* Information on the results of CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices. Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and not eligible for Rehabilitation Assistance. Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Rehabilitation of Non-Federal Flood Control Works.

(a) *Scope of work.* The Corps will provide assistance in the rehabilitation of non-Federal projects only when repairs are clearly beyond the normal physical and financial capabilities of the project sponsor. The urgency of the work required will be considered in determining the sponsor's capability.

(b) *Eligibility for Rehabilitation Assistance.* A flood control project is eligible for Rehabilitation Assistance provided that the project is in an Active status at the time of the flood event, the damage was caused by the flood event, the work can be economically justified, and the work is not otherwise prohibited by this regulation.

(c) *Work at non-Federal expense.* At the earliest opportunity prior to commencement of or during authorized rehabilitation work, the Corps will inform the project sponsor of any work that must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies, and any modifications that are necessary to preserve the integrity of the project.

(d) *Nonconforming works.* Any non-Federal project constructed or modified without the appropriate local, State, tribal, and/or Federal permits, or waivers thereof, will not be rehabilitated under Public Law 84–99.

(e) *Cooperation Agreements.* A Cooperation Agreement is required in accordance with subpart G of this part.

§ 203.45 Rehabilitation of Federal Flood Control Works.

Rehabilitation of Federal flood control projects will be identical to rehabilitation of non-Federal projects (§ 203.44), except for those conditions contained in subpart G of this part concerning cooperation agreements, when the original PCA for the Federal project is sufficient. Additional requirements for Hurricane/Beach Protection Projects are covered in § 203.49.

§ 203.46 Restrictions.

(a) Restrictions to flood control works. Flood control works are designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels. Structures built primarily for the purposes of channel alignment, navigation, recreation, fish

and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection are generally ineligible for Public Law 84–99 Rehabilitation Assistance.

(b) *Non-flood related rehabilitation.* Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms will generally not be provided under Public Law 84–99.

(c) *Maintenance and deterioration deficiencies.* Rehabilitation under Public Law 84–99 will not be provided for either Federal or non-Federal flood control projects that, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by, or at the expense of, the non-Federal sponsor, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred or deficient maintenance, the estimated deferred or deficient maintenance cost will not be included as contributed non-Federal funds, and will be in addition to cost-sharing requirements addressed in § 203.82. Failure of project sponsors to correct deficiencies noted during Continuing Eligibility Inspections may result in ineligibility to receive Rehabilitation Assistance under Public Law 84–99.

(d) *Economic justification.* No flood control work will be rehabilitated unless the work required satisfies Corps criteria for a favorable benefit-to-cost ratio, and the construction cost of the work required exceeds fifteen thousand dollars. Construction costs greater than fifteen thousand dollars does not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for Corps Rehabilitation Assistance.

§ 203.47 Modifications to Non-Federal Flood Control Works.

Modifications necessary to preserve the structural integrity of existing non-Federal projects may be constructed at additional Federal and non-Federal expense in conjunction with approved rehabilitation work. The additional Federal cost will be limited to not more than one-third of the estimated Federal construction cost of rehabilitation to preflood level of protection, or $100,000, whichever is less. The modification work must be economically justified. Non-Federal interests are required to contribute a minimum of 25% of the total construction costs of the modification, LERRD's, and any additional funds necessary to support the remaining cost of the modification beyond what the Corps can provide. Engineering and design costs will be at Corps cost.

(a) *Cash contributions.* Non-Federal contributions will be only in cash. In-kind services are not permitted for modification work.

(b) *Protection of additional areas.* Modifications designed to provide protection to additional area are not authorized.

§ 203.48 Inspection Guidelines for Non-Federal Flood Control Works.

(a) *Intent.* The intent of these guidelines is to facilitate inspections of the design, construction, and maintenance of non-Federal flood control works. The guidelines are not intended to establish design standards for non-Federal flood control works, but to provide uniform procedures within the Corps for conducting required inspections. The results of these inspections determine Active status in the RIP, and thus determine eligibility for Rehabilitation Assistance. The contents of this section are applicable to both IEI's and CEI's.

(b) *Level of detail.* Evaluations of non-Federal flood control works will be made through on site inspections and technical analyses by Corps technical personnel. The level of detail required in an inspection will be commensurate with the complexity of the inspected project, the potential for catastrophic failure to cause significant loss of life, the economic benefits of the area protected, and other special circumstances that may occur. Technical evaluation procedures are intended to establish the general capability of a non-Federal flood control work to provide reliable flood protection.

(c) *Purposes.* The IEI assesses the integrity and reliability of the flood control work. In addition, other essential information required to help determine the Federal interest in future repairs/rehabilitation to the flood control work will be obtained. The IEI will establish the estimated level of protection and structural reliability of the existing flood control work. Subsequent CEI's will seek to detect changed project conditions that may have an impact on the reliability of the flood protection provided by the flood control work, to include the level of maintenance being performed on the flood control work.

(d) *Inspection Components*—(1) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal flood control work will be evaluated and expressed in terms of exceedence frequency (e.g., a 20% chance of a levee being overtopped in any given year). These analyses also include an evaluation of existing or needed erosion control features for portions of a project that may be threatened by stream flows, overland flows, or wind generated waves.

(2) *Geotechnical analyses.* The Geotechnical evaluation will be based primarily on a detailed visual inspection. As a minimum, for levees, the IEI will identify critical sections where levee stability appears weakest and will document the location, reach, and cross-section at these points.

(3) *Maintenance.* Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.

(4) *Other structural features.* Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

(e) *Ratings.* Inspected flood control works will receive a rating in accordance with the table in this paragraph. The table in this paragraph provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.

Rating	Assessment
M—Minimally Acceptable	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

(f) *Sponsor reclama.* If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane/Shore Protection Projects.

(a) *Authority.* The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engineers, such rehabilitation is warranted for the adequate functioning of the project.

(b) *Policies.* (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.

(2) To be eligible for Rehabilitation Assistance, HSPP's must be:

(i) A completed element of a Federally authorized project; or,

(ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, HQUSACE or his designated representative; or,

(iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and

(3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.

(4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Deputy Commanding General for Civil Works, and may be delegated to the Chief, Operations Division, Office of the Deputy Commanding General for Civil Works.

(5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.

(6) Definition of extraordinary storm. An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. ''Prolongation or severity'' means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. ''Significant amounts of damage'' have occurred when:

(i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds 1 million dollars and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds 6 million dollars; or,

(iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.

(c) *Procedural requirements.* Rehabilitation of HSPP will be done in accordance with § 203.45, except as modified by this section.

(d) *Combined Rehabilitation and Periodic Nourishment.* In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Deputy Commanding General for Civil Works.

§ 203.50 Nonstructural Alternatives to Rehabilitation of Flood Control Works.

(a) *Authority.* Under Public Law 84–99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) *Policy.* (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of such non-Federal sponsors.

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in § 203.15, or another Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSA that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5)(i) The principal purposes of an NSAP are for:

(A) Floodplain restoration;

(B) Provision or restoration of floodways; and,

(C) Reduction of future flood damages and associated flood control works repair costs.

(ii) Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under Public Law 84–99 authority.

(c) *Limitation on Corps Expenditures.* Exclusive of the costs of investigation, report preparation, engineering and

design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Deputy Commanding General for Civil Works.

(d) *Responsibilities of the NSAP non-Federal Sponsor.*

(1) Operate and maintain the NSAP;

(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.

(3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

(e) *Responsibilities of Other Federal Agencies Acting as NSAP Sponsor.* The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (See paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (f)(1) of this section.

(f) *Responsibilities of the Requesting Flood Control Work Project Sponsor.* (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.

(2) If not also the NSAP sponsor, the flood control work project sponsor must:

(i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and

(ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) *Allowable Public Law 84–99 expenses for NSAP's.* (1) Acquisition of land or interests in land.

(2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.

(3) Demolition and removal of structures, including utility connections and related items.

(4) Debris removal and debris reduction.

(5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.

(6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.

(7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.

(8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection features and/or riprap.

(9) Protection/floodproofing of essential structures and facilities.

(10) Supervision, administrative, and contract administration costs of other expenses allowed in this subparagraph.

(h) *Time limitation.* Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) *Participation and involvement of other Federal, State, tribal, local, and private agencies.* Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency's authorities and regulations.

(j) *Future Assistance.* After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84–99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) *Environmental Considerations.* NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirements for Cooperation Agreement (CA)/Items of Local Cooperation.* (1) Requirement for Local Cooperation. In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraph (l)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraph (l)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.

(2) The CA requirements of subpart G of this part are not applicable to NSAP's.

(3) Items of Local Cooperation. For NSAP's, non-Federal interests shall:

(i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;

(ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.

(4) Cost sharing. The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.

(5) Eligibility under other Federal programs. NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

(6) Contributed funds. Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 USC 701h as the pertinent authority.

(7) Obligation of contributed funds. In accordance with OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury

before any obligations can be made against such funds.

(8) Prohibition of future assistance. The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.

(9) Assurance of Compliance with Exec. Order 11988. NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Exec. Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.

(10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

(m) *Acquisition of LERRD's.* (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in paragraph (c) of this section, and availability of appropriations.

(2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

§ 203.51 Levee Owner's Manual.

(a) *Authority.* In accordance with section 202(f) of Public Law 104–303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.

(b) *Policies.* (1) Active non-Federal projects. A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.

(2) Federal projects. The Operation and Maintenance Manual specified by § 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.

(c) Procedural requirements. Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

§ 203.52 [Reserved]

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

§ 203.61 Emergency Water Supplies Due to Contaminated Water Source.

(a) *Authority.* The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policies.* (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) The maximum contaminant level *or* treatment technique for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (40 CFR part 141), is exceeded.

(ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (e.g., a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated on the basis of other information available.

(3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (See subpart G of this part.) Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the State and the Corps. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.

(9) State, tribal, and local governments must make full use of their own resources, including National Guard capabilities.

(c) *Governor's request.* A letter signed by the Governor, or his or her authorized representative, requesting Corps assistance and addressing the State's commitments and capabilities in response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the local and State efforts undertaken. Verify that all reasonably available resources have been committed.

(2) Identify the specific needs of the State, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the State.

(4) Identify the project sponsor(s).

(d) *Non-Federal responsibilities.* Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination. If assistance is furnished by the Corps, local interests must furnish the basic requirements of local cooperation as detailed in the Cooperation Agreement. In all cases, reasonable water conservation measures must be implemented. Local interests will be required to operate and maintain any loaned equipment, and to remove and return such equipment to Federal interests, in a fully maintained condition, after the situation is resolved.

§ 203.62 Drought assistance.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells, and to transport water to farmers, ranchers and political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section.*

(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching which receives its majority income from such activity is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells, and

(B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(d) *Guidance—Construction of wells.* (1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(e) *Guidance-transport of water.* (1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(f) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

Subpart F—Advance Measures

§ 203.71 Policy.

Advance Measures consists of those activities performed prior to a flood event, or potential flood event, to protect against loss of life and/or significant damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an imminent threat of unusual flooding. Corps assistance will be to complement the maximum efforts of tribal, State, and local authorities. Projects will be designed for the specific threat, normally of expedient-type construction, and typically temporary in nature.

§ 203.72 Eligibility Criteria and Procedures.

(a) *Threat of flooding.* An *imminent* threat of *unusual* flooding must exist before Advance Measures projects can be approved. The threat may be established by National Weather Service predictions, or by Corps of Engineers determinations of unusual flooding from adverse or unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.

(b) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information.

(1) Describe the non-Federal efforts undertaken. Verify that all available resources have been committed.

(2) Identify the specific needs, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the non-Federal interests.

(4) Identify the non-Federal sponsor(s).

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages.

(d) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.

(e) *Local cooperation/responsibilities.* Subpart G of this part provides requirements for a Cooperation Agreement needed to provide local assurances. The project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.

(f) *Contingency Planning Efforts for Potential Advance Measures Activities.* Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to tribal, State, and local agencies, commensurate with the predicted weather phenomenon, based on requests for assistance from such tribal, State, and local agencies. Specific Advance Measures projects must be addressed as specified in paragraph (b) of this section.

(g) *Definitions.*

(1) *Imminent Threat.* A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in a given geographical location. Implicit in the timing aspect can be considerations of available time (when the next flood or storm event is likely to occur), season (e.g., a snowpack that will melt in the coming spring runoff), or of known cyclical activities.

(2) *Unusual Flooding.* A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/ Cooperation Agreements

§ 203.81 General.

(a) *Requirements for Cooperation Agreements.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.

(b) *Request for assistance.* (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

(2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/ division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of Local Cooperation.

It is Corps policy that provision of assistance under Public Law 84–99 will, insofar as feasible, require local interests to provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84–99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

(a) *Furnishing of LERRD's.* This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a

non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.

(b) *Hold and save clause.* This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Maintain and operate clause.* This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: ''It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of (insert name of sponsor, and owner if appropriate).''

(d) *Removal of temporary works.* Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.

(e) *Request for retention of temporary flood control works.* Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84–99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84–99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* (1) The Federal Government may assume up to 75 percent of the eligible construction costs for rehabilitation of Federal and non-Federal flood control projects. The Federal Government may assume up to 75 percent of the eligible construction costs for rehabilitation of HSPP's. Sponsors will provide their share of costs as provided for in § 203.84. The sponsor's share is in addition to providing costs for LERRD's, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.

(2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD's.

§ 203.83 Additional Requirements.

(a) *Maintenance deficiencies.* Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage, flood control works.* Separable areas with minor damage will be included in the maintenance program of local interests.

(c) *Minor completion items.* Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.

(d) *Adequacy of requirements of local cooperation.* In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a ''Contingency Fund'' to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a ''Capital Improvement Fund'' to meet future costs of capital improvement projects such as replacement of culverts in levees, pump station equipment, etc.

(e) *Eligibility under other Federal programs.* The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84–99 assistance, but will not be ''at no cost to the United States.'' Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of Local Participation—Cost Sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: Contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

(a) *Contributed funds.* Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701n as the pertinent authority .

(b) *Obligation of contributed funds.* Per OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84–99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant. Public Law 84–99 limits the term to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal Flood Control Projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These

requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in § 203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84–99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the ''Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR part 208)'' or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal sponsor will vary according to organization and other circumstances.

[FR Doc. 02–3515 Filed 2–25–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319b; FRL–7139–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns nitrogen oxides (NO_X) emissions from internal combustion engines. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 28, 2002.

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

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local KCAPCD Rule 427. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4399 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN64–01–7289b; FRL–7139–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for the Northern States Power Company (NSP) Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. The Minnesota Pollution Control Agency requested in their September 1, 1999 submittal that EPA approve into the Minnesota SO_2 SIP certain portions of the Title V permit for NSP's Riverside plant and remove the NSP Riverside Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, we are proposing to approve into the SIP only those portions of the permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In addition, we are proposing to remove the NSP Riverside Plant Administrative Order from the state SO_2 SIP. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive 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. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 28, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone

Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–4401 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7150–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by Weirton Steel Corporation (Weirton), to exclude (or delist) on a one-time basis certain solid wastes generated at its Weirton, West Virginia, facility from the lists of hazardous waste.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. We will accept comments on this proposal until April 12, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by March 13, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, please contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
- A. What laws and regulations give EPA the authority to delist waste?
- B. What does Weirton request in its petition?

II. Waste-Specific Information
- A. How was the waste generated by Weirton?
- B. What information did Weirton submit to support its petition?

III. EPA's Evaluation of the Petition
- A. What method did EPA use to evaluate risk?
- B. What other factors did EPA consider in its evaluation?
- C. What conclusion did EPA reach?

IV. Conditions for Exclusion
- A. What conditions are associated with this exclusion?
- B. What happens if Weirton fails to meet the conditions of this exclusion?

V. Effect on State Authorization

VI. Effective Date

VII. Administrative Requirements

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded, a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261, even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

B. What Does Weirton Request in Its Petition?

On March 3, 1999, Weirton petitioned EPA to exclude on a one-time basis the wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) from the list of hazardous wastes contained in 40 CFR 261.31. The lagoon and tanks were removed from service in September,

1998. The total estimated volume of sludge in the impoundment and tanks is 18,000 cubic yards.

The wastewater treatment sludge is described in Weirton's petition as a mixture of small quantities of EPA Hazardous Waste Numbers F007 (spent cyanide plating bath solutions from electroplating operations) and F008 (plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process) with nonhazardous solids that settled during treatment of process wastewater, cooling water, quench water, and stormwater entering Weirton's C&E outfall area.

Hazardous wastes F007 and F008 were originally listed because they were found to contain cyanide salts, although Land Disposal Restriction treatment standards for these wastes found at 40 CFR 268.40 have been establised for cadmium, chromium (total), cyanide (total), cyanide (amenable), lead, nickel, and silver.

The sludge is currently being managed as listed hazardous waste as a result of a judicial Consent Decree (Civil Action No. 5:96–CV–171) entered into on December 26, 1996, by Weirton, EPA, the West Virginia Department of Environmental Protection (WVDEP) and the United States Department of Justice. The Consent Decree requires that Weirton decommission the East Lagoon (and another impoundment known as the West Lagoon) and manage and dispose of the sludge as listed hazardous waste. The sludge contained in the West Lagoon is not included in this petition. It was removed and disposed of as hazardous waste in the fall of 1997 and spring of 1998.

Weirton is requesting this exclusion so that the sludge in the East Lagoon and the Figure 8 tanks can be removed and disposed of in a permitted Subtitle D landfill.

II. Waste-Specific Information

A. How Was the Waste Generated by Weirton?

Weirton owns and operates an integrated steel mill, including the C&E wastewater treatment plant, occupying approximately 1300 acres on the banks of the Ohio River in Weirton, WV. Weirton produces iron and steel, and manufactures flat rolled carbon steel that is further processed into tin mill products and hot rolled, cold rolled and galvanized sheet steel products. Manufacturing processes that contributed wastewater to the generation of the wastewater treatment sludge that is the subject of this petition (known as the C&E sludge) included steel-making in basic oxygen furnaces, steel slab production in a four strand continuous caster, sheet steel production via hot and cold rolling using roughing and finishing strands, tandem mills, pickling, temper mills, annealing and hot dip galvanizing of sheet steel.

Several waste treatment processes contributed wastewater discharges to the C&E outfall area. Internal wastewater treatment plants at the hot mill, continuous caster, the basic oxygen plant scrubber and the oil recovery plant remove solids and oil from the process wastewater via settling, filtration and skimming. The primary contributor of wastewater flow is the hot mill wastewater treatment plant which contributes mill scale containing iron and trace levels of metals and oil and grease to the C&E outfall area. The basic oxygen plant scrubber treats quench water from the basic oxygen furnace exhaust, and its wastewater treatment plant contributes trace levels of iron and other metals to the C&E outfall area. Weak acid rinsewater and oils are treated in the on-site oil recovery plant, and this wastewater treatment plant contributes metals and oil and grease to the C&E outfall area. Spent pickle liquor is processed at an on-site acid regeneration plant for reuse in the pickling lines.

The process that caused the C&E sludge to be classified as EPA hazardous wastes F007 and F008 was the recovery of tin from tin plating line sludges in the detinning plant and the subsequent discharge of wastewater from the detinning plant to the C&E wastewater treatment plant. Tin sludge from the tin mill was generated in Weirton's halogen electroplating lines which used cyanide in the process. The sludge was periodically removed from the electroplating cells and transported to the detinning plant for tin recovery. The detinning plant was also used for the recovery of tin and steel from tin-plated scrap steel. Both elemental tin and steel were recycled in this process.

The volume of tin-recovery process water historically discharged from the detinning plant to the C&E outfall area (approximately 22,500 gallons per day) was negligible compared to the quantity of non-hazardous process water discharged to this outfall (approximately 60,000,000 gallons per day). Recovery of tin from tin scrap ceased in 1996, and tin sludge processing related discharges from the detinning plant to the C&E outfall ceased on February 7, 1997. The detinning plant was subsequently closed, and tin scrap and tin sludge are currently transported offsite for tin recovery and/or disposal.

Other non-process wastewater treated at the C&E outfall area wastewater treatment plant consists of onsite and Weirton City stormwater runoff collected from multiple upstream facilities and locations.

At the C&E outfall area, the lagoon was used for oil skimming and for settling of solids not removed in the upstream wastewater treatment plants described above.

The sludge itself consists primarily of inorganic solids generated as a result of steelmaking. The Ohio River is used as the source of process water for the steelmaking process, and much of the solids content in the wastewater is associated with the suspended and dissolved solids in the raw river water. Another substantial portion of the sludge can be attributed to the mill scale present in the wastewater. Oil and grease are also present in the sludge as a result of the use of various lubricants in the rolling and other steelmaking equipment.

The East Lagoon and the Figure 8 tanks are no longer used for wastewater treatment purposes. They were placed in service in 1974. From 1974 through 1990, the East Lagoon and an adjacent surface impoundment (the West Lagoon) were used for primary solids settling and oil skimming. In 1990, a 3.5 million gallon wastewater treatment plant was constructed upstream of the lagoons. After 1990, the lagoons were used for final polishing of wastewater prior to discharge through a permitted outfall.

Historically, the C&E sludge from the East Lagoon was dredged on a routine basis and placed in the Figure 8 tanks using either a clamshell bucket or a hydraulic dredge. Placement of the sludge in the Figure 8 tanks served to gravity thicken and dewater it prior to offsite disposal.

The East Lagoon and the Figure 8 tanks were removed from service on September 2, 1998.

B. What Information Did Weirton Submit To Support Its Petition?

In order to support its petition, Weirton submitted detailed descriptions of its manufacturing and wastewater treatment process, analytical results from representative samples of its wastewater treatment sludge collected by the United States Army Corps of Engineers (ACOE) for EPA during an investigation done in September 1996, analytical results from samples of the wastewater treatment sludge obtained by Weirton on September 8, 1996, and split samples analyzed by Weirton from the ACOE sampling investigation. We

requested and Weirton provided Material Safety Data Sheets (MSDS) for commercial products used in its process.

The ACOE analytical program obtained systematic and grab samples from the East Lagoon. Sludge samples were obtained from twenty-nine discrete locations in the East Lagoon. Nineteen samples were obtained from grid nodes. Five random samples were obtained from the shallow sludge layer. An additional five samples from the deep sludge layer were obtained from the center of the lagoon and the center of each lagoon quadrant.

All nineteen grid samples were analyzed for the twenty-three metals on the Target Analyte List (TAL) plus tin, total and amenable cyanide, total petroleum hydrocarbons (TPH) and pH. The Toxicity Characteristic Leaching Procedure (TCLP) was performed on the five grid samples that had the highest total metal content to determine leachable metals concentrations of the eight Toxicity Characteristic (TC) metals plus nickel and tin.

The five random samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH and pH. The TCLP was performed on three of the random samples to determine leachable metals concentrations of the TC metals plus nickel and tin.

The five deep samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH, volatile organic compounds, semivolatile organic compounds, pH and ignitability. The TCLP was performed on all five deep samples to determine leachable concentrations of the TC metals plus nickel and tin, and TC organics except for pesticides and herbicides.

After an initial review of the Weirton petition, we rejected the analytical results obtained by Weirton from the samples it collected on September 8, 1996, and from the samples it analyzed which were obtained as split samples during the ACOE investigation. We did this because the data had not been validated and, therefore, was of unknown quality.

We requested that Weirton supplement the data obtained during the ACOE investigation because high TPH values indicated the oil and grease content of the waste was greater that 1%. When oil and grease content is greater than 1%, we do not know if the leachate data for metal constituents obtained by performing SW–846 Method 1311, the Toxicity Characteristic Leaching Procedure (TCLP), will be representative of the mobility of these constituents in the environment. In this case, we requested that Weirton perform leachate analysis for metals using Method 1330A, the Extraction Procedure for Oily Wastes (OWEP).

Because of the number and variety of wastewater generating operations at Weirton, we felt there was the possibility that hazardous constituents other than those addressed in the ACOE data might be present in the waste. Therefore, we requested that Weirton provide analysis for the entire list of hazardous constituents found in Appendix IX to 40 CFR Part 264.

In addition, the quantitation levels for semivolatile organic compounds in the ACOE data were unacceptably high for risk-based decision making. Therefore, we requested that when doing the Appendix IX analysis, Weirton provide us with semivolatile organic compound data that had lower (more sensitive) quantitation levels.

On June 12 and 13, 2001, Weirton collected eight additional samples to supplement the ACOE data. Three shallow samples and three deep samples were collected in the East Lagoon. An additional sample was collected from each of the Figure 8 tanks.

These samples were analyzed for total Appendix IX volatiles, semi-volatiles, metals, cyanide and sulfide. Leachable concentrations of all constituents except cyanide and sulfide were determined by performing the TCLP for Appendix IX volatile and semivolatile organics, and the OWEP for metals. Analysis for Appendix IX polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs), polychlorinated biphenyls (PCBs), pesticides and herbicides was performed on four of these samples. These additional analyses were performed on two of the shallow samples and one deep sample from the East Lagoon, and one of the samples from the Figure 8 tanks.

Leachate analysis was not performed on any of the samples for cyanide. Therefore, in our evaluation of cyanide we have calculated the theoretical maximum leachate concentration by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP (a leaching procedure) followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (i.e., a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by twenty. This twenty-fold dilution is part of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual waste, the concentration of this constituent in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

During the supplemental sampling event on June 12 and 13, 2001, the WVDEP collected split samples and analyzed them using the TCLP for all TC constituents.

We also requested that Weirton supplement the data obtained during the ACOE investigation because of discrepancies in the results of the testing done for the characteristic of ignitability.

As mentioned above, the five deep samples from the ACOE sampling event were analyzed for ignitability. The results reported for these determinations showed that two of the five samples had a flash point greater than 150° F. The reported results for the other three samples showed a flash point of 62° F. As defined in 40 CFR 261.21, a liquid that has a flash point of less that 140° F, determined using one of the methods prescribed in that regulation, is an ignitable hazardous waste. The method used for these determinations was EPA Method 1010 (Pensky-Martens Closed-Cup Method for Determining Ignitability).

Weirton argues in its petition that the results of samples showing a flash point of 62° F were reported in error, and presents results of its own determinations to support this conclusion.

Furthermore, we note that a flash point determination is only applicable to liquids as a definitive test for determining the characteristic of ignitability. The C&E sludge is not a liquid. Weirton reports that the sludge is approximately 45% solids by weight. There is no promulgated definitive test for determining the ignitability of solids (*i.e.,* physically a solid with no free liquid). There is, however, a test method in EPA's compendium of test methods, ''Test Methods for Evaluating Solid Wastes,'' (SW–846) for Ignitability of Solids (Method 1030). Although not required by regulation, this method (a burning rate test procedure) may be used to evaluate that portion of the ignitability definition in 40 CFR

261.22(a)(2) that reads, '' * * * and, when ignited, burns so vigorously and persistently that it creates a hazard,'' for certain solids.

Also, we note that the Agency has issued guidance saying that if a solid flashes using some modification of the flash point test, this may indicate that there is a potential problem with the sample, such as contamination with ignitable volatiles, and further investigation may be in order. The flash point test may be used with other evidence to build a case for a waste being classified as an ignitable hazard.

On December 18, 2001, Weirton collected five additional samples to further demonstrate that the sludge is not ignitable. Weirton determined the flash point of these samples using Method 1010, and also analyzed the samples using Method 1030.

The results of this additional analysis demonstrated that the samples were not ignitable because of their flash point (all five samples had a flash point greater than 200° F), nor were they ignitable through application of the burning rate test.

We agree with Weirton's determination that the C&E sludge is not ignitable. The sludge consists primarily of mill scale, sediments from treating process water taken from the Ohio River, oil and grease from the use of lubricants in the rolling and processing of steel, and storm water. It would not be expected to have a significant volatile organic content.

We have reviewed the sampling and analysis procedures used by Weirton for the collection and analysis of these samples, and have determined that they are adequate for the generation of data that are acceptable for risk-evaluation purposes.

The maximum total and maximum leachate concentrations for all detected inorganic constituents in Weirton's waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Weirton or the ACOE using appropriate methods to analyze the waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WASTEWATER TREATMENT SLUDGE

Inorganic constituents	Total constituent concentration (mg/kg)	OWEP or TCLP leachate concentration (mg/l)
Antimony	2.2	<1.0
Arsenic	22.4	0.38
Barium	172	2.24
Beryllium	0.75	<0.05
Cadmium	6.3	0.0156
Chromium	276	0.382
Cobalt	38.4	0.3
Copper	243	0.15
Lead	217	0.23
Mercury	0.3	<0.001
Nickel	485	2.46
Selenium	5.4	0.3
Silver	6.2	0.01
Thallium	5.5	<0.2
Tin	7160	0.124
Vanadium	34.9	<0.5
Zinc	6010	12.2
Cyanide (total)	3.1	0.155 [2]

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
[2] This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.
< Denotes that the constituent was not detected at the concentration specified in the table.

The maximum total and maximum leachate concentrations for all detected organic constituents in Weirton's waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT [1] AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE

Organic constituents	Total constituent concentation (mg/kg)	TCLP leachate concentration (mg/l)
Acetone	0.62	0.056
Acetophenone	2	<0.05
Anthracene	1.4	<0.05
Benz(a)anthracene	1.9	<0.05
Benzene	<0.012	0.021
Benzo(a)pyrene	1.8	<0.05
Benzo(b)fluoranthene	1.2	<0.05
Bis(2-ethylhexyl)phthlate	1.8	0.18
Butylbenzylphthalate	1.7	<0.05
Carbon Disulfide	0.052	<0.05
Chrysene	4.3	<0.05
m-Cresol	<10	0.25
p-Cresol	<10	0.25
DDE	<0.05	0.000007

TABLE 2.—MAXIMUM TOTAL CONSTITUENT [1] AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE—Continued

Organic constituents	Total constituent concentation (mg/kg)	TCLP leachate concentration (mg/l)
DDT	0.079	0.00001
Endosulfan	0.13	0.000017
Endrin	0.242	<0.00006
Ethylbenzene	0.022	0.062
Fluoranthene	2.9	<0.05
Heptachlor	0.023	<0.00006
Heptachlor epoxide	0.014	<0.00006
Methyl chloride (chloromethane)	0.092	<0.1
Methyl ethyl ketone (2-butanone)	0.12	0.002
Methyl isobutyl ketone	0.38	<0.05
2-Methylnapthalene	2	<0.05
Phenanthrene	3.8	<0.05
Phenol	1	0.038
Pyrene	4.8	<0.05
2,3,7,8-TCDD [2]	0.00000766	0.00000000011
Toluene	2.4	0.46
Trichloroethylene	<0.012	0.035
Xylene	0.22	0.29

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
[2] For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).
< Denotes that the constituent was not detected at the concentration specified in the table.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (See 40 CFR 260.22(i)(12)). Weirton submitted signed certifications stating that all submitted information is true, accurate and complete.

III. EPA's Evaluation of the Petition

A. What Method Did EPA Use To Evaluate Risk?

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, and air) for hazardous constituents present in the petitioned waste. Because the Consent Decree requires that the sludge be removed from the units in which it currently resides and because of its physical form, we determined that disposal in a Subtitle D landfill was the most reasonable, worst-case disposal scenario for Weirton's petitioned waste. We then used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of, in order to evaluate the potential impact on human health and the environment. To perform this evaluation, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model for estimating groundwater releases. For a detailed description of the DRAS program and the EPACMPT model, See 65 FR 58015, September 27, 2000. Subsequent revisions to the DRAS program are described in 65 FR 75637 (December 4, 2000). The DRAS program is available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra__abc/pd-o/dras.htm.* The technical support document for the DRAS program is also available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm* as well as in the public docket for this proposed rule.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and insures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

In assessing potential risks to groundwater, we use the estimated waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

For constituents which are not detected in leachate analysis, the DRAS requires that the detection limit be entered along with the other data. In these circumstances, the DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed, if an appropriate analytical method was used.

Similarly, the DRAS also predicts possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to perform this assessment.

In most cases, because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict, and does not presently control, how a petitioner will

manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The back-calculation procedure contrasts with the method used to compute the cumulative risk for a one-time delisting petition. To determine cumulative risk, the calculations proceed in a forward direction. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks (risk) and noncarcinogenic hazards (hazard). The risk is said to be cumulative because risks and hazards are summed separately for receptors (resident adults and children) across all applicable waste constituents and exposure pathways to obtain an estimate of the total individual risk and hazard for each receptor. Risk is the probability that a receptor will develop cancer. Risk is estimated based on a unique set of exposure, model, and toxicity assumptions.

Hazard is defined as the potential for noncarcinogenic health effects as a result of exposure to constituents of concern, averaged over an exposure period of less than an entire lifetime. A hazard is not a probability but rather a measure (expressed as a ratio) of the magnitude of a receptor's potential exposure relative to a standard exposure level. The standard exposure level is calculated over an exposure period such that there is no likelihood of adverse health effects to potential receptors, including sensitive populations.

If a delisting evaluation is performed for a one-time exclusion, the DRAS computes the cumulative carcinogenic risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. The DRAS also computes the cumulative noncarcinogenic risk by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indexes (HIs), and then summing the HIs associated with each exposure pathway analyzed. For a one-time exclusion, the results of the cumulative risk assessment may be used in lieu of the calculated delisting levels. Since this is a one-time delisting, we do not need to establish monitoring concentrations for each batch of waste that is subsequently managed under the exclusion. Therefore, we set the evaluation levels in the cumulative risk process at the established target risk range (1×10^{-4} to 1×10^{-6} for carcinogenic waste constituents and a HI of 1.0 to 0.1 for noncarcinogenic waste constituents). Use of the cumulative risk analysis allows the risk associated with an individual waste constituent to extend to a less conservative risk level as long as the cumulative risk for the entire petitioned waste lies below or within EPA's target risk range.

For calculation of delisting levels for multi-year (batch) waste generation, EPA Region III generally defines acceptable risk levels as wastes with an excess cancer risk of no more than 1×10^{-6} and a hazard quotient of no more than 0.1 for individual constituents. For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than 1×10^{-4} and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

B. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (*e.g.,* a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst case assumptions, we believe that evidence of groundwater contamination originating from a land-based waste management unit may be sufficient basis for petition denial.

Pursuant to an administrative order issued by EPA, Weirton is currently conducting a RCRA Facility Investigation (RFI) at its site in conformance with a plan approved by EPA on July 20, 1999. This plan includes groundwater monitoring in the C&E outfall area (known as Corrective Action Area I for this purpose) for Target Analyte List metals, Target Compound List volatile and semivolatile organics, and total cyanide.

The groundwater monitoring network established for the investigation in this area was designed to monitor groundwater quality for the entire Corrective Action Area I, not just the East Lagoon. Corrective Action Area I includes several other solid waste management units in addition to the East Lagoon.

Nevertheless, one of the groundwater monitoring wells in the network is adjacent to the East Lagoon and is likely downgradient of the unit. Based on the results collected in the investigation so far, this well does not show elevated levels of contaminants, especially when compared to the upgradient well in the monitoring network.

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by Weirton provides a reasonable basis to grant Weirton's petition. We, therefore, propose to grant Weirton a one-time delisting for its C&E sludge currently residing in the East Lagoon and the Figure 8 tanks. The data submitted to support the petition and the Agency's evaluation show that the constituents in the Weirton C&E sludge are below health-based levels used by the Agency for delisting decision-making, and that the sludge does not exhibit any of the characteristics of a hazardous waste.

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Weirton's petitioned waste. We applied the DRAS described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of Weirton's petitioned waste on human health and the environment.

The estimated total cumulative risk posed by the waste, as calculated using the DRAS, is 7.5×10^{-5}. We believe that this risk is acceptable both because the value is within the generally acceptable range of 1×10^{-4} to 1×10^{-6} and, as stated above, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than 1×10^{-4} to be protective of human health.

The estimated cumulative hazard index for this waste is calculated by DRAS to be 9.8×10^{-2}. We likewise believe that this risk is acceptable both because the value is within the generally acceptable range of 1.0 to 0.1 and, for a one-time delisting, EPA Region III considers a cumulative

hazard index less than or equal to 1 to be protective of human health.

We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We, therefore, propose to grant Weirton's request for a one-time delisting for the C&E sludge currently residing in the East Lagoon and the Figure 8 tanks.

IV. Conditions for Exclusion

A. What Conditions Are Associated With This Exclusion?

The proposed exclusion would apply only to the estimated 18,000 cubic yards of C&E sludge currently contained in the East Lagoon and the Figure 8 tanks as described in Weirton's petition. Any volume of sludge exceeding this amount could not be managed as nonhazardous waste under this exclusion.

Furthermore, in order to insure that the sludge is removed from the units as required by the Consent Decree, and because the risk assessment was based on disposal in a landfill, this exclusion would be effective only when the sludge is removed from the units in which it currently resides. That is, if this proposed exclusion becomes final, the C&E sludge would remain a hazardous waste until it is removed from the East Lagoon and the Figure 8 tanks for transportation and subsequent disposal in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste.

If Weirton discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, Weirton will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that condition.

The purpose of this condition is to require Weirton to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, we will require that Weirton provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. Weirton will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

B. What Happens if Weirton Fails To Meet the Conditions of This Exclusion?

If Weirton violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, Weirton must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today making a tentative decision to grant Weirton's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 19, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Weirton Steel Corporation	Weirton, West Virginia	Wastewater treatment sludge (known as C&E sludge) containing EPA Hazardous Waste Numbers F007 and F008, subsequent to its excavation from the East Lagoon and the Figure 8 tanks for the purpose of transportation and disposal in a Subtitle D landfill after (insert publication date of the final rule). This is a one-time exclusion for 18,000 cubic yards of C&E sludge. (1) *Reopener language* (a) If Weirton discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then Weirton must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator and the West Virginia Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health or the environment. (2) *Notification Requirements* Weirton must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
*	*	* * * * *

[FR Doc. 02–4530 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. RSPA–02–11654 (HM–228)]

RIN 2137–AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA is considering changes to the requirements in the Hazardous Materials Regulations (HMR) on the transportation of hazardous materials by aircraft. These changes would modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. In addition, RSPA is denying a petition for rulemaking in this document.

This ANPRM invites public comments on how to accomplish these goals, provides an opportunity for comment on amendments that RSPA is considering, and provides a forum for the public to present additional ideas for improving the safe transportation of hazardous materials by aircraft.

DATES: *Written comments:* Comments must be received by May 31, 2002.

ADDRESSES: *Comments:* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should identify the docket number (RSPA–02–11654 (HM–228)) and submit your comments in two copies. If you want to confirm our receipt of your comments, you should include a self-addressed, stamped postcard. You may submit comments to RSPA by e-mail to: *rules@rspa.dot.gov* or you may submit comments to the DMS Web at: *http://dms.dot.gov.* The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif Building) at the above address. You may review public dockets there between the hours of 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also review comments on-line at the DOT Dockets

Management System web site at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or Michael Stevens of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The HMR (49 CFR Parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft (49 CFR 171.1(a)(1)). Parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains additional requirements applicable to aircraft operators transporting hazardous materials aboard an aircraft, and authorizes passengers and crew members to carry hazardous materials on board an aircraft under certain conditions. In addition, aircraft operators must comply with the training requirements in 14 CFR parts 121 or 135, as appropriate.

RSPA (''we'' or ''our'') and the Federal Aviation Administration (FAA) are reviewing Part 175 and other sections of the HMR applicable to transportation of hazardous materials by aircraft. This review will increase safety in the air transportation of hazardous materials by:

(1) Modifying or clarifying requirements to promote compliance and enforcement;

(2) Eliminating unnecessary current regulatory requirements;

(3) Adopting current exemptions and outstanding petitions for rulemaking;

(4) Facilitating international commerce; and

(5) Making the regulations easier to understand.

RSPA requests interested persons (''you'') to submit written comments concerning regulatory changes and clarifications to accomplish the goals set forth above. You should feel free to suggest any change to the HMR to improve safety in the transportation of hazardous materials by aircraft. You do not have to limit your comments to the specific sections of the HMR and issues discussed in this notice. You are encouraged to provide proposed language for changes to the current regulations, rationale and factual data to support your proposed changes, and any other suggestions to make the HMR easier to understand and promote compliance and enforcement. We organized this ANPRM by subject matter with questions at the end of each section. When responding to the questions at the end of each section, please refer to the section and number of the question.

While this ANPRM attempts to encompass a broad range of safety issues regarding hazardous materials transported by air, it is not our only rulemaking initiative addressing air transportation. Other rulemakings include:

(1) a final rule under Docket HM–215D, published on June 21, 2001 (66 FR 33315), which addressed miscellaneous changes in §§ 175.10, 175.33, and 173.150, and revised §§ 175.78 and 175.85 to further align those regulations with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods By Air (ICAO Technical Instructions);

(2) a NPRM under Docket HM–206C, published February 13, 2002 (67 FR 6669), in response to National Transportation Safety Board (NTSB) recommendation A–98–80, which recommends air carriers transporting hazardous materials to have the means to quickly retrieve and provide information about the identity of each shipment of hazardous material on an airplane;

(3) an NPRM under Docket HM–226, published January 22, 2001 (66 FR 6942), which proposes to revise the classification criteria and packaging requirements for infectious substances consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the ICAO Technical Instructions;

(4) a rulemaking to be initiated under Docket HM–224B, which is evaluating the packaging requirements for oxygen cylinders aboard aircraft (see the discussion in the preamble to our August 19, 1999 final rule under Docket HM–224A (64 FR 45391–93)); and

(5) a rulemaking to be initiated under Docket HM–224C, to revise the requirements of the HMR applicable to lithium batteries (see our advisory notice published September 7, 2000 (65 FR 54366)).

This rulemaking will not propose any security related changes to the HMR. As a result of the terrorist incidents of September 11, 2001, and subsequent threats related to biological materials, we are reviewing the HMR to determine if additional requirements are necessary to assure the security of hazardous materials in transportation. We initiated a rulemaking project to address security issues related to the transportation of hazardous materials by all modes. We are examining hazard communication, shipping documentation, training, and other requirements to determine if rulemaking action is necessary.

II. Communication of Requirements to Airline Passengers and Shippers (Signage)

A. Discussion

Reducing the incidence of undeclared hazardous materials aboard aircraft is one of our highest priorities. We believe a lack of awareness of the risks posed by hazardous materials and their applicable regulatory requirements is a major factor in undeclared hazardous material shipments by air. RSPA and FAA are working with the Air Transport Association and others, on non-regulatory initiatives to increase public awareness through outreach and education efforts. Methods for detection of undeclared hazardous materials and ways to better assess the extent of the problem, are also of interest to us.

RSPA and FAA also are considering other measures. A requirement to verbally question passengers and shippers on whether their baggage or packages contain hazardous materials is one possibility. Another potential solution suggested by the NTSB in its Recommendation A–98–71, may be to require a shipper to provide written responses on shipping papers to inquiries about hazardous characteristics of the shipment. Blocks on shipping documents to check whether or not the package contains hazardous materials or requiring shipper certification when a new or unknown shipper is involved, may be alternative ways to accomplish basic objectives.

The HMR currently require notices to be posted at air passenger and cargo facilities and where cargo is accepted. The notices contain specific language warning passengers and offerors of cargo of the requirements applicable to carrying or offering hazardous materials and the penalties for failure to comply with those requirements. Section 175.25 requires aircraft operators to display notices warning passengers against carrying undeclared hazardous materials aboard aircraft in either their checked or carry-on luggage or on their persons, and prescribes the information to be contained in each notice. Section 175.26 requires each person who engages in the acceptance of, or the transportation of, cargo by aircraft, to

display notices in prominent locations at each facility where cargo is accepted. These notices are intended to inform their customers of what a hazardous material is, the requirement to comply with the HMR, and the penalties for failure to comply with the HMR. Therefore, signs must be in prominent view of passengers and persons who accept or offer cargo. Sections 175.25 and 175.26 also list the minimum information that must be contained on the notice.

In some cases, cargo terminals are co-located with passenger terminals. To make it easier for the industry to comply with signage requirements, FAA and RSPA stated in a final rule published September 27, 1993 (58 FR 50496) that display of separate passenger and cargo notices is not required at these passenger terminals. Notices are not required to be displayed at unattended locations if there is a general notice prominently displayed advising customers that shipments of hazardous materials at that location are prohibited. In addition, notices are not required to be displayed at a shipper's facility where packages of hazardous materials are accepted. However, we note there are differences in the information provided on the two notifications, and we are considering eliminating these differences. In a final rule published July 10, 1998 (63 FR 37454), we revised §§ 175.25 and 175.26 to reflect changes in the statutory citations and penalties, and to provide carriers greater flexibility.

Internationally, the ICAO Technical Instructions require each operator to warn passengers of the types of goods they are prohibited from transporting aboard aircraft. However, the ICAO Technical Instructions do not specify the wording or information to be provided in the warning. However, ICAO Technical Instruction Part 7;5.1 does require each operator to ensure the information is promulgated in such a manner to alert its passengers. The information must accompany the passenger ticket; and be sufficient in number and ''prominently displayed'' at each of the places in an airport where tickets are issued, passengers and baggage check in, aircraft boarding areas are maintained, and at any other location where passengers may check in. In addition, the ICAO Technical Instructions require operators to ensure that notices sufficient in number and prominence are displayed in baggage claim areas.

Some packaging, shipping and freight forwarding facilities erroneously believe they are not subject to the requirements of § 175.26. These entities believe they are not subject to Part 175, and specifically § 175.26, because they are not air carriers (See discussion in Part IV. A.). The HMR require each person who engages in accepting or transporting packages for transportation by air to display notification signs. Packaging, shipping and freight forwarding facilities are not excepted from § 175.26(d), because they are performing carrier functions when they accept packages on a carrier's behalf. Therefore, such entities must comply with the signage requirements of § 175.26.

We are considering the need to clarify the term, ''prominently displayed.'' In addition, we are considering clarifying the applicability of § 175.26 to packaging, shipping and freight forwarding facilities.

B. Questions

1. What do you estimate to be the frequency of undeclared hazardous materials shipments by air and what can be done to improve the accuracy of these estimates?

2. What can carriers or the government do to better detect undeclared hazardous materials shipments by air?

3. What are the best approaches (regulatory and non-regulatory) to reducing undeclared hazardous materials shipments by air?

4. What other alternatives should be considered to ensure requirements for shipping hazardous materials by air are understood and followed?

5. What benefits and burdens would result from requirements to verbally question passengers and shippers as to whether their baggage or packages contain hazardous materials?

6. What benefits and burdens would result from requiring shippers to provide written responses on shipping papers to inquiries about hazardous characteristics of the shipment?

7. How can signage be improved?

8. Are existing signage requirements effective in communicating to passengers and shippers the types of hazardous materials they are prohibited from carrying aboard aircraft in carry-on or checked luggage or as cargo?

9. Should we allow the use of warning signs required by ICAO Technical Instructions in lieu of the requirements of §§ 175.25 and 175.26?

10. Do the terms ''prominent location'' or ''prominently displayed,'' need to be clarified?

11. Is there a need to change the requirements in §§ 175.25 and 175.26 to maximize the effectiveness of signs and posters? Is there a better way to design signs to increase the likelihood that passengers and shippers will notice and understand requirements?

12. Do packaging, shipping and freight forwarding facilities understand that, if they accept packages as cargo for transportation by aircraft, which would meet the definition of an ''air carrier'' under 49 U.S.C. 40102, they must comply with the signage requirements of Section 175.26? If not, how can this be clarified?

13. Do we need to clarify or revise the location requirements for display of the signs?

III. ICAO Technical Instructions

A. Discussion

The ICAO Technical Instructions are based on the UN Recommendations and prescribe requirements applicable to the international transport of dangerous goods by air, including classification and packaging of hazardous materials, communication of their hazards, training of employees, and segregation and separation of materials. Section 171.11 of the HMR permits a person to offer and transport hazardous materials in accordance with the provisions of the ICAO Technical Instructions as an alternative to the applicable provisions of the HMR (parts 172 and 173 for classification, hazard communication, and packaging). Section 171.11 permits the use of ICAO Technical Instructions for international and domestic transportation, where at least one leg of transportation is by air.

However, the provisions of § 171.11 do not constitute a total alternative to compliance with the HMR. We are concerned about the lack of awareness that the other regulatory requirements continue to apply, such as those in part 175 of the HMR or the training requirements in 14 CFR. Shipments made in accordance with the ICAO Technical Instructions also remain subject to the emergency response provisions of subpart G of part 172 (Section 171.11(d)(10)). This requirement is restated in State Variation US12 to the ICAO Technical Instructions. Although the ICAO Technical Instructions contain a requirement for emergency response information, it is not detailed in respect to the type of emergency response information required. The ICAO Technical Instructions now satisfy the requirements of subpart G of part 172, with the exception of the requirement for a 24-hour emergency telephone number.

We are considering clarifying what requirements of the HMR apply to a shipment transported under the ICAO Technical Instructions, and updating

the conditions allowing for use of the ICAO Technical Instructions specified in § 171.11(d).

B. Questions

1. Do shippers understand that a shipment made under the ICAO Technical Instructions still must comply with other regulatory requirements, such as part 175 of the HMR and the training requirements in 14 CFR?

2. Should shippers and carriers of hazardous materials be allowed to use the provisions of the ICAO Technical Instructions other than those for packing, marking, labeling, classification, and description, such as Operator Responsibilities and Unloading and Storage provisions?

3. Do any of the conditions in § 171.11(d) on the use of the ICAO Technical Instructions need to be revised or removed? Should any other conditions be added?

4. Are there ways to improve consistency between the ICAO requirements and corresponding requirements in the HMR?

IV. Storage Requirements and Limitations and Docket HM–192

A. Storage Requirements and Limitations

Sections 175.75 and 175.85 prescribe limitations on the quantity of hazardous materials that may be carried aboard passenger-carrying or cargo-only aircraft, and the location of those materials, respectively. The quantity limitations for hazardous materials permitted aboard passenger-carrying aircraft are specified in § 175.75(a)(2). This section states that no more than 25 kg of hazardous materials and, in addition, 75 kg net weight of Division 2.2 (non-flammable compressed gas) may be carried aboard a passenger-carrying or cargo-only aircraft:

(1) In an accessible cargo compartment;

(2) In any freight container within an accessible cargo compartment; or

(3) In any accessible cargo compartment of a cargo-only aircraft if the hazardous materials are loaded as to be inaccessible unless in a freight container.

Class 9 materials and consumer commodities are excepted from the quantity limitations of § 175.75(a)(2). Section 175.85(b) requires hazardous materials packages acceptable for cargo-aircraft only, to be loaded in a manner that allows access to the package by crew members.

Section 175.85(a) prohibits the carriage of a hazardous material in the passenger cabin or on the flight deck of any aircraft, and specifies conditions under which hazardous materials may be carried on main-deck cargo compartments. Section 175.85(c)(1)(i) through (v) provides exceptions for cargo-only operations from the quantity limitations of § 175.75(a)(2), and accessibility requirements of § 175.85(b) for those hazardous materials listed. Section 175.85(c)(2) provides exceptions, when other means of transportation are impracticable, to the accessibility requirement of § 175.85(b) and the quantity limitation requirements of § 175.75(a)(2) for hazardous materials acceptable by both cargo-only and passenger-carrying aircraft. These exceptions require that packages are carried in accordance with procedures approved in writing by the nearest FAA Civil Aviation Security Field Office (CASFO). Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT) specify limitations on individual package quantities, or list packages that are forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages.

Sections 175.85(c)(3)(i) through (iii) provide exceptions for small, single-pilot cargo-only aircraft from the accessibility requirements of § 175.85(b) and the quantity limits of § 175.75. These exceptions may be invoked when small aircraft are the only means of transporting hazardous materials to a particular destination. This applies to airports and locations incapable of supporting larger aircraft operations, where the only means of access is by smaller aircraft. The provisions of § 175.85(c)(3) do not require approval by the FAA.

Sections 175.310 and 175.320 provide exceptions from the quantity limitations in §§ 175.75 and 172.101, when certain conditions are met. Section 175.310 provides an aircraft may carry up to 20 gallons of flammable liquid if: (1) air transportation is the ''only practical means'' of providing suitable fuel; (2) the flight is necessary to meet the needs of a passenger; and (3) fuel is carried in metal containers, as specified in this section. Section 175.320 authorizes the transportation of certain hazardous materials by cargo-only aircraft in inaccessible cargo locations when means of transportation other than air are impracticable or not available (i.e., air transport is the only means of transportation) subject to the conditions specified in § 175.320.

We believe the language of §§ 175.75, 175.85 and §§ 175.310, 175.320 contain overlapping requirements and makes these sections difficult to understand. We base this on the number of inquiries we receive requesting clarification of these regulations. Both § 175.75 and § 175.85 refer to quantities, accessibility and cargo location. Both also refer to exceptions for certain hazardous materials. For example, § 175.85 excepts certain Division 6.1 and 6.2; certain Class 3, 7, 9; and consumer commodities from the quantity limitations of § 175.75. Further, §§ 175.75 and 175.85 do not provide restrictions on the amount of Class 9 materials and hazardous materials reclassed as consumer commodities, loaded onto an aircraft. We believe these exceptions should be reevaluated relative to potential risks to safety.

In a letter issued to FAA on December 27, 2000, RSPA stated, for the purpose of § 175.85, ''impracticable'' means transportation is not physically possible or cannot be performed by routine and frequent means of other transportation, due to extenuating circumstances. Extenuating circumstances include: conditions precluding highway or water transportation, such as a frozen vessel route; road closures due to catastrophic weather or volcanic activity; or a declared state of emergency. Other means of transportation also would be ''impracticable,'' if special characteristics of the material being shipped would render it useless upon arrival if transported by means other than aircraft. For example, time sensitive radio pharmaceuticals or hazardous materials required in response to an emergency. However, the desire for expedience of a shipper, carrier, or consignor, is not relevant in determining whether other means of transportation are impracticable.

With regard to the issues presented in this section, we are considering the following changes to the HMR regarding package storage requirements and limitations:

1. Combining §§ 175.75 and 175.85 for purposes of clarity.

2. Eliminating the exception in § 175.75(b) for consumer commodities and Class 9 materials.

3. Adding a definition for the term ''impracticable.''

4. Adding a footnote to Column 9A and 9B of the HMT to clarify that there are additional requirements for materials transported by aircraft contained in § 173.27 and Part 175.

B. Docket HM–192

On April 6, 1983, we published an ANPRM under Docket HM–192 (49 FR 13717) in response to a petition filed by Japan Air Lines Company LTD (JAL) (P–903). The petition requested removal of the quantity limitations in § 175.75. JAL asserted that the quantity limitation in

§ 175.75 was arbitrary, unjustifiable and inconsistent with other provisions of Part 175 and the ICAO Technical Instructions. The petition noted that: (1) HMR allow an unlimited quantity of hazardous materials to be carried in accessible cargo compartments; (2) the § 175.75 limitation applies only to passenger-carrying aircraft, not to cargo-only aircraft; and (3) the ICAO Technical Instructions do not contain a per-aircraft limitation. JAL stated it was unaware of any incidents attributable to the transportation of quantities of hazardous materials in excess of the limitation prescribed in § 175.75(a)(2). Further, JAL believes that the current lack of uniformity between U.S. regulations and ICAO Technical Instructions may increase dangers as a result of additional handling, (e.g., off-loading and re-loading) at an en route station prior to departure to the U.S.

In response to the ANPRM, we received 28 written comments. Additionally, eight persons made oral presentations at a public meeting held on May 30, 1985 (See 50 FR 6013). At least one advocate for the removal of § 175.75(a)(2) recommended issuance of an interim final rule for a trial period of one year. The proposed interim rule would revise the quantity limit in § 175.75(a)(2) from 25 kg (55 pounds) to 135 kg (300 pounds), and from 75 kg (165 pounds) to 225 kg (500 pounds) for non-flammable compressed gas. The determination to implement a final rule would be based on the results of the interim final rule. JAL stated § 175.75(a)(2) should be removed because the 25 kg (55 pounds) limit is rendered obsolete by advances in aviation technology and improvements in procedures for packaging dangerous goods.

Persons opposed to the removal of the 25 kg (55 pounds) limitation asserted that the relaxation of the hazardous materials standards would be ill-advised and would compromise the safety of flight crews and passengers. Some opposing commenters believe more study is required before this quantity limitation is removed for passenger carrying aircraft. Some commenters believe there are serious deficiencies in cargo compartment fire containment capabilities, and it is the wrong time to remove any quantity limitations.

On March 18, 1996, the Air Freight Association (AFA) filed a petition for rulemaking (P–1310) requesting amendments to the quantity limitations requirement of § 175.75. AFA stated that limitations on the quantities of hazardous materials on aircraft should be determined by the nature of service for which each aircraft is intended. AFA suggested that limited quantities regulations are permitted to apply to a wider range of materials than originally intended. AFA cited the evolving nature of the small package delivery process. Specifically, AFA referred to the time constraints dictated by customers' need to have packages delivered next-day, second-day, etc. AFA believes the need to monitor loading limits causes its members to inefficiently load packages into unit load devices (ULD), and the time-sensitive nature of next-day or second-day delivery processes are adversely impacted by assuring the quantity limitations requirements are met. In its petition, AFA stated that exemption DOT E–11110, is adequate proof that the removal of the quantity limitations for cargo-only aircraft operations causes no adverse impact on safety. Exemption DOT E–11110 authorizes the transportation of certain hazardous materials in combination packages in quantities that exceed those authorized by § 175.75(a)(2). These hazardous materials include Division 1.4 Compatibility Group S; Class 3 Packing Group III (that do not meet any other hazard class); Division 6.1 PG III; and Class 8 PG III (that do not meet any other hazard class). However, P–1310 also requests the inclusion of packages of hazardous materials in Division 2.2 (non-flammable, non-poisonous compressed gas) and Class 3 PG II to the exception. Based upon the rationale presented, we do not believe that the claims made and the evidence cited by the petitioners, provide an adequate basis for removal of the quantity limitations of § 175.75. We are unaware of the existence of any data suggesting that an increase in the amount of hazardous materials carried in inaccessible cargo compartments will not increase the risk of an incident involving hazardous materials, nor place passengers aboard aircraft at higher risk for injury. We also do not believe that the evolution of the package delivery process demonstrates the ability of the process to provide the same levels of safety sought by regulation, for all hazardous materials. Further, we do not believe an ''inefficiency'' to the loading process in and of itself, is a sufficient reason to relax safety regulation. In fact, loading processes vary from operator to operator. This includes the amounts, if any, of hazardous materials carried and the location of where the materials are loaded on the aircraft. Finally, we believe continued regulation for certain hazardous materials is warranted at this time. Therefore, we are denying P–903 and P–1310, and closing Docket HM–192.

C. Questions

1. Would footnotes to Column 9A and 9B of the HMT to reference § 173.27 and Part 175 be helpful?
2. Should §§ 173.27, 175.75, or 173.85 be amended to include cross-references to quantity limitations in other sections?
3. Would combining §§ 175.75 and 175.85 simplify and/or clarify these regulations?
4. Does compartment accessability versus inaccessibility affect air safety and/or commerce?
5. Should the exception allowing unlimited amounts of consumer commodities and Class 9 materials to be loaded on both passenger and cargo-only aircraft be modified or eliminated?
6. Should DOT Exemption E–11110 (or any of the provisions contained within it) be incorporated into the HMR? Would incorporating this exemption adversely affect safety?
7. Is RSPA's definition of the term ''impracticable'' feasible? Should it be revised and/or added to the HMR?
8. Should we remove or revise any approval provisions in part 175? Should we add new approval procedures to part 175?

V. Other Requirements in Part 175

A. Scope and Applicability

1. Discussion

Section 175.1 states that part 175 prescribes requirements for aircraft operators transporting hazardous materials aboard aircraft that are in addition to those contained in parts 171, 172, and 173. Section 175.5 states that part 175 applies to the acceptance for transportation, loading and transportation of hazardous materials in any aircraft in the United States, and in aircraft of United States registry anywhere in air commerce. Section 175.5 also provides exceptions from the requirements of the HMR for those aircraft under the direct, exclusive control of a government and not used for commercial purposes.

We believe there is some confusion over the applicability of part 175 to persons who are not air carriers, such as freight forwarders. Although the language of § 175.1 refers to aircraft operators, part 175 also applies to persons who are not direct air carriers but perform the same functions. Such persons include: persons who accept packages for air commerce; ground handling crews; contracted employees; air freight forwarders; and subsidiary companies formed by aircraft operators that perform pallet building and handle,

load, and unload hazardous materials in air commerce. (Note: Additional discussion on the applicability of the HMR to airline passengers is contained in Section V.D. of this preamble.)

The exceptions provided in § 175.5 do not apply to commercial aircraft operators who supply contractual services to a government, because the government does not have exclusive control of the aircraft in flight. These exceptions are for those aircraft under the direct exclusive control of a government, and not a private carrier working under a government contract. Exclusive direction and control consists of both administrative and physical control.

We are considering revising § 175.1 to clarify that persons who are not direct air carriers but perform air carrier functions, are subject to part 175. We are also considering revising the applicability of the HMR to air carriers under exclusive control of a government.

2. Questions

1. Should § 175.1 be rewritten to clarify the applicability to persons who are not direct air carriers but perform air carrier functions (*e.g.,* indirect air carriers)?

2. Are there conditions relating to the control of an aircraft by a government, that need to be clarified or addressed?

B. Inspection and Acceptance of Packages/Shipments

1. Discussion

A number of requirements in part 175 contain provisions for inspecting and accepting shipments of hazardous materials transported by aircraft. Section 175.3 prohibits aircraft operators from accepting hazardous materials not prepared for shipment in accordance with the HMR. Section 175.30, states no person may carry a hazardous material aboard an aircraft unless the package is inspected by the aircraft operator to ensure that the integrity of the package has not been compromised. Section 175.88 prohibits a ULD from being placed on an aircraft unless the device is inspected and found to be free from evidence of leakage from, or damage to, any package containing hazardous materials. Section 175.90 requires packages and overpacks containing hazardous materials to be inspected after unloading from aircraft, to assure no damage or leakage has occurred during flight. When packages or overpacks containing hazardous materials are carried in a ULD, an immediate inspection of the location where the ULD was stored on the aircraft is required to detect any evidence of leakage or contamination. Packages or overpacks containing hazardous materials carried in a ULD must also be inspected for damage or leakage when unloaded from a ULD.

We issued a formal interpretation on the acceptance of hazardous materials on June 4, 1998 (63 FR 30411). We stated a carrier's acceptance and transportation of hazardous materials can involve several different situations. For example, in some manner a shipment could be declared by the offeror to contain hazardous materials, and should comply with requirements of the HMR. Conversely, an ''undeclared'' or ''hidden'' shipment is a shipment of hazardous materials that, intentionally or unintentionally, is not declared by the offeror to contain hazardous materials and there is no attempt to comply with the HMR.

The importance of responsibly accepting hazardous materials is highlighted by the requirement under 49 U.S.C. 5123 to assess a civil penalty against any person who ''knowingly violates'' any requirement in the HMR, including the provisions of § 175.30. Section 5123(a) provides that a person ''acts knowingly'' when (A) the person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. A carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material not properly packaged, marked, labeled, or described on a shipping paper as required by the HMR. This means a carrier may not ignore readily apparent facts indicating that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

Internationally, part 7 of the ICAO Technical Instructions contains hazardous materials acceptance procedures for aircraft operators. ICAO Part 7;1.3 requires operators to develop and use a checklist that includes all reasonable steps to assure packages are properly prepared for transportation by aircraft, and all regulatory requirements have been satisfied.

Because § 175.3 appears to overlap with the provisions of § 171.2(a) and (b), we are considering eliminating § 175.3. We are also considering whether the provisions of § 175.30 provide adequate guidance for accepting packages of hazardous materials, and for air carriers to identify shipments of undeclared hazardous materials. In place of these provisions, we are determining whether a checklist similar to the one used in the ICAO Technical Instructions would be helpful in assuring packages of hazardous materials are in compliance with applicable regulations prior to being accepted. Finally, based on the detailed requirements of § 175.90, we are considering merging the pre-flight ULD inspection requirements of § 175.88 into the post-flight inspection requirements of § 175.90.

2. Questions

1. Are the requirements of § 175.3 already addressed by § 171.2? If so, should these requirements be removed from § 175.3?

2. Are there additional issues regarding accepting or inspecting packages that are not addressed by § 175.30?

3. As outlined in the formal interpretation we issued on June 4, 1998 on the acceptance of hazardous materials, the acceptance requirements of § 175.30 are not limited to declared hazardous materials packages. Are the requirements of § 175.30 sufficiently clear or should we revise the section?

4. Should we adopt a checklist similar to the one used in the ICAO Technical Instructions to enable operators to assure packages of hazardous materials are in compliance with applicable regulations? Would such a checklist help operators to identify undeclared hazardous materials? If adopted, when should the checklist be completed?

5. Should we merge the pre-flight ULD inspection requirements of § 175.88 with the post-flight inspection requirements of § 175.90?

C. Discrepancy Reporting

1. Discussion

Section 175.31 requires a person who discovers a discrepancy after acceptance of a package of hazardous materials (as defined by § 175.31(b)) to notify the nearest FAA Civil Aviation Security Field Office (CASFO) by telephone ''as soon as practicable,'' and provide certain information. This requirement permits early investigation and intervention to determine the cause for failure to either properly declare or prepare a hazardous materials shipment. A May 27, 1980, final rule under Docket HM–168 (45 FR 35329), adopted requirements in 49 CFR 175.31 for reporting discrepancies. In the preamble to the final rule, we stated:

A shipment containing a hazardous material must be offered to the carrier in accordance with the regulations. An offering occurs when (1) the package is presented, (2) the shipping paper is presented, (3) the certification is executed, and (4) the transfer of the package and shipping paper is completed with no further exchange (written or verbal) between the shipper and aircraft operator, as usually evidenced by the departure of the shipper. At this point, it is clear that the operator has accepted the shipment and the shipper has removed himself from a final opportunity to take corrective action that would preclude a violation of the HMR relative to transportation of hazardous materials aboard aircraft . . . the requirement which has been adopted [in this final rule] limits required reporting to shipment discrepancies which are discovered [subsequent to] acceptance of the shipment for transportation and limits ''reportable'' discrepancies to those discrepancies which are not detectable as a result of proper examination by a person accepting shipment under the acceptance criteria of § 175.30. This notification requirement will facilitate the timely investigation by FAA personnel of shipment discrepancies involving situations where inside containers do not meet prescribed packaging or quantity limitation requirements and where packages or baggage are found to contain hazardous materials after having been offered and accepted as other than hazardous materials.

Internationally, ICAO Technical Instructions part 7;4.5 contains provisions under which operators must report undeclared or misdeclared dangerous goods found in cargo, or dangerous goods not permitted to be carried by passengers, found in baggage. This report must be given to the appropriate authorities in the country in which the incident occurs.

We adopted the reporting requirement of § 175.31 with the intent to allow time to investigate those persons offering undeclared shipments. We note that the reporting requirement in § 175.31(a) is limited in § 175.31(b) to those discrepancies involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted under the provisions of § 175.30(a). There is no requirement for a carrier to report discrepancies that are ascertainable under the acceptance and inspection requirements of § 175.30(a). However, many of the ''discrepancies'' reported by carriers fall into this latter category. We are considering the need for guidelines to help discern discrepancies from violations.

2. Questions

1. Should we require discrepancies to be reported immediately so packages are still available for inspection? Should the term in § 175.31, ''as soon as practicable'' be further clarified? Would a time limit established in hours be a good alternative?

2. Should a formalized amnesty feature be considered for those who report discrepancies?

3. Should the requirement to report discrepancies be clarified as they apply to indirect air carriers and other shipping facilities after acceptance of cargo?

D. Exceptions

1. Company Materials

Section 175.10(a)(2) excepts from the HMR certain hazardous materials required to be aboard an aircraft in accordance with applicable airworthiness requirements and operating instructions. However, items of replacement for such materials and other company materials (COMAT) of an airline that are hazardous materials must be properly classed, described, marked, labeled, packaged, handled, stored, and secured in accordance with the HMR (Note: We published an advisory notice on COMAT on December 13, 1996 (61 FR 65479)).

The HMR provide the following limited exceptions for COMAT: (1) Items of replacement for installed equipment containing hazardous materials are excepted from the packaging requirements of the HMR if they are contained in specialized packaging providing at least an equivalent level of protection of required packaging; (2) aircraft batteries are excepted from the quantity limitations in §§ 172.101 and 175.75(a); and (3) an aircraft tire assembly is not subject to the HMR if it is not inflated to a gauge pressure exceeding the maximum rated pressure for the tire. Other materials such as paint, chemicals for corrosion removal, automotive batteries, wastes, and engine-powered ground equipment containing fuels do not qualify for this limited relief.

In some cases, items of replacement for installed equipment containing hazardous materials or for hazardous materials carried to meet airworthiness requirements, are owned by one air carrier but are transported by another air carrier as part of a ''parts pooling agreement.'' The COMAT exceptions in § 175.10 do not apply to transportation of another air carrier's materials. The purpose of the exceptions in § 175.10(a)(2) is based on the knowledge of an air carrier to handle and package materials specific to the owner's operational use. Therefore, transportation of another air carrier's materials must be conducted in full compliance with the HMR. We are considering the need to clarify that this exception only applies to the transportation of an airline's own material.

2. Passengers and Crew

Section 175.10 also provides limited exceptions for the transportation of certain personal items of passengers or crew members that are hazardous materials, such as toiletries, alcoholic beverages, and medicinal items. We are examining these exceptions to determine if any of them should be removed and if additional exceptions should be provided. We understand some persons are not aware that the HMR apply to aircraft passengers who are carrying hazardous materials on their person or in checked or carry-on baggage. For example, we are aware of situations where passengers with certain medical conditions must transport as carry-on baggage personal monitors and devices such as apnea and heart monitors, nebulizers, and nerve stimulators. These items would qualify as hazardous materials for purposes of the HMR. Therefore, we are considering clarifying the applicability of the HMR to aircraft passengers carrying hazardous materials and are considering moving the passenger exceptions to part 173. We request comments on the need for any additional exceptions and whether any of the existing exceptions should be removed or revised. We are also considering removing exceptions applicable to disabled persons with medical conditions from § 175.10 and placing them in a new section.

3. Special Operations

Section 175.10 also provides limited exceptions for the transportation of certain hazardous materials for special aircraft operations, such as avalanche control flights, aerial applications, and sport parachute jumping. We received a petition (P–846) to add an exception to § 175.10 for hazardous materials that are loaded onto and carried in an aircraft for the purpose of emergency response situations where a loss of life or property is imminent. These materials would include items such as self-contained breathing apparatus or other related emergency equipment necessary for each situation. The exception would provide an exception for hazardous materials transported for the purpose of emergency response from the subchapter. The exception would apply to materials in authorized packaging. Each operator transporting the materials would keep current a manual of operational guidelines and handling procedures, and the aircraft could only transport crew members, emergency

response personnel, FAA inspectors, or persons essential to handling the hazardous materials. We are considering adopting this proposal into the HMR. A copy of the petition is available for review in the public docket.

4. Questions

1. Should we reorganize § 175.10 into three section applicable to: (1) Passengers and crewmembers; (2) COMAT; and (3) special operations?

2. Should we remove the exceptions applicable to persons with medical conditions from § 175.10 and place them in a new section? Should we move these exceptions, in particular the exceptions for passengers and crew, to another part of the HMR? If so, what part?

3. Is it understood that the COMAT exception contained in § 175.10 does not apply to transportation of another air carrier's material? Should the COMAT exception apply only to the transportation of those materials intended for an aircraft-on-ground (AOG)?

4. Is clarification of the applicability of the HMR to passengers necessary? Is there a more effective way of communicating the applicable passenger provisions of this section, such as moving the exceptions to Part 173? Should we define the term ''passenger'' in § 171.8?

5. Should we provide additional exceptions in § 175.10, such as those for personal monitors and devices such as apnea and heart monitors, nebulizers and nerve stimulators? Should we remove or modify any of these exceptions?

6. Should we except hazardous materials necessary for emergency response situations where there is the possibility of imminent loss of life or property from the requirements of the HMR? What effect would this have on air safety?

7. Should we make changes as to which provisions require FAA approval?

E. Training Requirements

1. Discussion

Section 175.20 requires aircraft operators to comply with all applicable requirements in parts 106, 171, 172, and 175. In addition, hazmat employers must ensure all hazmat employees receive training in accordance with part 172. Initial training under the HMR must be conducted within 90 days after employment begins or a change in the employee's job function. Recurrent training must be conducted every three years. Section 175.20 also refers to the training requirements of the FAA under 14 CFR §§ 121.135, 121.401, 121.433a, 135.323, 135.327, and 135.333, which additionally address training for air carriers.

A ''hazmat employee'' is defined in § 171.8 to include ''all persons who in the course of employment perform functions that directly affect hazardous materials transportation safety.'' This does not include every person who works around an area where, for example, hazardous materials are loaded, unloaded, handled, and stored. The employee's functional relationship to hazardous materials transportation safety, rather than incidental contact with hazardous materials in the workplace, is the primary factor in determining whether an individual is a ''hazmat employee.''

We believe there is confusion over who is a hazmat employee and, must therefore receive hazmat training. An employee of (or an employee of a contractor for) an airline who performs security functions related to hazardous materials is a hazmat employee and must receive the training required by 49 CFR part 172 and by 14 CFR parts 121 and 135. Such security functions could include: loading cargo onto pallets and x-ray machines; opening cargo for inspection; and transporting cargo that may include hazardous materials. An employee of an airline, including an employee of a contractor, who is not responsible for performing any function addressed by the HMR is not considered to be a ''hazmat employee'' and is not subject to the training requirements of the HMR. We are considering the need to revise § 175.20 to clarify training requirements for certain air carrier personnel.

2. Questions

1. Are the requirements for training applicable to aircraft operators and hazmat employees clear and easy to understand?

2. Should we clarify that persons responsible for screening for unacceptable hazardous materials must be trained?

3. Should we require baggage handling, sorting, security, and other carrier personnel to receive training to help them to identify undeclared hazardous materials in cargo?

4. Do aircraft operators understand what training requirements apply to their personnel (*e.g.,* 49 CFR versus 14 CFR)?

F. Carriage of Radioactive Material Aboard Aircraft

1. Discussion

Section 5114 of the federal hazardous materials transportation law addresses ionizing radiation material transportation. It states that the material may be transported on a passenger-carrying aircraft in air commerce, only if the material is intended for use in, or incident to, research or medical diagnosis or treatment; and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation. Section 175.700 of the HMR prohibits, in addition to other requirements, any person from carrying in a passenger-carrying aircraft any package required to be labeled in accordance with § 172.403 of the HMR with a Radioactive Yellow II or III label, unless certain provisions are met. In addition, § 175.700(c) states that (except for limited quantities) no person shall carry any class 7 material aboard a passenger-carrying aircraft unless that material is intended for use in research, medical diagnosis, or treatment.

It appears some persons have misused the definition of research to avoid these restrictions. We do not consider research to include the application of existing technology to industrial endeavors. For example, the use of radioactive material (e.g., iridium-192) to detect cracks in oil field pipelines is not research, but the application of existing scientific knowledge. We are considering revising § 175.700 to clarify that research does not include the application of existing technology to industrial endeavors.

2. Question

Does the term ''research'' as used in § 175.700 require further clarification?

VI. Small Quantities, Limited Quantities and Consumer Commodities

A. Discussion

The HMR contain hazardous materials exceptions for small quantities, limited quantities, and consumer commodities. These exceptions allow materials to be transported at reduced levels of regulation. Small quantities of hazardous materials are excepted from all other requirements of the HMR, provided certain criteria in § 173.4 are met. Limited quantity exceptions in the HMR are based on the class of the hazardous material, and contain some additional requirements for air transportation. Materials that meet the limited quantity exception and also meet the definition of a consumer

commodity as provided by § 171.8, may be renamed ''Consumer Commodity'' and reclassed as ORM–D. Consumer commodities are excepted from specification packaging, labeling, placarding and quantity limitations applicable to air transportation. As currently written, these exceptions allow small quantities and consumer commodities to be transported by aircraft even though they may contain hazardous materials otherwise forbidden aboard aircraft. These exceptions are inconsistent with the ICAO Technical Instructions, which require that before a hazardous material may be transported as an excepted quantity (i.e. small quantity), it must be suitable for transportation aboard passenger aircraft. In addition, the HMR allows many more hazardous materials to be transported as a consumer commodity than do the ICAO Technical Instructions. The ICAO Technical Instructions restrict consumer commodities to include only non-toxic aerosols, Class 3 Packing Group II or III, Division 6.1 packing group III, and UN3175. Therefore, we are considering revising the small quantity, limited quantity and consumer commodity provisions to be consistent with the ICAO Technical Instructions.

B. Questions

1. Should the provisions for small quantity, limited quantity and consumer commodity be revised to be consistent with the ICAO Technical Instructions?
2. Should the § 173.4 package marking be amended to align it with the ICAO Technical Instructions excepted quantity package marking?

VII. Request for Additional Comments

Comments are invited on any items or issues pertinent to this topic not addressed by the above questions. There are a number of additional issues we must address in determining whether to proceed with rulemaking on this matter. These include the analyses required under the following statutes and Executive Orders:

A. Executive Order 12866: Regulatory Planning and Review

E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits associated with the issues addressed in this notice.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), we must consider whether a proposed rule would have a significant economic impact on a substantial number of ''small entities.'' ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We invite comments as to the economic impact that the issues addressed in this notice may have on small businesses.

C. Executive Order 13132: Federalism

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) preempts many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. We invite comments on the effect that the issues addressed in this notice may have on state or local safety or emergency response programs.

D. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We do not believe there will be any effect on Indian tribes, but invite Indian tribal governments to provide comments as to the effect the issues addressed in this notice may have on Indian communities.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on February 20, 2002, under the authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–4482 Filed 2–25–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 38
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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125 and 126

RIN: 3245–AE66

Small Business Size Regulations; Government Contracting Programs; HUBZone Program

AGENCY: Small Business Administration.

ACTION: Notice of proposed rule; notice of extension of the comment period.

SUMMARY: The proposed rule proposes to amend its regulations for the Historically Underutilized Business Zone Program (HUBZone Program). On December 21, 2000, the Small Business Reauthorization Act of 2000 made several changes to the HUBZone Program, including changes to the eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations, and the addition of new HUBZone areas called redesignated areas. This proposed rule addresses these statutory amendments, clarifies several regulations, and makes some technical changes, including changes to website addresses. In addition, SBA proposes to amend its regulations, which address subcontracting limitations and to amend its size regulations to make SBA's application of the nonmanufacturer rule consistent for all programs. The proposed rule was published on January 28, 2002, 67 FR 3826. The comment period closes on February 27, 2002. We are extending the comment period because the Small Business Administration believes that affected businesses need more time to adequately respond.

DATES: The comment period for the proposed rule published on January 28, 2002 (67 FR 3826) is extended through March 29, 2002.

ADDRESSES: Address all comments to Michael McHale, Associate Administrator for the HUBZone Empowerment Contracting Program (AA/HUB), U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or via e-mail to or *hubzone@sba.gov.*

Fred C. Armendariz,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 02–4531 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535E4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to RR RB211–535E4 series turbofan engines. This proposal would require disassembling and inspecting all engine mounts for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. This proposal is prompted by reports of corrosion and fatigue cracks in the mount pins, the spherical bearings, and the support links and their respective spherical bearings. The actions specified by the proposed AD are intended to prevent failure of the engine mounts due to cracks that could result in loss of an engine.

DATES: Comments must be received by April 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9–ane–adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–13–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for

the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on RR RB211–535E4 series turbofan engines. The CAA advises that there have been reports of stress and fatigue cracks found in engine mount assemblies, part numbers (P/N's) B71210101 (front) and B71210201 (rear). There were two instances of rear mount pin cracking, two instances of front mount spherical bearing cracking, corrosion of the rear mount support links and their respective spherical bearings, and a number of instances of cracking in the center spherical bearing of the front mount thrust link. Because this condition could cause failure of the engine mounts due to cracks that could result in loss of an engine, the CAA considers it necessary to make disassembly and inspection of these engine mounts mandatory. The CAA has issued AD 004–08–2000, dated March 31, 2001, in order to assure the airworthiness of these Rolls-Royce engines in the UK.

Bilateral Agreement Information

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

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211–535E4 series turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require complete disassembling of the engine mounts, P/N's B71201101 and B71210201, inspecting for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. These actions would be required to be done before accumulating 12,000 cycles-since-new (CSN) or 36,000 engine-hours-since-new (EHSN), whichever is earlier, if engine cycles at next shop visit exceeds 5,000 cycles, and thereafter within every 12,000 cycles-since-last-compliance or 36,000 hours-since-last-compliance, whichever is earlier. For engines with greater than 12,000 CSN or 36,000 EHSN, these actions would be required to be done within 500 cycles-in-service, or 1,500 engine-hours-in-service, whichever is earlier.

Economic Analysis

There are approximately 1,128 engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 32 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $491 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,205,500.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2001–NE–13–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) Model RB211–535E4–37, –535E4–B–37 and –535E4–B–75 turbofan engines with engine mount assemblies, part numbers (P/N's) B71210101 and B71210201, installed. These engines are installed on, but not limited to Boeing 757 series and Tupolev Tu204–120 airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the engine mounts due to cracks that could result in loss of an engine, do the following:

Inspection of Engine Mounts for Cracks

(a) Using the compliance times specified in the following Table, do the following actions:

Number of Cycles-Since-New (CSN) or Engine-Hours-Since-New (EHSN) on the effective date of this AD	Initial compliance	Repetitive compliance by the earlier of—
(1) Fewer than 5,000 CSN	At the next shop visit after accumulating 5,000 CSN, but not to exceed 12,000 CSN or 36,000 EHSN.	(i) 12,000 cycles-since-last-compliance (CSLC), or (ii) 36,000 engine-hours-since-last-compliance (EHSLC).
(2) 5,000 to 12,000 CSN or 12,000 to 36,000 EHSN.	At the next shop visit, but not to exceed 12,000 CSN or 36,000 EHSN.	(i) 12,000 CSLC, or (ii) 36,000 EHSLC.
(3) Greater than 12,000 CSN or 36,000 EHSN.	Within 500 cycles-in-service or 1,500 engine hours-in-service, whichever is earlier, after the effective date of the AD.	(i) 12,000 CSLC, or (ii) 36,000 EHSLC.

(4) Disassemble front engine mounts, P/N 71210101, and rear engine mounts, P/N 71210201. Procedures for disassembly and inspection/check of the engine mounts can be found in sections 71–21–01 and 71–21–02 of the engine manual (EM).

(5) Inspect for cracks using the Fluorescent Penetrant or Magnetic Particle inspection methods.

(6) Assemble the engine mounts, insuring application of OMat 4/23 Neverseez. Procedures for assembling the engine mounts can be found in sections 71–21–01 and 71–21–02 of the EM.

Credit for Previous Compliance

(b) Compliance with RR Service Bulletin (SB) RB.211–71–5291 constitutes compliance with the initial compliance requirements or repetitive compliance requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA airworthiness directive 004–08–2000, dated March 13, 2001, and in RR SB No. RB.211–71–5291, Revision 14, dated March 13, 2001.

Issued in Burlington, Massachusetts, on February 19, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–4367 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–392–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200CB, and –300 series airplanes. This proposal would require determining the part numbers of the master control valve on the pressure bottles that activate the off-wing escape slides, and corrective action, if necessary. This action is necessary to prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–392–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Victor Wicklund, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1426; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–392–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–392–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that during certification testing of an off-wing emergency escape slide on a Boeing Model 757 series airplane, the escape slide failed to automatically deploy. The failure occurred because the master control valve installed on a pressure bottle that activates the off-wing escape slide did not actuate when the over-wing exit was opened. When the valve is not triggered by the electronically fired squib (pyrotechnic cartridge), the escape slide will not deploy until the system is manually activated. Subsequent functional tests of other off-wing escape slides revealed the same malfunction in the master control valve, which prevented slide deployment. Failure of an escape slide to deploy or inflate correctly could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletins 757–25–0214 and 757–25–0216, both dated April 6, 2000. The service bulletins describe procedures for determining the part numbers of the master control valve installed on each of the two pressure bottles that activate the off-wing escape slides, and corrective action, if necessary. The corrective action includes replacement of the master control valve with a new valve, or rework of any valve with part number (P/N) S416N207–6 (supplier P/N 42000802–1), and replacement of the placard on that pressure bottle assembly with a new placard. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Bulletins

Although the service bulletins recommend determining the P/Ns of the master control valves at the earliest maintenance period when manpower and parts are available, the FAA has determined that this compliance time may not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed AD. In light of all of these factors, the FAA finds a compliance time of 18 months after the effective date of this AD to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 435 airplanes of the affected design in the worldwide fleet. The FAA estimates that 360 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $21,600, or $60 per airplane.

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

Should an operator be required to accomplish the replacement of the valve and placard, it would take approximately 2 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Currently, the required parts would be provided at no cost to the operator. Based on these figures, the cost impact of the replacement is estimated to be $120 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–392–AD.

Applicability: Model 757–200, –200CB, and –300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–25–0214 or 757–25–0216, both dated April 6, 2000, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an escape slide to deploy or inflate correctly, which could cause the slide to be unusable during an emergency evacuation and result in consequent injury to passengers or crewmembers, accomplish the following:

Inspection/Corrective Action

(a) Within 18 months after the effective date of this AD: Determine the part numbers (P/N) of the master control valve installed on each of the two pressure bottles located in the forward end of the aft cargo compartment that activate the off-wing escape slides, per Boeing Special Attention Service Bulletin 757–25–0214 (for Model 757–200 and 200CB series airplanes), or 757–25–0216 (for Model 757–300 series airplanes), both dated April 6, 2000, as applicable.

(1) If any P/N found on any valve is P/N S416N207–6, (supplier P/N 42000802–1), before further flight, replace the affected valve with a new valve or rework the valve, as applicable; and replace the placard on the corresponding pressure bottle assembly with a new placard, per the applicable service bulletin.

(2) If the P/N shown on both valves is not P/N S416N207–6, (supplier P/N 42000802–1), no further action is required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install a master control valve, P/N S416N207–6 (supplier P/N 42000802–1), on any airplane.

Alternative Methods of Compliance

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

Note 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 Permit

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

Issued in Renton, Washington, on February 20, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–4506 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10980; Airspace Docket No. 01–AWP–21]

RIN 2120–AA66

Proposed Revision of Jet Route 10

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Jet Route 10 (J–10) between the Farmington, NM, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC), and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This proposal realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. The proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

DATES: Comments must be received on or before April 12, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–10980/Airspace Docket No. 01–AWP–21, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–10980/Airspace Docket No. 01–AWP–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently

published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise J–10 between the Farmington, NM, VORTAC, and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This proposal realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. The proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004, 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 jet route listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 2004–Jet Routes

* * * * *

J–10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075°and Flagstaff 251T (237M), radials; Flagstaff, AZ; Farmington, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

Issued in Washington, DC, on February 1, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–3127 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 99P–5332]

Substances Affirmed as Generally Recognized as Safe: Menhaden Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on menhaden oil which has been affirmed as generally recognized as safe (GRAS) as a direct human food ingredient with specific limitations. FDA is proposing to reallocate the uses of menhaden oil in food that currently are established in FDA's regulations. This proposal responds to a citizen petition on menhaden oil from the National Fish Meal and Oil Association (NFMOA).

DATES: Submit written or electronic comments by May 13, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3103.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 5, 1997 (62 FR 30751), FDA published a final rule to affirm that menhaden oil is GRAS for use as a direct human food ingredient with specific limitations (hereinafter referred to as the June 1997 final rule). FDA published the June 1997 final rule in response to a GRAS petition (GRASP 6G0316) submitted by the NFMOA. FDA concluded in the June 1997 final rule that, based on scientific procedures (including published and other information), the use of menhaden oil as a direct human food ingredient is safe, provided that the combined daily intake of eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) from menhaden oil does not exceed 3.0 grams per person per day (g/p/d).

Affirming the GRAS status of menhaden oil with specific limitations (§ 184.1(b)(2) (21 CFR 184.1(b)(2))) was necessary because of the agency's concerns over possible adverse effects of fish oils on bleeding time (the time taken for bleeding from a standardized skin wound to cease), glycemic control, and low-density lipoprotein cholesterol. These issues were discussed fully in the June 1997 final rule.

II. The Citizen Petition

The NFMOA has submitted a citizen petition (Docket No. 99P–5332) under 21 CFR 10.20 and 10.30 requesting that the agency amend § 184.1472 *Menhaden oil* (21 CFR 184.1472) by reallocating the

uses of menhaden oil in food, while maintaining the total daily intake of EPA and DHA from menhaden oil at a level not exceeding 3.0 g/p/d. The maximum limit of 3.0 g/p/d on the total daily intake of EPA and DHA has been considered a reasonable safeguard against the possible adverse effects stated above and to date no new information available has caused the agency to alter this limit. The reallocation is performed by: (1) Reducing the maximum levels of use of menhaden oil in some of the currently listed food categories; (2) adding additional food categories along with assigning maximum levels of use in these new categories; and (3) eliminating the listing of subcategories, for example, cookies and crackers, breads and rolls, fruit pies and custard pies, and cakes, and including them under broader food categories, i.e., baked goods and baking mixes.

Table 1 shows the current maximum levels of use of menhaden oil in the currently listed food categories as established in § 184.1472(a)(3).

TABLE 1.—CURRENT MAXIMUM LEVELS OF USE OF MENHADEN OIL

Category of food[1]	Current maximum level of use in food (as served)
Cookies and crackers (1)	5.0 percent
Breads and rolls (white and dark) (1)	1.0 percent
Fruit pies and custard pies (1)	7.0 percent
Cakes (1)	10.0 percent
Cereals (4)	4.0 percent
Fats and oils (12), but not in infant formula	20.0 percent
Yogurt (31)	4.0 percent
Cheese products (5)	5.0 percent
Frozen dairy products (20)	5.0 percent
Meat products (29)	10.0 percent
Egg products (11)	5.0 percent
Fish products (13)	20.0 percent
Condiments (8)	5.0 percent
Soup mixes (40)	3.0 percent
Snack foods (37)	5.0 percent
Nut products (32)	5.0 percent
Gravies and sauces (24)	5.0 percent

[1]The number in parenthesis following each food category is the paragraph listing of that food category in § 170.3(n) (21 CFR 170.3(n)).

Table 2 shows the new maximum levels of use of menhaden oil in the currently listed food categories plus new food categories, as proposed by the NFMOA.

TABLE 2.—NEW MAXIMUM LEVELS OF USE OF MENHADEN OIL

Category of food[1]	Proposed maximum level of use
Baked goods and baking mixes (1)	5.0 percent
Cereals (4)	4.0 percent
Cheese products (5)	5.0 percent
Condiments (8)	5.0 percent
Egg products (11)	5.0 percent
Fats and oils (12), but not in infant formula	12.0 percent
Fish products (13)	5.0 percent
Frozen dairy desserts (20)	5.0 percent
Gravies and sauces (24)	5.0 percent
Meat products (29)	5.0 percent
Milk products (31)	5.0 percent
Nut products (32)	5.0 percent
Snack foods (37)	5.0 percent
Soup mixes (40)	3.0 percent
Nonalcoholic beverages (3)	0.5 percent
Chewing gum (6)	3.0 percent
Confections and frostings (9)	5.0 percent
Dairy product analogs (10)	5.0 percent
Gelatins and puddings (22)	1.0 percent
Pastas (23)	2.0 percent
Hard candy (25)	10.0 percent
Jams and jellies (28)	7.0 percent
Plant protein products (33)	5.0 percent
Poultry products (34)	3.0 percent
Processed fruit juices (35)	1.0 percent
Processed vegetable juices (36)	1.0 percent
Soft candy (38)	4.0 percent
White granulated sugar (41)	4.0 percent

TABLE 2.—NEW MAXIMUM LEVELS OF USE OF MENHADEN OIL—Continued

Category of food[1]	Proposed maximum level of use
Sugar substitutes (42)	10.0 percent
Sweet sauces, toppings, and syrups (43)	5.0 percent

[1]The number in parenthesis following each food category is the paragraph listing of that food category in § 170.3(n).

As shown in table 1, the currently listed food categories include several subcategories, such as cookies and crackers, breads and rolls, fruit pies and custard pies, and cakes. These items are subcategories of baked goods and baking mixes as described under § 170.3(n)(1). The proposed reallocation (in table 2) does not list any subcategory, but rather includes the food category baked goods and baking mixes, which would include all of these items. Also, the currently listed food categories include another subcategory, i.e., yogurt, a subcategory of milk product as described under § 170.3(n)(31). Similarly, the proposed reallocation does not list yogurt, but rather includes the food category milk products, which would include yogurt.

Although each food category in the proposed reallocation (table 2) is associated with a paragraph in § 170.3(n), menhaden oil may not be added to all foods included in that paragraph, unless such food is listed in table 2. For example, § 170.3(n)(23) includes grain products and pastas, but menhaden oil only could be added to pastas (not grain products) under this proposed reallocation in table 2. In other words, only the food categories that are listed in table 2 are those that the NFMOA is requesting for the amendment of the regulation on menhaden oil.

The NFMOA has provided exposure analyses that contain estimates of EPA and DHA intake from menhaden oil for the revised uses of the currently listed food categories and the proposed uses of the new food categories. The NFMOA states that the estimated daily exposure to EPA and DHA from those uses of menhaden oil is 2.7 g/p/d. The NFMOA concludes that menhaden oil is GRAS for the revised uses of the currently listed food categories and the proposed uses of the new food categories, because the total daily intake of EPA and DHA from those uses of menhaden oil would not exceed 3.0 g/p/d, consistent with the June 1997 final rule.

III. Proposed Action

Based on information in the citizen petition and other relevant material, FDA tentatively has determined that the GRAS status of menhaden oil with specific limitations remains unchanged if uses of menhaden oil in food are reallocated, because the total daily intake of EPA and DHA from menhaden oil from the revised uses of the currently listed food categories and the proposed uses of the new food categories would not exceed 3.0 g/p/d. Because not all foods in the marketplace within those food categories in table 2 would contain menhaden oil that substitutes for other edible fat or oil, and because not all foods that a consumer chooses daily would be those with menhaden oil used as a substitute oil, the actual total daily intake of EPA and DHA from menhaden oil for an average person should be significantly below 3.0 g/p/d. Further, because the total daily intake of EPA and DHA from menhaden oil based on the uses proposed in this rulemaking would not exceed 3.0 g/p/d, and the agency is not aware of any new data and information that would prompt the agency to change the upper limit of safety of 3.0 g/p/d, FDA intends to rely on its safety determination from its prior GRAS affirmation for finding these uses safe. Therefore, the agency is proposing to amend the regulation on menhaden oil to reallocate its use in food.

IV. Environmental Impact

The agency carefully has considered the potential environmental effects of this action. FDA tentatively has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Analysis of Economic Impacts

A. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation also is considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

FDA is proposing to amend its regulation on menhaden oil, which the agency believes is GRAS with specific limitations. This proposed rule would reallocate the uses of menhaden oil in food, without causing the combined daily intake of EPA and DHA from menhaden oil to exceed 3.0 g/p/d.

The main benefit of this proposed rule would be the expansion of the potential uses of menhaden oil as proposed in table 2. Firms choosing to use menhaden oil would bear labeling and other costs. Because these costs are voluntary, they will be borne only if doing so is anticipated to be advantageous to the firm.

FDA proposes to reduce maximum use levels of menhaden oil for pies, cakes, fats, oils, fish products, and meat products. The potential compliance costs of this proposed rule would be borne by firms making products that now use menhaden oil at levels below the current maximum but above the proposed maximum. The proposed rule would force them to either reformulate their products or cease production. Although the potential cost of both reformulation and ceasing production may be large, FDA does not know of any products that would be forced to bear these costs. Using menhaden oil in pies, cakes, fats, oils, fish products, and meat products at the current maximum levels leads to products with undesirable flavors. Based on both market observations and taste, FDA assumes that no products currently contain levels of menhaden oil above the proposed maximum levels and thus

there are no costs associated with reformulation or ceasing production based on this proposal. We request comments on this assumption.

B. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities.

FDA is proposing to amend the GRAS affirmation for menhaden oil by establishing new maximum levels of use. The use of the menhaden oil by any small business is voluntary and is undertaken only if anticipated to be advantageous to the small business. Small businesses would only bear a compliance cost if, as stated above, they make products that are below the current maximum but above the proposed maximum levels of use. The proposed rule would force them to either reformulate their products or cease production. Although the potential cost of both reformulation and ceasing production to small businesses may be large, FDA does not know of any small businesses that would be forced to bear these costs. Using menhaden oil in pies, cakes, fats, oils, fish products, and meat products at the current maximum levels leads to products with undesirable flavors. Based on both market observations and taste, FDA assumes that no products currently contain levels of menhaden oil above the proposed maximum levels and thus there are no costs associated with reformulation or ceasing production based on this proposal. The agency therefore tentatively concludes that the new maximum levels proposed would not impose significant costs on a substantial number of small entities. The agency requests comments from small businesses on this assumption. Based on the assumption that no small businesses make products that would be affected by reducing the maximum levels of menhaden oil in pies, cakes, fats, oils, fish products, and meat products, FDA finds that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rulemaking if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current inflation-adjusted statutory threshold is $110 million. FDA has determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995.

VI. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism Impact

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has tentatively determined that the proposed 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. The agency invites comments on its tentative conclusion that the proposed rule does not contain policies that have federalism implications as defined in the order, and consequently, a federalism summary impact statement is not required.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposed rule by May 13, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. 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.

List of Subjects in 21 CFR Part 184

Food additives, Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1472 is amended by revising paragraph (a)(3) to read as follows:

§ 184.1472 Menhaden oil.

(a) * * *

(3) In accordance with § 184.1(b)(2), the ingredient may be used in food only within the following specific limitations:

Category of food	Maximum level of use in food (as served)
Baked goods, baking mixes, § 170.3(n)(1) of this chapter.	5.0 percent
Cereals, § 170.3(n)(4) of this chapter.	4.0 percent
Cheese products, § 170.3(n)(5) of this chapter.	5.0 percent
Chewing gum, § 170.3(n)(6) of this chapter.	3.0 percent
Condiments, § 170.3(n)(8) of this chapter.	5.0 percent
Confections, frostings, § 170.3(n)(9) of this chapter.	5.0 percent
Dairy product analogs, § 170.3(n)(10) of this chapter.	5.0 percent
Egg products, § 170.3(n)(11) of this chapter.	5.0 percent
Fats, oils, § 170.3(n)(12) of this chapter, but not in infant formula.	12.0 percent
Fish products, § 170.3(n)(13) of this chapter.	5.0 percent
Frozen dairy desserts, § 170.3(n)(20) of this chapter.	5.0 percent
Gelatins, puddings, § 170.3(n)(22) of this chapter.	1.0 percent
Gravies, sauces, § 170.3(n)(24) of this chapter.	5.0 percent
Hard candy, § 170.3(n)(25) of this chapter.	10.0 percent
Jams, jellies, § 170.3(n)(28) of this chapter.	7.0 percent
Meat products, § 170.3(n)(29) of this chapter.	5.0 percent

Category of food	Maximum level of use in food (as served)
Milk products, § 170.3(n)(31) of this chapter.	5.0 percent
Nonalcoholic beverages, § 170.3(n)(3) of this chapter.	0.5 percent
Nut products, § 170.3(n)(32) of this chapter.	5.0 percent
Pastas, § 170.3(n)(23) of this chapter.	2.0 percent
Plant protein products, § 170.3(n)(33) of this chapter.	5.0 percent
Poultry products, § 170.3(n)(34) of this chapter.	3.0 percent
Processed fruit juices, § 170.3(n)(35) of this chapter.	1.0 percent
Processed vegetable juices, § 170.3(n)(36) of this chapter.	1.0 percent
Snack foods, § 170.3(n)(37) of this chapter.	5.0 percent
Soft candy, § 170.3(n)(38) of this chapter.	4.0 percent
Soup mixes, § 170.3(n)(40) of this chapter.	3.0 percent
Sugar substitutes, § 170.3(n)(42) of this chapter.	10.0 percent
Sweet sauces, toppings, syrups, § 170.3(n)(43) of this chapter.	5.0 percent
White granulated sugar, § 170.3(n)(41) of this chapter.	4.0 percent

* * * * *

Dated: January 11, 2002.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–4327 Filed 2–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to revise its regulations to reflect current policy, add features required by the Water Resources Development Act of 1996 (WRDA 96) (Pub. L. 104–303), and streamline certain procedures concerning Corps authority addressing disaster preparedness, response, and recovery activities. WRDA 96 additions include the option to provide nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and the provision of a levee owner's manual. Other significant changes include a change in the cost share provision for rehabilitation of both Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

DATES: Submit comments on or before April 29, 2002.

ADDRESSES: Send comments to HQUSACE, ATTN: CECW–OE, 441 G Street, NW., Washington, DC 20314–1000. See Supplementary Information section for electronic filing addresses.

FOR FURTHER ASSISTANCE CONTACT: Mr. Robert K. Grubbs, P.E., Headquarters, U.S. Army Corps of Engineers, Civil Emergency Management Branch, CECW–OE, at (202) 761–4561.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in 33 U.S.C. 701n (commonly and hereinafter referred to as Pub. L. 84–99), the Corps proposes to revise 33 CFR part 203. Public Law 84–99 authorizes the Corps to undertake preparedness, response, and recovery activities for natural disasters. The Water Resources Development Act of 1996 amended Public Law 84–99 to add the authority to provide, at the option of the non-Federal sponsor, nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and also added the requirement to provide a levee owner's manual. Other significant changes include a change in the cost share provision for rehabilitation of both Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures activities, and a streamlined approach for requests for assistance from Federally recognized Native American tribes and Alaska Native Corporations. In addition, these changes will modify and streamline policy involving the Corps policy concerning assistance for ice jams, and the Corps policy requiring reimbursement in kind or in cash for certain loaned supplies and materials. Subpart D clarifies the definition and inspection of ''Active'' flood control works (i.e., those flood control works eligible for consideration to receive Corps assistance when damaged in a flood, hurricane, or coastal storm), provides clarification concerning Corps inspections of non-Federal flood control works, and adds a new section that addresses inspections and rehabilitation of Federal flood control works that merely incorporates existing Corps policy. A new section (§ 203.49) incorporates existing Corps policy on the use of Public Law 84–99 funds for rehabilitation of Hurricane/Shore Protection Projects, and, when undertaking such a rehabilitation effort, requires incorporation of the existing Project Cooperation Agreement to have the project sponsor cost share the renourishment/repair effort. In addition, Corps policy is revised to specify that, during droughts, water is provided for human consumption only, not for livestock. The revised rule is anticipated to go into effect 60 days after publication of the final rule in the **Federal Register**, except that all requests for assistance received by the Corps, for emergencies declared by the appropriate District Engineer prior to the effective date of the final rule, will be ''grandfathered'' under the previous rule for any assistance provided.

Electronic Access and Filing Addresses. You may submit comments by E-mail to robert.k.grubbs@usace.army.mil. Comments should be in one of the following formats: Word, WordPerfect, or ASCII. The subject line for submission of comments should begin with ''33 CFR 203 Comments from (insert name of agency, organization, or individual).''

Procedural Requirements

a. *Review under the National Environmental Policy Act.* This revision is not a major Federal action. There are no significant changes to any aspects of this regulation that may impact on the human environment. When a specific action (e.g., a proposal to rehabilitate a damaged levee) occurs, appropriate environmental documentation, to include an Environmental Assessment/Environmental Impact Statement when required, is prepared by the Corps.

b. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private

sector and therefore, is not a Federal private sector mandate, and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The Corps has also found, under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood control, Technical assistance, Water resources.

Dated: February 7, 2002.

Approved:

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

Accordingly, 33 CFR Part 203 is proposed to be revised as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

Subpart A—Introduction

Sec.
203.11 Purpose.
203.12 Authority.
203.13 Available Assistance.
203.14 Responsibilities of Non-Federal Interests.
203.15 Definitions.
203.16 Federally Recognized Indian Tribes and the Alaska Native Corporations.

Subpart B—Disaster Preparedness

203.21 Disaster Preparedness Responsibilities of Non-Federal Interests.

Subpart C—Emergency Operations

203.31 Authority.
203.32 Policy.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

203.41 General.
203.42 Inspection of Non-Federal Flood Control Works.
203.43 Inspection of Federal Flood Control Works.
203.44 Rehabilitation of Non-Federal Flood Control Works.
203.45 Rehabilitation of Federal Flood Control Works.
203.46 Restrictions.
203.47 Modifications to Non-Federal Flood Control Works.
203.48 Inspection Guidelines for Non-Federal Flood Control Works.
203.49 Rehabilitation of Hurricane/Shoreline Protection Projects.
203.50 Nonstructural Alternatives to Rehabilitation of Flood Control Works
203.51 Levee Owner's Manual
203.52 (Reserved)

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

203.61 Emergency Water Supplies Due to Contaminated Water Sources.
203.62 Drought Assistance.

Subpart F—Advance Measures

203.71 Policy.
203.72 Eligibility Criteria and Procedures.

Subpart G—Local Interests/Cooperation Agreements

203.81 General.
203.82 Requirements of Local Cooperation.
203.83 Additional Requirements.
203.84 Forms of Local Participation—Cost Sharing.
203.85 Rehabilitation of Federal Flood Control Projects.
203.86 Transfer of Completed Work to Local Interests.

Authority: 33 U.S.C. 701n.

Subpart A—Introduction

§ 203.11 Purpose.

This regulation prescribes administrative policies, guidance, and operating procedures for natural disaster preparedness, response, and recovery activities of the United States Army Corps of Engineers.

§ 203.12 Authority.

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n) (69 Stat. 186), commonly and hereinafter referred to as Public Law 84–99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: Preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood, or nonstructural alternatives thereto; emergency protection of federally authorized hurricane or shore protection projects which are threatened, when such protection is warranted to protect against imminent and substantial loss to life and property; and repair and restoration of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature. The law includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality, and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. This law authorizes the Secretary of the Army (Secretary) to construct wells and to transport water within areas determined by the Secretary to be drought-distressed. The Secretary of the Army has delegated the authority vested in the Secretary under Public Law 84–99 through the Assistant Secretary of the Army (Civil Works) to the Chief of Engineers, subject to such further direction as the Secretary may provide.

§ 203.13 Available Assistance.

Corps assistance provided under authority of Public Law 84–99 is intended to be supplemental to State and local efforts. The principal assistance programs and activities of the Corps are described below.

(a) *Disaster preparedness.* Technical assistance for many types of disasters is available to State and local interests. Primary Corps efforts are focused on technical assistance for, and inspections of, flood control works, and related flood fight preparedness and training activities. Technical assistance for specialized studies, project development, and related activities, and requirements for long term assistance, are normally beyond the scope of disaster preparedness assistance, and are appropriately addressed by other Corps authorities and programs. Subpart B of this part addresses disaster preparedness responsibilities and activities.

(b) *Emergency operations.* Emergency operations, consisting of Flood Response (flood fight and rescue operations) and Post Flood Response assistance, may be provided to supplement State and local emergency operations efforts. Subpart C of this part addresses emergency operations assistance.

(c) *Rehabilitation.* The Corps may rehabilitate flood control works damaged or destroyed by floods and coastal storms. The Corps Rehabilitation and Inspection Program (RIP) incorporates both disaster preparedness activities and Rehabilitation Assistance. The RIP consists of a process to inspect flood control works; a status determination, i.e., an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event. Subpart D of this part addresses Rehabilitation Assistance and the RIP.

(d) *Emergency water supplies due to contaminated water source.* The Corps may provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality. Subpart E of this part addresses emergency water supply assistance.

(e) *Drought assistance.* Corps assistance may be provided to drought-distressed areas (as declared by the

Secretary of the Army) to construct wells and to transport water for human consumption. Subpart E of this part addresses drought assistance.

(f) *Advance Measures.* Advance Measures assistance may be provided to protect against imminent threats of predicted, but unusual, floods. Advance Measures projects must be justified from an engineering and economic standpoint, and must be capable of completion in a timely manner. Advance Measures assistance may be provided only to protect against loss of life and/or significant damages to improved property due to flooding. Subpart F of this part addresses Advance Measures assistance.

§ 203.14 Responsibilities of Non-Federal interests.

Non-Federal interests, which include State, County and local governments; Federally recognized Indian tribes; and Alaska Native Corporations, are required to make full use of their own resources before Federal assistance can be furnished. The National Guard, as part of the State's resources when it is under State control, must be fully utilized as part of the non-Federal response. Non-Federal responsibilities include the following:

(a) *Disaster preparedness.* Disaster preparedness is a basic tenet of State and local responsibility. Disaster preparedness responsibilities of non-Federal interests include:

(1) Operation and maintenance of flood control works;

(2) Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations;

(3) Training personnel to operate, maintain, and patrol projects during crisis situations, and preparation of plans to address emergency situations;

(4) Taking those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part; and,

(5) Responsible regulation, management, and use of floodplain areas.

(b) *Emergency operations.* During emergency operations, non-Federal interests must commit available resources, to include work force, supplies, equipment, and funds. Requests for Corps emergency operations assistance will be in writing from the appropriate State, tribal, or local official. For flood fight direct assistance and Post Flood Response assistance, non-Federal interests must furnish formal written assurances of local cooperation by entering into Cooperation Agreements (CA's), as detailed in subpart G of this part. (For Corps work authorized under Public Law 84–99, the term ''Cooperation Agreement'' is used to differentiate this agreement from a Project Cooperation Agreement (PCA) that addresses the original construction of a project.) Following Flood Response or Post Flood Response assistance, it is a non-Federal responsibility to remove expedient flood control structures and similar works installed by the Corps under Public Law 84–99.

(c) *Rehabilitation of non-Federal Flood Control Projects.* Prior to Corps rehabilitation of non-Federal flood control projects, non-Federal interests must furnish formal written assurances of local cooperation by entering into a CA, as detailed in subpart G of this part. Requirements of local participation include such items as provision of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD's), applicable cost-sharing, and costs attributable to deficient and/or deferred maintenance.

(d) *Rehabilitation of Federal Flood Control Projects.* Sponsors of Federal flood control projects are usually not required to furnish written assurances of local cooperation, if the PCA for the original construction of the project is sufficient.

Note: The PCA may also be referred to as a local cooperation agreement (LCA), cooperation and participation agreement (C&P), or similar terms.

In lieu of a new PCA, the Corps will notify the sponsor of the sponsor's standing requirements, including such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, relocations, and any cost-sharing requirements contained in subpart G, § 203.82. Modifications to the existing Operation and Maintenance Manual may be required based on the Rehabilitation Assistance required.

(e) *Emergency Water Supplies Due to Contaminated Water Source.* Except for Federally recognized Indian tribes or Alaska Native Corporations, Non-Federal interests must first seek emergency water assistance through the Governor of the affected State. If the State is unable to provide the needed assistance, then the Governor or his or her authorized representative must request Corps assistance in writing. Similarly, requests for Corps assistance for Indian tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(f) *Drought assistance.* Except for Federally recognized Indian tribes or Alaska Native Corporations, non-Federal interests must first seek emergency drinking water assistance through the Governor of the affected State. Requests for Corps assistance will be in writing from the Governor or his or her authorized representative. Similarly, requests for Corps assistance for Indian tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Assistance can be provided to those drought-distressed areas (as declared by the Secretary of the Army) to construct wells and to transport water for human consumption. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(g) *Advance Measures.* Advance Measures assistance should complement the maximum non-Federal capability. Requests for assistance must be made by the Governor of the affected State, except requests for assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian tribe or Alaska Native Corporation, or through the regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. A CA (see subpart G of this part) is required prior to assistance being rendered. Non-Federal participation may include either financial contribution or commitment of non-Federal physical resources, or both.

§ 203.15 Definitions.

The following definitions are applicable throughout this regulation.

(a) *Federal Project.* A project constructed by the Corps, and subsequently turned over to a local sponsor for operations and maintenance responsibility. This definition also includes any project specifically designated as a Federal project by an Act of Congress.

(b) *Flood Control Project:* A project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multipurpose project, only those components that are necessary for the flood control function are considered eligible for Rehabilitation Assistance.

(c) *Governor.* All references in this part 203 to the Governor of a State also refer to: the Governors of United States commonwealths, territories, and possessions; and the Mayor of Washington, DC.

(d) *Hurricane/Shore Protection Project (HSPP).* A flood control project designed and constructed to have appreciable and predictable effects in preventing damage to developed areas from the impacts of hurricanes, tsunamis, and coastal storms. These effects are primarily to protect against wave action, storm surge, wind, and the complicating factors of extraordinary high tides. HSPP's include projects known as shore protection projects, shore protection structures, periodic nourishment projects, shore enhancement projects, and similar terms. Components of an HSPP may include both hard (permanent construction) and soft (sacrificial, i.e., sand) features.

(e) *Non-Federal Project.* A project constructed with non-Federal funds, or a project constructed by tribal, state, local, or private interests, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Public Law 84–99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, et.seq) (hereinafter referred to as the Stafford Act), is a non-Federal project unless it repairs or replaces an existing Federal project. Works Progress Administration (WPA) projects, and projects funded completely or partially by other (non-Corps) Federal agencies, are considered non-Federal projects for the application of Public Law 84–99 authority.

(f) *Non-Federal Sponsor.* A non-Federal sponsor is a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A non-Federal sponsor may be a State, County, City, Town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and LERRD's necessary for the project.

(g) *Repair and Rehabilitation.* The term *repair* and *rehabilitation* means the repair or rebuilding of a flood control structure, after the structure has been damaged by a flood, hurricane, or coastal storm, to the level of protection provided by the structure prior to the flood, hurricane, or coastal storm. ''Repair and rehabilitation'' does not include improvements (betterments) to the structure, nor does ''repair and rehabilitation'' include any repair or rebuilding of a flood control structure that, in the normal course of usage, has become structurally unsound and is no longer fit to provide the level of protection for which it was designed.

§ 203.16 Federally Recognized Indian Tribes and the Alaska Native Corporations.

Requests for Public Law 84–99 assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State.

Subpart B—Disaster Preparedness

§ 203.21 Disaster Preparedness Responsibilities of Non-Federal Interests.

Disaster preparedness is a basic tenet of State and local responsibility. Assistance provided under authority of Public Law 84–99 is intended to be supplemental to the maximum efforts of State and local interests. Assistance under Public Law 84–99 will not be provided when non-Federal interests have made insufficient efforts to address the situation for which assistance is requested. Assistance under Public Law 84–99 will not be provided when a request for such assistance is based entirely on a lack of fiscal resources with which to address the situation. Non-Federal interests' responsibilities are addressed in detail as follows:

(a) *Operation and maintenance of flood control works.* Flood control works must be operated and maintained by non-Federal interests. Maintenance includes both short-term activities (normally done on an annual cycle, or more frequently) such as vegetation control and control of burrowing animals, and longer term activities such as repair or replacement of structural components (e.g., culverts) of the project.

(b) *Procurement/Stockpiling.* Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations is a non-Federal responsibility. The Corps is normally a last resort option for obtaining such materials. Local interests should request such materials from State assets prior to seeking Corps assistance. Local interests are responsible for reimbursing (either in kind or in cash) the Corps for flood fight supplies and materials.

(c) *Training and Plans.* Training personnel to operate, maintain, and patrol flood control projects during crisis situations is a non-Federal responsibility. Specific plans should be developed and in place to address known problem areas. For instance, the non-Federal sponsor of a levee reach prone to boils should have personnel specifically trained in flood fighting boils. In addition, contingency plans must be made when needed to address short term situations. For instance, if a culvert through a levee is being replaced, then the contingency plan should address all actions needed should a flood event occur during the construction period when levee integrity is lacking.

(d) *Corps Rehabilitation and Inspection Program for Flood Control Works.* To be eligible for Rehabilitation Assistance under Public Law 84–99, it is a non-Federal responsibility to take those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part.

Subpart C—Emergency Operations

§ 203.31 Authority.

Emergency operations under Public Law 84–99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane and shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

(a) *Flood Response.* Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, state, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or state and local interests, may include the following: technical advice and assistance; lending

of flood fight supplies, e.g., sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.

(b) *Post Flood Response.* The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include the following: Provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy.

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement state and local activities. Corps assistance is limited to the preservation of life and property, i.e., residential/commercial/industrial developments, and public facilities/service. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of state or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84–99, and will not prevent state or local governments from receiving other Federal assistance for which they are eligible.

(a) *Flood Response.* Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, state, or local official will be accepted, followed by a written confirmation.

(1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, state, or local official. However, legal responsibility always remains with the tribal, state, and local officials.

(2) Corps assistance will be terminated when the flood waters recede below bankfull, absent a short term threat (e.g., a significant storm front expected to arrive within a day or two) likely to cause additional flooding.

(3) Removal of ice jams is a local responsibility. Corps technical advice and assistance, as well as assistance with flood fight operations, can be provided to supplement state and local efforts. The Corps will not perform ice jam blasting operations for local interests.

(b) *Post Flood Response.* A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement state and local efforts. Corps assistance is limited to 10 days following receipt of the Governor's written request, or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period, or trigger a new 10-day period. The Corps will deny any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* (1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.

(2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Presidential disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.

(3) Expendable supplies that are lent, such as sandbags, will be replaced in kind, or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

§ 203.41 General.

(a) *Authority.* Public Law 84–99 authorizes repair and restoration of the following types of projects to ensure their continued function:

(1) Flood control projects.

(2) Federally authorized and constructed hurricane/shore protection projects.

(b) *Implementation of Authority.* The Rehabilitation and Inspection Program (RIP) implements Public Law 84–99 authority to repair and rehabilitate flood control projects damaged by floods and coastal storm events. The RIP consists of a process to inspect flood control work; a status determination, i.e., an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event.

(c) *Active status.* In order for a flood control work to be eligible for Rehabilitation Assistance, it must be in an Active status at the time of damage from a flood or coastal storm event. To gain an Active status, a non-Federal flood control work must meet certain engineering, maintenance, and

qualification criteria, as determined by the Corps during an Initial Eligibility Inspection (IEI). To retain an Active status, Federal and non-Federal flood control works must continue to meet inspection criteria set by the Corps, as determined by the Corps during a Continuing Eligibility Inspection (CEI). All flood control works not in an Active status are considered to be Inactive, regardless of whether or not they have previously received a Corps inspection, or Corps assistance.

(d) *Modification of flood control projects.* Modification of a flood control project to increase the level of protection, or to provide protection to a larger area, is beyond the scope of Public Law 84–99 assistance. Such modifications to Federal projects are normally accomplished under Congressional authorization and appropriation, or under Continuing Authorities Programs of the Corps. Such modifications to non-Federal projects are normally accomplished by the non-Federal sponsor and local interests. Modifications necessary to preserve the structural integrity of an existing non-Federal flood control project may be funded by the RIP, but such work must meet the criteria established in § 203.47 to be eligible for funding under Public Law 84–99.

§ 203.42 Inspection of Non-Federal Flood Control Works.

(a) *Required inspections.* The Corps will conduct inspections of non-Federal flood control works. These inspections are IEI's and CEI's. Conduct of IEI's and CEI's will be as provided for in § 203.48.

(1) Corps involvement with any non-Federal flood control work normally begins when the sponsor requests an IEI. The Corps will conduct an IEI to determine if the flood control work meets minimum engineering and maintenance standards and is capable of providing the intended degree of flood protection. An Acceptable or Minimally Acceptable rating (see § 203.48) on the IEI is required to allow the project to gain an Active status in the RIP.

(2) CEI's are conducted periodically to ensure that projects Active in the RIP continue to meet Corps standards, and to determine if the sponsor's maintenance program is adequate. A rating of Acceptable or Minimally Acceptable (see § 203.48) on a CEI is required in order to retain an Active status in the RIP.

(b) *Advice and reporting.* Information on the results of IEI and CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices.

(1) Non-Federal sponsors will be informed that an IEI rating of Unacceptable will cause the flood control work to remain in an Inactive status, and ineligible for Rehabilitation Assistance.

(2) Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and ineligible for Rehabilitation Assistance.

(3) Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.43 Inspection of Federal Flood Control Works.

(a) *Required inspections.* A completed Federal flood control project, or completed functional portions thereof, is granted Active status in the RIP upon transfer of the operation and maintenance of the project (or functional portion thereof) to the non-Federal sponsor. Federal flood control works will be periodically inspected in accordance with 33 CFR 208.10 and Engineer Regulation (ER) 1130–2–530, Flood Control Operations and Maintenance Policies. These periodic inspections of Federal flood control works are also, for simplicity, known as CEI's. If a Federal project is found to be inadequately maintained on a CEI, then it will be placed in an Inactive status in the RIP.

(**Note:** This is a separate and distinct action from project deauthorization, which is not within the scope of Public Law 84–99 activities.)

A Federal project will remain in an Inactive status until such time as an adequate maintenance program is restored, and the project is determined by the Corps to be adequately maintained.

(b) *Advice and reporting.* Information on the results of CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices. Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and not eligible for Rehabilitation Assistance. Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Rehabilitation of Non-Federal Flood Control Works.

(a) *Scope of work.* The Corps will provide assistance in the rehabilitation of non-Federal projects only when repairs are clearly beyond the normal physical and financial capabilities of the project sponsor. The urgency of the work required will be considered in determining the sponsor's capability.

(b) *Eligibility for Rehabilitation Assistance.* A flood control project is eligible for Rehabilitation Assistance provided that the project is in an Active status at the time of the flood event, the damage was caused by the flood event, the work can be economically justified, and the work is not otherwise prohibited by this regulation.

(c) *Work at non-Federal expense.* At the earliest opportunity prior to commencement of or during authorized rehabilitation work, the Corps will inform the project sponsor of any work that must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies, and any modifications that are necessary to preserve the integrity of the project.

(d) *Nonconforming works.* Any non-Federal project constructed or modified without the appropriate local, State, tribal, and/or Federal permits, or waivers thereof, will not be rehabilitated under Public Law 84–99.

(e) *Cooperation Agreements.* A Cooperation Agreement is required in accordance with subpart G of this part.

§ 203.45 Rehabilitation of Federal Flood Control Works.

Rehabilitation of Federal flood control projects will be identical to rehabilitation of non-Federal projects (§ 203.44), except for those conditions contained in subpart G of this part concerning cooperation agreements, when the original PCA for the Federal project is sufficient. Additional requirements for Hurricane/Beach Protection Projects are covered in § 203.49.

§ 203.46 Restrictions.

(a) Restrictions to flood control works. Flood control works are designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels. Structures built primarily for the purposes of channel alignment, navigation, recreation, fish

and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection are generally ineligible for Public Law 84–99 Rehabilitation Assistance.

(b) *Non-flood related rehabilitation.* Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms will generally not be provided under Public Law 84–99.

(c) *Maintenance and deterioration deficiencies.* Rehabilitation under Public Law 84–99 will not be provided for either Federal or non-Federal flood control projects that, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by, or at the expense of, the non-Federal sponsor, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred or deficient maintenance, the estimated deferred or deficient maintenance cost will not be included as contributed non-Federal funds, and will be in addition to cost-sharing requirements addressed in § 203.82. Failure of project sponsors to correct deficiencies noted during Continuing Eligibility Inspections may result in ineligibility to receive Rehabilitation Assistance under Public Law 84–99.

(d) *Economic justification.* No flood control work will be rehabilitated unless the work required satisfies Corps criteria for a favorable benefit-to-cost ratio, and the construction cost of the work required exceeds fifteen thousand dollars. Construction costs greater than fifteen thousand dollars does not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for Corps Rehabilitation Assistance.

§ 203.47 Modifications to Non-Federal Flood Control Works.

Modifications necessary to preserve the structural integrity of existing non-Federal projects may be constructed at additional Federal and non-Federal expense in conjunction with approved rehabilitation work. The additional Federal cost will be limited to not more than one-third of the estimated Federal construction cost of rehabilitation to preflood level of protection, or $100,000, whichever is less. The modification work must be economically justified. Non-Federal interests are required to contribute a minimum of 25% of the total construction costs of the modification, LERRD's, and any additional funds necessary to support the remaining cost of the modification beyond what the Corps can provide. Engineering and design costs will be at Corps cost.

(a) *Cash contributions.* Non-Federal contributions will be only in cash. In-kind services are not permitted for modification work.

(b) *Protection of additional areas.* Modifications designed to provide protection to additional area are not authorized.

§ 203.48 Inspection Guidelines for Non-Federal Flood Control Works.

(a) *Intent.* The intent of these guidelines is to facilitate inspections of the design, construction, and maintenance of non-Federal flood control works. The guidelines are not intended to establish design standards for non-Federal flood control works, but to provide uniform procedures within the Corps for conducting required inspections. The results of these inspections determine Active status in the RIP, and thus determine eligibility for Rehabilitation Assistance. The contents of this section are applicable to both IEI's and CEI's.

(b) *Level of detail.* Evaluations of non-Federal flood control works will be made through on site inspections and technical analyses by Corps technical personnel. The level of detail required in an inspection will be commensurate with the complexity of the inspected project, the potential for catastrophic failure to cause significant loss of life, the economic benefits of the area protected, and other special circumstances that may occur. Technical evaluation procedures are intended to establish the general capability of a non-Federal flood control work to provide reliable flood protection.

(c) *Purposes.* The IEI assesses the integrity and reliability of the flood control work. In addition, other essential information required to help determine the Federal interest in future repairs/rehabilitation to the flood control work will be obtained. The IEI will establish the estimated level of protection and structural reliability of the existing flood control work. Subsequent CEI's will seek to detect changed project conditions that may have an impact on the reliability of the flood protection provided by the flood control work, to include the level of maintenance being performed on the flood control work.

(d) *Inspection Components*—(1) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal flood control work will be evaluated and expressed in terms of exceedence frequency (e.g., a 20% chance of a levee being overtopped in any given year). These analyses also include an evaluation of existing or needed erosion control features for portions of a project that may be threatened by stream flows, overland flows, or wind generated waves.

(2) *Geotechnical analyses.* The Geotechnical evaluation will be based primarily on a detailed visual inspection. As a minimum, for levees, the IEI will identify critical sections where levee stability appears weakest and will document the location, reach, and cross-section at these points.

(3) *Maintenance.* Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.

(4) *Other structural features.* Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

(e) *Ratings.* Inspected flood control works will receive a rating in accordance with the table in this paragraph. The table in this paragraph provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.

Rating	Assessment
M—Minimally Acceptable	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

(f) *Sponsor reclama.* If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane/Shore Protection Projects.

(a) *Authority.* The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engineers, such rehabilitation is warranted for the adequate functioning of the project.

(b) *Policies.* (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.

(2) To be eligible for Rehabilitation Assistance, HSPP's must be:

(i) A completed element of a Federally authorized project; or,

(ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, HQUSACE or his designated representative; or,

(iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and

(3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.

(4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Deputy Commanding General for Civil Works, and may be delegated to the Chief, Operations Division, Office of the Deputy Commanding General for Civil Works.

(5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.

(6) Definition of extraordinary storm. An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. ''Prolongation or severity'' means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. ''Significant amounts of damage'' have occurred when:

(i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds 1 million dollars and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds 6 million dollars; or,

(iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.

(c) *Procedural requirements.* Rehabilitation of HSPP will be done in accordance with § 203.45, except as modified by this section.

(d) *Combined Rehabilitation and Periodic Nourishment.* In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Deputy Commanding General for Civil Works.

§ 203.50 Nonstructural Alternatives to Rehabilitation of Flood Control Works.

(a) *Authority.* Under Public Law 84–99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) *Policy.* (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of such non-Federal sponsors.

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in § 203.15, or another Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSA that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5)(i) The principal purposes of an NSAP are for:

(A) Floodplain restoration;

(B) Provision or restoration of floodways; and,

(C) Reduction of future flood damages and associated flood control works repair costs.

(ii) Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under Public Law 84–99 authority.

(c) *Limitation on Corps Expenditures.* Exclusive of the costs of investigation, report preparation, engineering and

design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Deputy Commanding General for Civil Works.

(d) *Responsibilities of the NSAP non-Federal Sponsor.*

(1) Operate and maintain the NSAP;

(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.

(3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

(e) *Responsibilities of Other Federal Agencies Acting as NSAP Sponsor.* The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (See paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (f)(1) of this section.

(f) *Responsibilities of the Requesting Flood Control Work Project Sponsor.* (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.

(2) If not also the NSAP sponsor, the flood control work project sponsor must:

(i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and

(ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) *Allowable Public Law 84–99 expenses for NSAP's.* (1) Acquisition of land or interests in land.

(2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.

(3) Demolition and removal of structures, including utility connections and related items.

(4) Debris removal and debris reduction.

(5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.

(6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.

(7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.

(8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection features and/or riprap.

(9) Protection/floodproofing of essential structures and facilities.

(10) Supervision, administrative, and contract administration costs of other expenses allowed in this subparagraph.

(h) *Time limitation.* Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) *Participation and involvement of other Federal, State, tribal, local, and private agencies.* Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency's authorities and regulations.

(j) *Future Assistance.* After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84–99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) *Environmental Considerations.* NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirements for Cooperation Agreement (CA)/Items of Local Cooperation.* (1) Requirement for Local Cooperation. In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraph (l)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraph (l)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.

(2) The CA requirements of subpart G of this part are not applicable to NSAP's.

(3) Items of Local Cooperation. For NSAP's, non-Federal interests shall:

(i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;

(ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.

(4) Cost sharing. The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.

(5) Eligibility under other Federal programs. NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

(6) Contributed funds. Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 USC 701h as the pertinent authority.

(7) Obligation of contributed funds. In accordance with OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury

before any obligations can be made against such funds.

(8) Prohibition of future assistance. The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.

(9) Assurance of Compliance with Exec. Order 11988. NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Exec. Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.

(10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

(m) *Acquisition of LERRD's.* (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in paragraph (c) of this section, and availability of appropriations.

(2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

§ 203.51 Levee Owner's Manual.

(a) *Authority.* In accordance with section 202(f) of Public Law 104–303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.

(b) *Policies.* (1) Active non-Federal projects. A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.

(2) Federal projects. The Operation and Maintenance Manual specified by § 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.

(c) Procedural requirements. Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

§ 203.52 [Reserved]

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

§ 203.61 Emergency Water Supplies Due to Contaminated Water Source.

(a) *Authority.* The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policies.* (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) The maximum contaminant level *or* treatment technique for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (40 CFR part 141), is exceeded.

(ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (e.g., a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated on the basis of other information available.

(3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (See subpart G of this part.) Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the State and the Corps. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.

(9) State, tribal, and local governments must make full use of their own resources, including National Guard capabilities.

(c) *Governor's request.* A letter signed by the Governor, or his or her authorized representative, requesting Corps assistance and addressing the State's commitments and capabilities in response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the local and State efforts undertaken. Verify that all reasonably available resources have been committed.

(2) Identify the specific needs of the State, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the State.

(4) Identify the project sponsor(s).

(d) *Non-Federal responsibilities.* Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination. If assistance is furnished by the Corps, local interests must furnish the basic requirements of local cooperation as detailed in the Cooperation Agreement. In all cases, reasonable water conservation measures must be implemented. Local interests will be required to operate and maintain any loaned equipment, and to remove and return such equipment to Federal interests, in a fully maintained condition, after the situation is resolved.

§ 203.62 Drought assistance.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells, and to transport water to farmers, ranchers and political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section.*

(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching which receives its majority income from such activity is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells, and

(B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(d) *Guidance—Construction of wells.* (1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(e) *Guidance-transport of water.* (1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(f) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

Subpart F—Advance Measures

§ 203.71 Policy.

Advance Measures consists of those activities performed prior to a flood event, or potential flood event, to protect against loss of life and/or significant damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an imminent threat of unusual flooding. Corps assistance will be to complement the maximum efforts of tribal, State, and local authorities. Projects will be designed for the specific threat, normally of expedient-type construction, and typically temporary in nature.

§ 203.72 Eligibility Criteria and Procedures.

(a) *Threat of flooding.* An *imminent* threat of *unusual* flooding must exist before Advance Measures projects can be approved. The threat may be established by National Weather Service predictions, or by Corps of Engineers determinations of unusual flooding from adverse or unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.

(b) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information.

(1) Describe the non-Federal efforts undertaken. Verify that all available resources have been committed.

(2) Identify the specific needs, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the non-Federal interests.

(4) Identify the non-Federal sponsor(s).

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages.

(d) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.

(e) *Local cooperation/responsibilities.* Subpart G of this part provides requirements for a Cooperation Agreement needed to provide local assurances. The project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.

(f) *Contingency Planning Efforts for Potential Advance Measures Activities.* Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to tribal, State, and local agencies, commensurate with the predicted weather phenomenon, based on requests for assistance from such tribal, State, and local agencies. Specific Advance Measures projects must be addressed as specified in paragraph (b) of this section.

(g) *Definitions.*

(1) *Imminent Threat.* A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in a given geographical location. Implicit in the timing aspect can be considerations of available time (when the next flood or storm event is likely to occur), season (e.g., a snowpack that will melt in the coming spring runoff), or of known cyclical activities.

(2) *Unusual Flooding.* A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/ Cooperation Agreements

§ 203.81 General.

(a) *Requirements for Cooperation Agreements.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.

(b) *Request for assistance.* (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

(2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/ division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of Local Cooperation.

It is Corps policy that provision of assistance under Public Law 84–99 will, insofar as feasible, require local interests to provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84–99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

(a) *Furnishing of LERRD's.* This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a

non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.

(b) *Hold and save clause.* This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Maintain and operate clause.* This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: ''It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of (insert name of sponsor, and owner if appropriate).''

(d) *Removal of temporary works.* Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.

(e) *Request for retention of temporary flood control works.* Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84–99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84–99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* (1) The Federal Government may assume up to 75 percent of the eligible construction costs for rehabilitation of Federal and non-Federal flood control projects. The Federal Government may assume up to 75 percent of the eligible construction costs for rehabilitation of HSPP's. Sponsors will provide their share of costs as provided for in § 203.84. The sponsor's share is in addition to providing costs for LERRD's, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.

(2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD's.

§ 203.83 Additional Requirements.

(a) *Maintenance deficiencies.* Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage, flood control works.* Separable areas with minor damage will be included in the maintenance program of local interests.

(c) *Minor completion items.* Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.

(d) *Adequacy of requirements of local cooperation.* In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a ''Contingency Fund'' to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a ''Capital Improvement Fund'' to meet future costs of capital improvement projects such as replacement of culverts in levees, pump station equipment, etc.

(e) *Eligibility under other Federal programs.* The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84–99 assistance, but will not be ''at no cost to the United States.'' Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of Local Participation—Cost Sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: Contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

(a) *Contributed funds.* Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701n as the pertinent authority .

(b) *Obligation of contributed funds.* Per OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84–99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant. Public Law 84–99 limits the term to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal Flood Control Projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These

requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in § 203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84–99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the ''Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR part 208)'' or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal sponsor will vary according to organization and other circumstances.

[FR Doc. 02–3515 Filed 2–25–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 256–0319b; FRL–7139–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns nitrogen oxides (NO_X) emissions from internal combustion engines. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 28, 2002.

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

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local KCAPCD Rule 427. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–4399 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN64–01–7289b; FRL–7139–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site-specific revision to the Minnesota Sulfur Dioxide (SO_2) State Implementation Plan (SIP) for the Northern States Power Company (NSP) Riverside Plant, located in Minneapolis, Hennepin County, Minnesota. The Minnesota Pollution Control Agency requested in their September 1, 1999 submittal that EPA approve into the Minnesota SO_2 SIP certain portions of the Title V permit for NSP's Riverside plant and remove the NSP Riverside Administrative Order from the state SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, we are proposing to approve into the SIP only those portions of the permit cited as ''Title I condition: State Implementation Plan for SO_2.'' In addition, we are proposing to remove the NSP Riverside Plant Administrative Order from the state SO_2 SIP. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive 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. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 28, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone

Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–4401 Filed 2–25–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7150–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by Weirton Steel Corporation (Weirton), to exclude (or delist) on a one-time basis certain solid wastes generated at its Weirton, West Virginia, facility from the lists of hazardous waste.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. We will accept comments on this proposal until April 12, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by March 13, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, please contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
- A. What laws and regulations give EPA the authority to delist waste?
- B. What does Weirton request in its petition?

II. Waste-Specific Information
- A. How was the waste generated by Weirton?
- B. What information did Weirton submit to support its petition?

III. EPA's Evaluation of the Petition
- A. What method did EPA use to evaluate risk?
- B. What other factors did EPA consider in its evaluation?
- C. What conclusion did EPA reach?

IV. Conditions for Exclusion
- A. What conditions are associated with this exclusion?
- B. What happens if Weirton fails to meet the conditions of this exclusion?

V. Effect on State Authorization

VI. Effective Date

VII. Administrative Requirements

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded, a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261, even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

B. What Does Weirton Request in Its Petition?

On March 3, 1999, Weirton petitioned EPA to exclude on a one-time basis the wastewater treatment sludge contained in an inactive surface impoundment (the East Lagoon) and two tanks (the Figure 8 tanks) from the list of hazardous wastes contained in 40 CFR 261.31. The lagoon and tanks were removed from service in September,

1998. The total estimated volume of sludge in the impoundment and tanks is 18,000 cubic yards.

The wastewater treatment sludge is described in Weirton's petition as a mixture of small quantities of EPA Hazardous Waste Numbers F007 (spent cyanide plating bath solutions from electroplating operations) and F008 (plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process) with nonhazardous solids that settled during treatment of process wastewater, cooling water, quench water, and stormwater entering Weirton's C&E outfall area.

Hazardous wastes F007 and F008 were originally listed because they were found to contain cyanide salts, although Land Disposal Restriction treatment standards for these wastes found at 40 CFR 268.40 have been establised for cadmium, chromium (total), cyanide (total), cyanide (amenable), lead, nickel, and silver.

The sludge is currently being managed as listed hazardous waste as a result of a judicial Consent Decree (Civil Action No. 5:96–CV–171) entered into on December 26, 1996, by Weirton, EPA, the West Virginia Department of Environmental Protection (WVDEP) and the United States Department of Justice. The Consent Decree requires that Weirton decommission the East Lagoon (and another impoundment known as the West Lagoon) and manage and dispose of the sludge as listed hazardous waste. The sludge contained in the West Lagoon is not included in this petition. It was removed and disposed of as hazardous waste in the fall of 1997 and spring of 1998.

Weirton is requesting this exclusion so that the sludge in the East Lagoon and the Figure 8 tanks can be removed and disposed of in a permitted Subtitle D landfill.

II. Waste-Specific Information

A. How Was the Waste Generated by Weirton?

Weirton owns and operates an integrated steel mill, including the C&E wastewater treatment plant, occupying approximately 1300 acres on the banks of the Ohio River in Weirton, WV. Weirton produces iron and steel, and manufactures flat rolled carbon steel that is further processed into tin mill products and hot rolled, cold rolled and galvanized sheet steel products. Manufacturing processes that contributed wastewater to the generation of the wastewater treatment sludge that is the subject of this petition (known as the C&E sludge) included steel-making in basic oxygen furnaces, steel slab production in a four strand continuous caster, sheet steel production via hot and cold rolling using roughing and finishing strands, tandem mills, pickling, temper mills, annealing and hot dip galvanizing of sheet steel.

Several waste treatment processes contributed wastewater discharges to the C&E outfall area. Internal wastewater treatment plants at the hot mill, continuous caster, the basic oxygen plant scrubber and the oil recovery plant remove solids and oil from the process wastewater via settling, filtration and skimming. The primary contributor of wastewater flow is the hot mill wastewater treatment plant which contributes mill scale containing iron and trace levels of metals and oil and grease to the C&E outfall area. The basic oxygen plant scrubber treats quench water from the basic oxygen furnace exhaust, and its wastewater treatment plant contributes trace levels of iron and other metals to the C&E outfall area. Weak acid rinsewater and oils are treated in the on-site oil recovery plant, and this wastewater treatment plant contributes metals and oil and grease to the C&E outfall area. Spent pickle liquor is processed at an on-site acid regeneration plant for reuse in the pickling lines.

The process that caused the C&E sludge to be classified as EPA hazardous wastes F007 and F008 was the recovery of tin from tin plating line sludges in the detinning plant and the subsequent discharge of wastewater from the detinning plant to the C&E wastewater treatment plant. Tin sludge from the tin mill was generated in Weirton's halogen electroplating lines which used cyanide in the process. The sludge was periodically removed from the electroplating cells and transported to the detinning plant for tin recovery. The detinning plant was also used for the recovery of tin and steel from tin-plated scrap steel. Both elemental tin and steel were recycled in this process.

The volume of tin-recovery process water historically discharged from the detinning plant to the C&E outfall area (approximately 22,500 gallons per day) was negligible compared to the quantity of non-hazardous process water discharged to this outfall (approximately 60,000,000 gallons per day). Recovery of tin from tin scrap ceased in 1996, and tin sludge processing related discharges from the detinning plant to the C&E outfall ceased on February 7, 1997. The detinning plant was subsequently closed, and tin scrap and tin sludge are currently transported offsite for tin recovery and/or disposal.

Other non-process wastewater treated at the C&E outfall area wastewater treatment plant consists of onsite and Weirton City stormwater runoff collected from multiple upstream facilities and locations.

At the C&E outfall area, the lagoon was used for oil skimming and for settling of solids not removed in the upstream wastewater treatment plants described above.

The sludge itself consists primarily of inorganic solids generated as a result of steelmaking. The Ohio River is used as the source of process water for the steelmaking process, and much of the solids content in the wastewater is associated with the suspended and dissolved solids in the raw river water. Another substantial portion of the sludge can be attributed to the mill scale present in the wastewater. Oil and grease are also present in the sludge as a result of the use of various lubricants in the rolling and other steelmaking equipment.

The East Lagoon and the Figure 8 tanks are no longer used for wastewater treatment purposes. They were placed in service in 1974. From 1974 through 1990, the East Lagoon and an adjacent surface impoundment (the West Lagoon) were used for primary solids settling and oil skimming. In 1990, a 3.5 million gallon wastewater treatment plant was constructed upstream of the lagoons. After 1990, the lagoons were used for final polishing of wastewater prior to discharge through a permitted outfall.

Historically, the C&E sludge from the East Lagoon was dredged on a routine basis and placed in the Figure 8 tanks using either a clamshell bucket or a hydraulic dredge. Placement of the sludge in the Figure 8 tanks served to gravity thicken and dewater it prior to offsite disposal.

The East Lagoon and the Figure 8 tanks were removed from service on September 2, 1998.

B. What Information Did Weirton Submit To Support Its Petition?

In order to support its petition, Weirton submitted detailed descriptions of its manufacturing and wastewater treatment process, analytical results from representative samples of its wastewater treatment sludge collected by the United States Army Corps of Engineers (ACOE) for EPA during an investigation done in September 1996, analytical results from samples of the wastewater treatment sludge obtained by Weirton on September 8, 1996, and split samples analyzed by Weirton from the ACOE sampling investigation. We

requested and Weirton provided Material Safety Data Sheets (MSDS) for commercial products used in its process.

The ACOE analytical program obtained systematic and grab samples from the East Lagoon. Sludge samples were obtained from twenty-nine discrete locations in the East Lagoon. Nineteen samples were obtained from grid nodes. Five random samples were obtained from the shallow sludge layer. An additional five samples from the deep sludge layer were obtained from the center of the lagoon and the center of each lagoon quadrant.

All nineteen grid samples were analyzed for the twenty-three metals on the Target Analyte List (TAL) plus tin, total and amenable cyanide, total petroleum hydrocarbons (TPH) and pH. The Toxicity Characteristic Leaching Procedure (TCLP) was performed on the five grid samples that had the highest total metal content to determine leachable metals concentrations of the eight Toxicity Characteristic (TC) metals plus nickel and tin.

The five random samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH and pH. The TCLP was performed on three of the random samples to determine leachable metals concentrations of the TC metals plus nickel and tin.

The five deep samples were analyzed for the twenty-three metals on the TAL plus tin, total and amenable cyanide, TPH, volatile organic compounds, semivolatile organic compounds, pH and ignitability. The TCLP was performed on all five deep samples to determine leachable concentrations of the TC metals plus nickel and tin, and TC organics except for pesticides and herbicides.

After an initial review of the Weirton petition, we rejected the analytical results obtained by Weirton from the samples it collected on September 8, 1996, and from the samples it analyzed which were obtained as split samples during the ACOE investigation. We did this because the data had not been validated and, therefore, was of unknown quality.

We requested that Weirton supplement the data obtained during the ACOE investigation because high TPH values indicated the oil and grease content of the waste was greater that 1%. When oil and grease content is greater than 1%, we do not know if the leachate data for metal constituents obtained by performing SW–846 Method 1311, the Toxicity Characteristic Leaching Procedure (TCLP), will be representative of the mobility of these constituents in the environment. In this case, we requested that Weirton perform leachate analysis for metals using Method 1330A, the Extraction Procedure for Oily Wastes (OWEP).

Because of the number and variety of wastewater generating operations at Weirton, we felt there was the possibility that hazardous constituents other than those addressed in the ACOE data might be present in the waste. Therefore, we requested that Weirton provide analysis for the entire list of hazardous constituents found in Appendix IX to 40 CFR Part 264.

In addition, the quantitation levels for semivolatile organic compounds in the ACOE data were unacceptably high for risk-based decision making. Therefore, we requested that when doing the Appendix IX analysis, Weirton provide us with semivolatile organic compound data that had lower (more sensitive) quantitation levels.

On June 12 and 13, 2001, Weirton collected eight additional samples to supplement the ACOE data. Three shallow samples and three deep samples were collected in the East Lagoon. An additional sample was collected from each of the Figure 8 tanks.

These samples were analyzed for total Appendix IX volatiles, semi-volatiles, metals, cyanide and sulfide. Leachable concentrations of all constituents except cyanide and sulfide were determined by performing the TCLP for Appendix IX volatile and semivolatile organics, and the OWEP for metals. Analysis for Appendix IX polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs), polychlorinated biphenyls (PCBs), pesticides and herbicides was performed on four of these samples. These additional analyses were performed on two of the shallow samples and one deep sample from the East Lagoon, and one of the samples from the Figure 8 tanks.

Leachate analysis was not performed on any of the samples for cyanide. Therefore, in our evaluation of cyanide we have calculated the theoretical maximum leachate concentration by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP (a leaching procedure) followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (i.e., a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by twenty. This twenty-fold dilution is part of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual waste, the concentration of this constituent in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

During the supplemental sampling event on June 12 and 13, 2001, the WVDEP collected split samples and analyzed them using the TCLP for all TC constituents.

We also requested that Weirton supplement the data obtained during the ACOE investigation because of discrepancies in the results of the testing done for the characteristic of ignitability.

As mentioned above, the five deep samples from the ACOE sampling event were analyzed for ignitability. The results reported for these determinations showed that two of the five samples had a flash point greater than 150° F. The reported results for the other three samples showed a flash point of 62° F. As defined in 40 CFR 261.21, a liquid that has a flash point of less that 140° F, determined using one of the methods prescribed in that regulation, is an ignitable hazardous waste. The method used for these determinations was EPA Method 1010 (Pensky-Martens Closed-Cup Method for Determining Ignitability).

Weirton argues in its petition that the results of samples showing a flash point of 62° F were reported in error, and presents results of its own determinations to support this conclusion.

Furthermore, we note that a flash point determination is only applicable to liquids as a definitive test for determining the characteristic of ignitability. The C&E sludge is not a liquid. Weirton reports that the sludge is approximately 45% solids by weight. There is no promulgated definitive test for determining the ignitability of solids (*i.e.,* physically a solid with no free liquid). There is, however, a test method in EPA's compendium of test methods, ''Test Methods for Evaluating Solid Wastes,'' (SW–846) for Ignitability of Solids (Method 1030). Although not required by regulation, this method (a burning rate test procedure) may be used to evaluate that portion of the ignitability definition in 40 CFR

261.22(a)(2) that reads, '' * * * and, when ignited, burns so vigorously and persistently that it creates a hazard,'' for certain solids.

Also, we note that the Agency has issued guidance saying that if a solid flashes using some modification of the flash point test, this may indicate that there is a potential problem with the sample, such as contamination with ignitable volatiles, and further investigation may be in order. The flash point test may be used with other evidence to build a case for a waste being classified as an ignitable hazard.

On December 18, 2001, Weirton collected five additional samples to further demonstrate that the sludge is not ignitable. Weirton determined the flash point of these samples using Method 1010, and also analyzed the samples using Method 1030.

The results of this additional analysis demonstrated that the samples were not ignitable because of their flash point (all five samples had a flash point greater than 200° F), nor were they ignitable through application of the burning rate test.

We agree with Weirton's determination that the C&E sludge is not ignitable. The sludge consists primarily of mill scale, sediments from treating process water taken from the Ohio River, oil and grease from the use of lubricants in the rolling and processing of steel, and storm water. It would not be expected to have a significant volatile organic content.

We have reviewed the sampling and analysis procedures used by Weirton for the collection and analysis of these samples, and have determined that they are adequate for the generation of data that are acceptable for risk-evaluation purposes.

The maximum total and maximum leachate concentrations for all detected inorganic constituents in Weirton's waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Weirton or the ACOE using appropriate methods to analyze the waste.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WASTEWATER TREATMENT SLUDGE

Inorganic constituents	Total constituent concentration (mg/kg)	OWEP or TCLP leachate concentration (mg/l)
Antimony	2.2	<1.0
Arsenic	22.4	0.38
Barium	172	2.24
Beryllium	0.75	<0.05
Cadmium	6.3	0.0156
Chromium	276	0.382
Cobalt	38.4	0.3
Copper	243	0.15
Lead	217	0.23
Mercury	0.3	<0.001
Nickel	485	2.46
Selenium	5.4	0.3
Silver	6.2	0.01
Thallium	5.5	<0.2
Tin	7160	0.124
Vanadium	34.9	<0.5
Zinc	6010	12.2
Cyanide (total)	3.1	0.155 [2]

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
[2] This value is the calculated theoretical maximum leachate concentration based on the maximum total constituent concentration.
< Denotes that the constituent was not detected at the concentration specified in the table.

The maximum total and maximum leachate concentrations for all detected organic constituents in Weirton's waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT [1] AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE

Organic constituents	Total constituent concentation (mg/kg)	TCLP leachate concentration (mg/l)
Acetone	0.62	0.056
Acetophenone	2	<0.05
Anthracene	1.4	<0.05
Benz(a)anthracene	1.9	<0.05
Benzene	<0.012	0.021
Benzo(a)pyrene	1.8	<0.05
Benzo(b)fluoranthene	1.2	<0.05
Bis(2-ethylhexyl)phthlate	1.8	0.18
Butylbenzylphthalate	1.7	<0.05
Carbon Disulfide	0.052	<0.05
Chrysene	4.3	<0.05
m-Cresol	<10	0.25
p-Cresol	<10	0.25
DDE	<0.05	0.000007

TABLE 2.—MAXIMUM TOTAL CONSTITUENT [1] AND LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE—Continued

Organic constituents	Total constituent concentation (mg/kg)	TCLP leachate concentration (mg/l)
DDT	0.079	0.00001
Endosulfan	0.13	0.000017
Endrin	0.242	<0.00006
Ethylbenzene	0.022	0.062
Fluoranthene	2.9	<0.05
Heptachlor	0.023	<0.00006
Heptachlor epoxide	0.014	<0.00006
Methyl chloride (chloromethane)	0.092	<0.1
Methyl ethyl ketone (2-butanone)	0.12	0.002
Methyl isobutyl ketone	0.38	<0.05
2-Methylnapthalene	2	<0.05
Phenanthrene	3.8	<0.05
Phenol	1	0.038
Pyrene	4.8	<0.05
2,3,7,8-TCDD [2]	0.00000766	0.00000000011
Toluene	2.4	0.46
Trichloroethylene	<0.012	0.035
Xylene	0.22	0.29

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
[2] For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).
< Denotes that the constituent was not detected at the concentration specified in the table.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (See 40 CFR 260.22(i)(12)). Weirton submitted signed certifications stating that all submitted information is true, accurate and complete.

III. EPA's Evaluation of the Petition

A. What Method Did EPA Use To Evaluate Risk?

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, and air) for hazardous constituents present in the petitioned waste. Because the Consent Decree requires that the sludge be removed from the units in which it currently resides and because of its physical form, we determined that disposal in a Subtitle D landfill was the most reasonable, worst-case disposal scenario for Weirton's petitioned waste. We then used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of, in order to evaluate the potential impact on human health and the environment. To perform this evaluation, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model for estimating groundwater releases. For a detailed description of the DRAS program and the EPACMPT model, See 65 FR 58015, September 27, 2000. Subsequent revisions to the DRAS program are described in 65 FR 75637 (December 4, 2000). The DRAS program is available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra__abc/pd-o/dras.htm.* The technical support document for the DRAS program is also available on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra__c/pd-o/dtsd.htm* as well as in the public docket for this proposed rule.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and insures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

In assessing potential risks to groundwater, we use the estimated waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

For constituents which are not detected in leachate analysis, the DRAS requires that the detection limit be entered along with the other data. In these circumstances, the DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed, if an appropriate analytical method was used.

Similarly, the DRAS also predicts possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to perform this assessment.

In most cases, because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict, and does not presently control, how a petitioner will

manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The back-calculation procedure contrasts with the method used to compute the cumulative risk for a one-time delisting petition. To determine cumulative risk, the calculations proceed in a forward direction. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks (risk) and noncarcinogenic hazards (hazard). The risk is said to be cumulative because risks and hazards are summed separately for receptors (resident adults and children) across all applicable waste constituents and exposure pathways to obtain an estimate of the total individual risk and hazard for each receptor. Risk is the probability that a receptor will develop cancer. Risk is estimated based on a unique set of exposure, model, and toxicity assumptions.

Hazard is defined as the potential for noncarcinogenic health effects as a result of exposure to constituents of concern, averaged over an exposure period of less than an entire lifetime. A hazard is not a probability but rather a measure (expressed as a ratio) of the magnitude of a receptor's potential exposure relative to a standard exposure level. The standard exposure level is calculated over an exposure period such that there is no likelihood of adverse health effects to potential receptors, including sensitive populations.

If a delisting evaluation is performed for a one-time exclusion, the DRAS computes the cumulative carcinogenic risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. The DRAS also computes the cumulative noncarcinogenic risk by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indexes (HIs), and then summing the HIs associated with each exposure pathway analyzed. For a one-time exclusion, the results of the cumulative risk assessment may be used in lieu of the calculated delisting levels. Since this is a one-time delisting, we do not need to establish monitoring concentrations for each batch of waste that is subsequently managed under the exclusion. Therefore, we set the evaluation levels in the cumulative risk process at the established target risk range (1×10^{-4} to 1×10^{-6} for carcinogenic waste constituents and a HI of 1.0 to 0.1 for noncarcinogenic waste constituents). Use of the cumulative risk analysis allows the risk associated with an individual waste constituent to extend to a less conservative risk level as long as the cumulative risk for the entire petitioned waste lies below or within EPA's target risk range.

For calculation of delisting levels for multi-year (batch) waste generation, EPA Region III generally defines acceptable risk levels as wastes with an excess cancer risk of no more than 1×10^{-6} and a hazard quotient of no more than 0.1 for individual constituents. For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than 1×10^{-4} and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

B. What Other Factors Did EPA Consider in Its Evaluation?

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (*e.g.,* a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst case assumptions, we believe that evidence of groundwater contamination originating from a land-based waste management unit may be sufficient basis for petition denial.

Pursuant to an administrative order issued by EPA, Weirton is currently conducting a RCRA Facility Investigation (RFI) at its site in conformance with a plan approved by EPA on July 20, 1999. This plan includes groundwater monitoring in the C&E outfall area (known as Corrective Action Area I for this purpose) for Target Analyte List metals, Target Compound List volatile and semivolatile organics, and total cyanide.

The groundwater monitoring network established for the investigation in this area was designed to monitor groundwater quality for the entire Corrective Action Area I, not just the East Lagoon. Corrective Action Area I includes several other solid waste management units in addition to the East Lagoon.

Nevertheless, one of the groundwater monitoring wells in the network is adjacent to the East Lagoon and is likely downgradient of the unit. Based on the results collected in the investigation so far, this well does not show elevated levels of contaminants, especially when compared to the upgradient well in the monitoring network.

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by Weirton provides a reasonable basis to grant Weirton's petition. We, therefore, propose to grant Weirton a one-time delisting for its C&E sludge currently residing in the East Lagoon and the Figure 8 tanks. The data submitted to support the petition and the Agency's evaluation show that the constituents in the Weirton C&E sludge are below health-based levels used by the Agency for delisting decision-making, and that the sludge does not exhibit any of the characteristics of a hazardous waste.

For this delisting determination, we used information gathered to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Weirton's petitioned waste. We applied the DRAS described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of Weirton's petitioned waste on human health and the environment.

The estimated total cumulative risk posed by the waste, as calculated using the DRAS, is 7.5×10^{-5}. We believe that this risk is acceptable both because the value is within the generally acceptable range of 1×10^{-4} to 1×10^{-6} and, as stated above, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than 1×10^{-4} to be protective of human health.

The estimated cumulative hazard index for this waste is calculated by DRAS to be 9.8×10^{-2}. We likewise believe that this risk is acceptable both because the value is within the generally acceptable range of 1.0 to 0.1 and, for a one-time delisting, EPA Region III considers a cumulative

hazard index less than or equal to 1 to be protective of human health.

We believe the data submitted in support of the petition show that the waste will not pose a threat when disposed of in a Subtitle D landfill. We, therefore, propose to grant Weirton's request for a one-time delisting for the C&E sludge currently residing in the East Lagoon and the Figure 8 tanks.

IV. Conditions for Exclusion

A. What Conditions Are Associated With This Exclusion?

The proposed exclusion would apply only to the estimated 18,000 cubic yards of C&E sludge currently contained in the East Lagoon and the Figure 8 tanks as described in Weirton's petition. Any volume of sludge exceeding this amount could not be managed as nonhazardous waste under this exclusion.

Furthermore, in order to insure that the sludge is removed from the units as required by the Consent Decree, and because the risk assessment was based on disposal in a landfill, this exclusion would be effective only when the sludge is removed from the units in which it currently resides. That is, if this proposed exclusion becomes final, the C&E sludge would remain a hazardous waste until it is removed from the East Lagoon and the Figure 8 tanks for transportation and subsequent disposal in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal or industrial solid waste.

If Weirton discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, Weirton will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that condition.

The purpose of this condition is to require Weirton to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, we will require that Weirton provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. Weirton will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

B. What Happens if Weirton Fails To Meet the Conditions of This Exclusion?

If Weirton violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, Weirton must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today making a tentative decision to grant Weirton's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 19, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Weirton Steel Corporation	Weirton, West Virginia	Wastewater treatment sludge (known as C&E sludge) containing EPA Hazardous Waste Numbers F007 and F008, subsequent to its excavation from the East Lagoon and the Figure 8 tanks for the purpose of transportation and disposal in a Subtitle D landfill after (insert publication date of the final rule). This is a one-time exclusion for 18,000 cubic yards of C&E sludge. (1) *Reopener language* (a) If Weirton discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then Weirton must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the West Virginia Department of Environmental Protection within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator and the West Virginia Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health or the environment. (2) *Notification Requirements* Weirton must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
*	*	* * * * *

[FR Doc. 02–4530 Filed 2–25–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. RSPA–02–11654 (HM–228)]

RIN 2137–AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA is considering changes to the requirements in the Hazardous Materials Regulations (HMR) on the transportation of hazardous materials by aircraft. These changes would modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. In addition, RSPA is denying a petition for rulemaking in this document.

This ANPRM invites public comments on how to accomplish these goals, provides an opportunity for comment on amendments that RSPA is considering, and provides a forum for the public to present additional ideas for improving the safe transportation of hazardous materials by aircraft.

DATES: *Written comments:* Comments must be received by May 31, 2002.

ADDRESSES: *Comments:* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should identify the docket number (RSPA–02–11654 (HM–228)) and submit your comments in two copies. If you want to confirm our receipt of your comments, you should include a self-addressed, stamped postcard. You may submit comments to RSPA by e-mail to: *rules@rspa.dot.gov* or you may submit comments to the DMS Web at: *http://dms.dot.gov.* The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif Building) at the above address. You may review public dockets there between the hours of 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also review comments on-line at the DOT Dockets

Management System web site at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or Michael Stevens of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The HMR (49 CFR Parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft (49 CFR 171.1(a)(1)). Parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains additional requirements applicable to aircraft operators transporting hazardous materials aboard an aircraft, and authorizes passengers and crew members to carry hazardous materials on board an aircraft under certain conditions. In addition, aircraft operators must comply with the training requirements in 14 CFR parts 121 or 135, as appropriate.

RSPA (''we'' or ''our'') and the Federal Aviation Administration (FAA) are reviewing Part 175 and other sections of the HMR applicable to transportation of hazardous materials by aircraft. This review will increase safety in the air transportation of hazardous materials by:

(1) Modifying or clarifying requirements to promote compliance and enforcement;

(2) Eliminating unnecessary current regulatory requirements;

(3) Adopting current exemptions and outstanding petitions for rulemaking;

(4) Facilitating international commerce; and

(5) Making the regulations easier to understand.

RSPA requests interested persons (''you'') to submit written comments concerning regulatory changes and clarifications to accomplish the goals set forth above. You should feel free to suggest any change to the HMR to improve safety in the transportation of hazardous materials by aircraft. You do not have to limit your comments to the specific sections of the HMR and issues discussed in this notice. You are encouraged to provide proposed language for changes to the current regulations, rationale and factual data to support your proposed changes, and any other suggestions to make the HMR easier to understand and promote compliance and enforcement. We organized this ANPRM by subject matter with questions at the end of each section. When responding to the questions at the end of each section, please refer to the section and number of the question.

While this ANPRM attempts to encompass a broad range of safety issues regarding hazardous materials transported by air, it is not our only rulemaking initiative addressing air transportation. Other rulemakings include:

(1) a final rule under Docket HM–215D, published on June 21, 2001 (66 FR 33315), which addressed miscellaneous changes in §§ 175.10, 175.33, and 173.150, and revised §§ 175.78 and 175.85 to further align those regulations with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods By Air (ICAO Technical Instructions);

(2) a NPRM under Docket HM–206C, published February 13, 2002 (67 FR 6669), in response to National Transportation Safety Board (NTSB) recommendation A–98–80, which recommends air carriers transporting hazardous materials to have the means to quickly retrieve and provide information about the identity of each shipment of hazardous material on an airplane;

(3) an NPRM under Docket HM–226, published January 22, 2001 (66 FR 6942), which proposes to revise the classification criteria and packaging requirements for infectious substances consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the ICAO Technical Instructions;

(4) a rulemaking to be initiated under Docket HM–224B, which is evaluating the packaging requirements for oxygen cylinders aboard aircraft (see the discussion in the preamble to our August 19, 1999 final rule under Docket HM–224A (64 FR 45391–93)); and

(5) a rulemaking to be initiated under Docket HM–224C, to revise the requirements of the HMR applicable to lithium batteries (see our advisory notice published September 7, 2000 (65 FR 54366)).

This rulemaking will not propose any security related changes to the HMR. As a result of the terrorist incidents of September 11, 2001, and subsequent threats related to biological materials, we are reviewing the HMR to determine if additional requirements are necessary to assure the security of hazardous materials in transportation. We initiated a rulemaking project to address security issues related to the transportation of hazardous materials by all modes. We are examining hazard communication, shipping documentation, training, and other requirements to determine if rulemaking action is necessary.

II. Communication of Requirements to Airline Passengers and Shippers (Signage)

A. Discussion

Reducing the incidence of undeclared hazardous materials aboard aircraft is one of our highest priorities. We believe a lack of awareness of the risks posed by hazardous materials and their applicable regulatory requirements is a major factor in undeclared hazardous material shipments by air. RSPA and FAA are working with the Air Transport Association and others, on non-regulatory initiatives to increase public awareness through outreach and education efforts. Methods for detection of undeclared hazardous materials and ways to better assess the extent of the problem, are also of interest to us.

RSPA and FAA also are considering other measures. A requirement to verbally question passengers and shippers on whether their baggage or packages contain hazardous materials is one possibility. Another potential solution suggested by the NTSB in its Recommendation A–98–71, may be to require a shipper to provide written responses on shipping papers to inquiries about hazardous characteristics of the shipment. Blocks on shipping documents to check whether or not the package contains hazardous materials or requiring shipper certification when a new or unknown shipper is involved, may be alternative ways to accomplish basic objectives.

The HMR currently require notices to be posted at air passenger and cargo facilities and where cargo is accepted. The notices contain specific language warning passengers and offerors of cargo of the requirements applicable to carrying or offering hazardous materials and the penalties for failure to comply with those requirements. Section 175.25 requires aircraft operators to display notices warning passengers against carrying undeclared hazardous materials aboard aircraft in either their checked or carry-on luggage or on their persons, and prescribes the information to be contained in each notice. Section 175.26 requires each person who engages in the acceptance of, or the transportation of, cargo by aircraft, to

display notices in prominent locations at each facility where cargo is accepted. These notices are intended to inform their customers of what a hazardous material is, the requirement to comply with the HMR, and the penalties for failure to comply with the HMR. Therefore, signs must be in prominent view of passengers and persons who accept or offer cargo. Sections 175.25 and 175.26 also list the minimum information that must be contained on the notice.

In some cases, cargo terminals are co-located with passenger terminals. To make it easier for the industry to comply with signage requirements, FAA and RSPA stated in a final rule published September 27, 1993 (58 FR 50496) that display of separate passenger and cargo notices is not required at these passenger terminals. Notices are not required to be displayed at unattended locations if there is a general notice prominently displayed advising customers that shipments of hazardous materials at that location are prohibited. In addition, notices are not required to be displayed at a shipper's facility where packages of hazardous materials are accepted. However, we note there are differences in the information provided on the two notifications, and we are considering eliminating these differences. In a final rule published July 10, 1998 (63 FR 37454), we revised §§ 175.25 and 175.26 to reflect changes in the statutory citations and penalties, and to provide carriers greater flexibility.

Internationally, the ICAO Technical Instructions require each operator to warn passengers of the types of goods they are prohibited from transporting aboard aircraft. However, the ICAO Technical Instructions do not specify the wording or information to be provided in the warning. However, ICAO Technical Instruction Part 7;5.1 does require each operator to ensure the information is promulgated in such a manner to alert its passengers. The information must accompany the passenger ticket; and be sufficient in number and ''prominently displayed'' at each of the places in an airport where tickets are issued, passengers and baggage check in, aircraft boarding areas are maintained, and at any other location where passengers may check in. In addition, the ICAO Technical Instructions require operators to ensure that notices sufficient in number and prominence are displayed in baggage claim areas.

Some packaging, shipping and freight forwarding facilities erroneously believe they are not subject to the requirements of § 175.26. These entities believe they are not subject to Part 175, and specifically § 175.26, because they are not air carriers (See discussion in Part IV. A.). The HMR require each person who engages in accepting or transporting packages for transportation by air to display notification signs. Packaging, shipping and freight forwarding facilities are not excepted from § 175.26(d), because they are performing carrier functions when they accept packages on a carrier's behalf. Therefore, such entities must comply with the signage requirements of § 175.26.

We are considering the need to clarify the term, ''prominently displayed.'' In addition, we are considering clarifying the applicability of § 175.26 to packaging, shipping and freight forwarding facilities.

B. Questions

1. What do you estimate to be the frequency of undeclared hazardous materials shipments by air and what can be done to improve the accuracy of these estimates?

2. What can carriers or the government do to better detect undeclared hazardous materials shipments by air?

3. What are the best approaches (regulatory and non-regulatory) to reducing undeclared hazardous materials shipments by air?

4. What other alternatives should be considered to ensure requirements for shipping hazardous materials by air are understood and followed?

5. What benefits and burdens would result from requirements to verbally question passengers and shippers as to whether their baggage or packages contain hazardous materials?

6. What benefits and burdens would result from requiring shippers to provide written responses on shipping papers to inquiries about hazardous characteristics of the shipment?

7. How can signage be improved?

8. Are existing signage requirements effective in communicating to passengers and shippers the types of hazardous materials they are prohibited from carrying aboard aircraft in carry-on or checked luggage or as cargo?

9. Should we allow the use of warning signs required by ICAO Technical Instructions in lieu of the requirements of §§ 175.25 and 175.26?

10. Do the terms ''prominent location'' or ''prominently displayed,'' need to be clarified?

11. Is there a need to change the requirements in §§ 175.25 and 175.26 to maximize the effectiveness of signs and posters? Is there a better way to design signs to increase the likelihood that passengers and shippers will notice and understand requirements?

12. Do packaging, shipping and freight forwarding facilities understand that, if they accept packages as cargo for transportation by aircraft, which would meet the definition of an ''air carrier'' under 49 U.S.C. 40102, they must comply with the signage requirements of Section 175.26? If not, how can this be clarified?

13. Do we need to clarify or revise the location requirements for display of the signs?

III. ICAO Technical Instructions

A. Discussion

The ICAO Technical Instructions are based on the UN Recommendations and prescribe requirements applicable to the international transport of dangerous goods by air, including classification and packaging of hazardous materials, communication of their hazards, training of employees, and segregation and separation of materials. Section 171.11 of the HMR permits a person to offer and transport hazardous materials in accordance with the provisions of the ICAO Technical Instructions as an alternative to the applicable provisions of the HMR (parts 172 and 173 for classification, hazard communication, and packaging). Section 171.11 permits the use of ICAO Technical Instructions for international and domestic transportation, where at least one leg of transportation is by air.

However, the provisions of § 171.11 do not constitute a total alternative to compliance with the HMR. We are concerned about the lack of awareness that the other regulatory requirements continue to apply, such as those in part 175 of the HMR or the training requirements in 14 CFR. Shipments made in accordance with the ICAO Technical Instructions also remain subject to the emergency response provisions of subpart G of part 172 (Section 171.11(d)(10)). This requirement is restated in State Variation US12 to the ICAO Technical Instructions. Although the ICAO Technical Instructions contain a requirement for emergency response information, it is not detailed in respect to the type of emergency response information required. The ICAO Technical Instructions now satisfy the requirements of subpart G of part 172, with the exception of the requirement for a 24-hour emergency telephone number.

We are considering clarifying what requirements of the HMR apply to a shipment transported under the ICAO Technical Instructions, and updating

the conditions allowing for use of the ICAO Technical Instructions specified in § 171.11(d).

B. Questions

1. Do shippers understand that a shipment made under the ICAO Technical Instructions still must comply with other regulatory requirements, such as part 175 of the HMR and the training requirements in 14 CFR?

2. Should shippers and carriers of hazardous materials be allowed to use the provisions of the ICAO Technical Instructions other than those for packing, marking, labeling, classification, and description, such as Operator Responsibilities and Unloading and Storage provisions?

3. Do any of the conditions in § 171.11(d) on the use of the ICAO Technical Instructions need to be revised or removed? Should any other conditions be added?

4. Are there ways to improve consistency between the ICAO requirements and corresponding requirements in the HMR?

IV. Storage Requirements and Limitations and Docket HM–192

A. Storage Requirements and Limitations

Sections 175.75 and 175.85 prescribe limitations on the quantity of hazardous materials that may be carried aboard passenger-carrying or cargo-only aircraft, and the location of those materials, respectively. The quantity limitations for hazardous materials permitted aboard passenger-carrying aircraft are specified in § 175.75(a)(2). This section states that no more than 25 kg of hazardous materials and, in addition, 75 kg net weight of Division 2.2 (non-flammable compressed gas) may be carried aboard a passenger-carrying or cargo-only aircraft:

(1) In an accessible cargo compartment;

(2) In any freight container within an accessible cargo compartment; or

(3) In any accessible cargo compartment of a cargo-only aircraft if the hazardous materials are loaded as to be inaccessible unless in a freight container.

Class 9 materials and consumer commodities are excepted from the quantity limitations of § 175.75(a)(2). Section 175.85(b) requires hazardous materials packages acceptable for cargo-aircraft only, to be loaded in a manner that allows access to the package by crew members.

Section 175.85(a) prohibits the carriage of a hazardous material in the passenger cabin or on the flight deck of any aircraft, and specifies conditions under which hazardous materials may be carried on main-deck cargo compartments. Section 175.85(c)(1)(i) through (v) provides exceptions for cargo-only operations from the quantity limitations of § 175.75(a)(2), and accessibility requirements of § 175.85(b) for those hazardous materials listed. Section 175.85(c)(2) provides exceptions, when other means of transportation are impracticable, to the accessibility requirement of § 175.85(b) and the quantity limitation requirements of § 175.75(a)(2) for hazardous materials acceptable by both cargo-only and passenger-carrying aircraft. These exceptions require that packages are carried in accordance with procedures approved in writing by the nearest FAA Civil Aviation Security Field Office (CASFO). Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT) specify limitations on individual package quantities, or list packages that are forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages.

Sections 175.85(c)(3)(i) through (iii) provide exceptions for small, single-pilot cargo-only aircraft from the accessibility requirements of § 175.85(b) and the quantity limits of § 175.75. These exceptions may be invoked when small aircraft are the only means of transporting hazardous materials to a particular destination. This applies to airports and locations incapable of supporting larger aircraft operations, where the only means of access is by smaller aircraft. The provisions of § 175.85(c)(3) do not require approval by the FAA.

Sections 175.310 and 175.320 provide exceptions from the quantity limitations in §§ 175.75 and 172.101, when certain conditions are met. Section 175.310 provides an aircraft may carry up to 20 gallons of flammable liquid if: (1) air transportation is the ''only practical means'' of providing suitable fuel; (2) the flight is necessary to meet the needs of a passenger; and (3) fuel is carried in metal containers, as specified in this section. Section 175.320 authorizes the transportation of certain hazardous materials by cargo-only aircraft in inaccessible cargo locations when means of transportation other than air are impracticable or not available (i.e., air transport is the only means of transportation) subject to the conditions specified in § 175.320.

We believe the language of §§ 175.75, 175.85 and §§ 175.310, 175.320 contain overlapping requirements and makes these sections difficult to understand. We base this on the number of inquiries we receive requesting clarification of these regulations. Both § 175.75 and § 175.85 refer to quantities, accessibility and cargo location. Both also refer to exceptions for certain hazardous materials. For example, § 175.85 excepts certain Division 6.1 and 6.2; certain Class 3, 7, 9; and consumer commodities from the quantity limitations of § 175.75. Further, §§ 175.75 and 175.85 do not provide restrictions on the amount of Class 9 materials and hazardous materials reclassed as consumer commodities, loaded onto an aircraft. We believe these exceptions should be reevaluated relative to potential risks to safety.

In a letter issued to FAA on December 27, 2000, RSPA stated, for the purpose of § 175.85, ''impracticable'' means transportation is not physically possible or cannot be performed by routine and frequent means of other transportation, due to extenuating circumstances. Extenuating circumstances include: conditions precluding highway or water transportation, such as a frozen vessel route; road closures due to catastrophic weather or volcanic activity; or a declared state of emergency. Other means of transportation also would be ''impracticable,'' if special characteristics of the material being shipped would render it useless upon arrival if transported by means other than aircraft. For example, time sensitive radio pharmaceuticals or hazardous materials required in response to an emergency. However, the desire for expedience of a shipper, carrier, or consignor, is not relevant in determining whether other means of transportation are impracticable.

With regard to the issues presented in this section, we are considering the following changes to the HMR regarding package storage requirements and limitations:

1. Combining §§ 175.75 and 175.85 for purposes of clarity.

2. Eliminating the exception in § 175.75(b) for consumer commodities and Class 9 materials.

3. Adding a definition for the term ''impracticable.''

4. Adding a footnote to Column 9A and 9B of the HMT to clarify that there are additional requirements for materials transported by aircraft contained in § 173.27 and Part 175.

B. Docket HM–192

On April 6, 1983, we published an ANPRM under Docket HM–192 (49 FR 13717) in response to a petition filed by Japan Air Lines Company LTD (JAL) (P–903). The petition requested removal of the quantity limitations in § 175.75. JAL asserted that the quantity limitation in

§ 175.75 was arbitrary, unjustifiable and inconsistent with other provisions of Part 175 and the ICAO Technical Instructions. The petition noted that: (1) HMR allow an unlimited quantity of hazardous materials to be carried in accessible cargo compartments; (2) the § 175.75 limitation applies only to passenger-carrying aircraft, not to cargo-only aircraft; and (3) the ICAO Technical Instructions do not contain a per-aircraft limitation. JAL stated it was unaware of any incidents attributable to the transportation of quantities of hazardous materials in excess of the limitation prescribed in § 175.75(a)(2). Further, JAL believes that the current lack of uniformity between U.S. regulations and ICAO Technical Instructions may increase dangers as a result of additional handling, (e.g., off-loading and re-loading) at an en route station prior to departure to the U.S.

In response to the ANPRM, we received 28 written comments. Additionally, eight persons made oral presentations at a public meeting held on May 30, 1985 (See 50 FR 6013). At least one advocate for the removal of § 175.75(a)(2) recommended issuance of an interim final rule for a trial period of one year. The proposed interim rule would revise the quantity limit in § 175.75(a)(2) from 25 kg (55 pounds) to 135 kg (300 pounds), and from 75 kg (165 pounds) to 225 kg (500 pounds) for non-flammable compressed gas. The determination to implement a final rule would be based on the results of the interim final rule. JAL stated § 175.75(a)(2) should be removed because the 25 kg (55 pounds) limit is rendered obsolete by advances in aviation technology and improvements in procedures for packaging dangerous goods.

Persons opposed to the removal of the 25 kg (55 pounds) limitation asserted that the relaxation of the hazardous materials standards would be ill-advised and would compromise the safety of flight crews and passengers. Some opposing commenters believe more study is required before this quantity limitation is removed for passenger carrying aircraft. Some commenters believe there are serious deficiencies in cargo compartment fire containment capabilities, and it is the wrong time to remove any quantity limitations.

On March 18, 1996, the Air Freight Association (AFA) filed a petition for rulemaking (P–1310) requesting amendments to the quantity limitations requirement of § 175.75. AFA stated that limitations on the quantities of hazardous materials on aircraft should be determined by the nature of service for which each aircraft is intended. AFA suggested that limited quantities regulations are permitted to apply to a wider range of materials than originally intended. AFA cited the evolving nature of the small package delivery process. Specifically, AFA referred to the time constraints dictated by customers' need to have packages delivered next-day, second-day, etc. AFA believes the need to monitor loading limits causes its members to inefficiently load packages into unit load devices (ULD), and the time-sensitive nature of next-day or second-day delivery processes are adversely impacted by assuring the quantity limitations requirements are met. In its petition, AFA stated that exemption DOT E–11110, is adequate proof that the removal of the quantity limitations for cargo-only aircraft operations causes no adverse impact on safety. Exemption DOT E–11110 authorizes the transportation of certain hazardous materials in combination packages in quantities that exceed those authorized by § 175.75(a)(2). These hazardous materials include Division 1.4 Compatibility Group S; Class 3 Packing Group III (that do not meet any other hazard class); Division 6.1 PG III; and Class 8 PG III (that do not meet any other hazard class). However, P–1310 also requests the inclusion of packages of hazardous materials in Division 2.2 (non-flammable, non-poisonous compressed gas) and Class 3 PG II to the exception. Based upon the rationale presented, we do not believe that the claims made and the evidence cited by the petitioners, provide an adequate basis for removal of the quantity limitations of § 175.75. We are unaware of the existence of any data suggesting that an increase in the amount of hazardous materials carried in inaccessible cargo compartments will not increase the risk of an incident involving hazardous materials, nor place passengers aboard aircraft at higher risk for injury. We also do not believe that the evolution of the package delivery process demonstrates the ability of the process to provide the same levels of safety sought by regulation, for all hazardous materials. Further, we do not believe an ''inefficiency'' to the loading process in and of itself, is a sufficient reason to relax safety regulation. In fact, loading processes vary from operator to operator. This includes the amounts, if any, of hazardous materials carried and the location of where the materials are loaded on the aircraft. Finally, we believe continued regulation for certain hazardous materials is warranted at this time. Therefore, we are denying P–903 and P–1310, and closing Docket HM–192.

C. Questions

1. Would footnotes to Column 9A and 9B of the HMT to reference § 173.27 and Part 175 be helpful?
2. Should §§ 173.27, 175.75, or 173.85 be amended to include cross-references to quantity limitations in other sections?
3. Would combining §§ 175.75 and 175.85 simplify and/or clarify these regulations?
4. Does compartment accessability versus inaccessibility affect air safety and/or commerce?
5. Should the exception allowing unlimited amounts of consumer commodities and Class 9 materials to be loaded on both passenger and cargo-only aircraft be modified or eliminated?
6. Should DOT Exemption E–11110 (or any of the provisions contained within it) be incorporated into the HMR? Would incorporating this exemption adversely affect safety?
7. Is RSPA's definition of the term ''impracticable'' feasible? Should it be revised and/or added to the HMR?
8. Should we remove or revise any approval provisions in part 175? Should we add new approval procedures to part 175?

V. Other Requirements in Part 175

A. Scope and Applicability

1. Discussion

Section 175.1 states that part 175 prescribes requirements for aircraft operators transporting hazardous materials aboard aircraft that are in addition to those contained in parts 171, 172, and 173. Section 175.5 states that part 175 applies to the acceptance for transportation, loading and transportation of hazardous materials in any aircraft in the United States, and in aircraft of United States registry anywhere in air commerce. Section 175.5 also provides exceptions from the requirements of the HMR for those aircraft under the direct, exclusive control of a government and not used for commercial purposes.

We believe there is some confusion over the applicability of part 175 to persons who are not air carriers, such as freight forwarders. Although the language of § 175.1 refers to aircraft operators, part 175 also applies to persons who are not direct air carriers but perform the same functions. Such persons include: persons who accept packages for air commerce; ground handling crews; contracted employees; air freight forwarders; and subsidiary companies formed by aircraft operators that perform pallet building and handle,

load, and unload hazardous materials in air commerce. (Note: Additional discussion on the applicability of the HMR to airline passengers is contained in Section V.D. of this preamble.)

The exceptions provided in § 175.5 do not apply to commercial aircraft operators who supply contractual services to a government, because the government does not have exclusive control of the aircraft in flight. These exceptions are for those aircraft under the direct exclusive control of a government, and not a private carrier working under a government contract. Exclusive direction and control consists of both administrative and physical control.

We are considering revising § 175.1 to clarify that persons who are not direct air carriers but perform air carrier functions, are subject to part 175. We are also considering revising the applicability of the HMR to air carriers under exclusive control of a government.

2. Questions

1. Should § 175.1 be rewritten to clarify the applicability to persons who are not direct air carriers but perform air carrier functions (*e.g.,* indirect air carriers)?

2. Are there conditions relating to the control of an aircraft by a government, that need to be clarified or addressed?

B. Inspection and Acceptance of Packages/Shipments

1. Discussion

A number of requirements in part 175 contain provisions for inspecting and accepting shipments of hazardous materials transported by aircraft. Section 175.3 prohibits aircraft operators from accepting hazardous materials not prepared for shipment in accordance with the HMR. Section 175.30, states no person may carry a hazardous material aboard an aircraft unless the package is inspected by the aircraft operator to ensure that the integrity of the package has not been compromised. Section 175.88 prohibits a ULD from being placed on an aircraft unless the device is inspected and found to be free from evidence of leakage from, or damage to, any package containing hazardous materials. Section 175.90 requires packages and overpacks containing hazardous materials to be inspected after unloading from aircraft, to assure no damage or leakage has occurred during flight. When packages or overpacks containing hazardous materials are carried in a ULD, an immediate inspection of the location where the ULD was stored on the aircraft is required to detect any evidence of leakage or contamination. Packages or overpacks containing hazardous materials carried in a ULD must also be inspected for damage or leakage when unloaded from a ULD.

We issued a formal interpretation on the acceptance of hazardous materials on June 4, 1998 (63 FR 30411). We stated a carrier's acceptance and transportation of hazardous materials can involve several different situations. For example, in some manner a shipment could be declared by the offeror to contain hazardous materials, and should comply with requirements of the HMR. Conversely, an ''undeclared'' or ''hidden'' shipment is a shipment of hazardous materials that, intentionally or unintentionally, is not declared by the offeror to contain hazardous materials and there is no attempt to comply with the HMR.

The importance of responsibly accepting hazardous materials is highlighted by the requirement under 49 U.S.C. 5123 to assess a civil penalty against any person who ''knowingly violates'' any requirement in the HMR, including the provisions of § 175.30. Section 5123(a) provides that a person ''acts knowingly'' when (A) the person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. A carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material not properly packaged, marked, labeled, or described on a shipping paper as required by the HMR. This means a carrier may not ignore readily apparent facts indicating that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

Internationally, part 7 of the ICAO Technical Instructions contains hazardous materials acceptance procedures for aircraft operators. ICAO Part 7;1.3 requires operators to develop and use a checklist that includes all reasonable steps to assure packages are properly prepared for transportation by aircraft, and all regulatory requirements have been satisfied.

Because § 175.3 appears to overlap with the provisions of § 171.2(a) and (b), we are considering eliminating § 175.3. We are also considering whether the provisions of § 175.30 provide adequate guidance for accepting packages of hazardous materials, and for air carriers to identify shipments of undeclared hazardous materials. In place of these provisions, we are determining whether a checklist similar to the one used in the ICAO Technical Instructions would be helpful in assuring packages of hazardous materials are in compliance with applicable regulations prior to being accepted. Finally, based on the detailed requirements of § 175.90, we are considering merging the pre-flight ULD inspection requirements of § 175.88 into the post-flight inspection requirements of § 175.90.

2. Questions

1. Are the requirements of § 175.3 already addressed by § 171.2? If so, should these requirements be removed from § 175.3?

2. Are there additional issues regarding accepting or inspecting packages that are not addressed by § 175.30?

3. As outlined in the formal interpretation we issued on June 4, 1998 on the acceptance of hazardous materials, the acceptance requirements of § 175.30 are not limited to declared hazardous materials packages. Are the requirements of § 175.30 sufficiently clear or should we revise the section?

4. Should we adopt a checklist similar to the one used in the ICAO Technical Instructions to enable operators to assure packages of hazardous materials are in compliance with applicable regulations? Would such a checklist help operators to identify undeclared hazardous materials? If adopted, when should the checklist be completed?

5. Should we merge the pre-flight ULD inspection requirements of § 175.88 with the post-flight inspection requirements of § 175.90?

C. Discrepancy Reporting

1. Discussion

Section 175.31 requires a person who discovers a discrepancy after acceptance of a package of hazardous materials (as defined by § 175.31(b)) to notify the nearest FAA Civil Aviation Security Field Office (CASFO) by telephone ''as soon as practicable,'' and provide certain information. This requirement permits early investigation and intervention to determine the cause for failure to either properly declare or prepare a hazardous materials shipment. A May 27, 1980, final rule under Docket HM–168 (45 FR 35329), adopted requirements in 49 CFR 175.31 for reporting discrepancies. In the preamble to the final rule, we stated:

A shipment containing a hazardous material must be offered to the carrier in accordance with the regulations. An offering occurs when (1) the package is presented, (2) the shipping paper is presented, (3) the certification is executed, and (4) the transfer of the package and shipping paper is completed with no further exchange (written or verbal) between the shipper and aircraft operator, as usually evidenced by the departure of the shipper. At this point, it is clear that the operator has accepted the shipment and the shipper has removed himself from a final opportunity to take corrective action that would preclude a violation of the HMR relative to transportation of hazardous materials aboard aircraft . . . the requirement which has been adopted [in this final rule] limits required reporting to shipment discrepancies which are discovered [subsequent to] acceptance of the shipment for transportation and limits ''reportable'' discrepancies to those discrepancies which are not detectable as a result of proper examination by a person accepting shipment under the acceptance criteria of § 175.30. This notification requirement will facilitate the timely investigation by FAA personnel of shipment discrepancies involving situations where inside containers do not meet prescribed packaging or quantity limitation requirements and where packages or baggage are found to contain hazardous materials after having been offered and accepted as other than hazardous materials.

Internationally, ICAO Technical Instructions part 7;4.5 contains provisions under which operators must report undeclared or misdeclared dangerous goods found in cargo, or dangerous goods not permitted to be carried by passengers, found in baggage. This report must be given to the appropriate authorities in the country in which the incident occurs.

We adopted the reporting requirement of § 175.31 with the intent to allow time to investigate those persons offering undeclared shipments. We note that the reporting requirement in § 175.31(a) is limited in § 175.31(b) to those discrepancies involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted under the provisions of § 175.30(a). There is no requirement for a carrier to report discrepancies that are ascertainable under the acceptance and inspection requirements of § 175.30(a). However, many of the ''discrepancies'' reported by carriers fall into this latter category. We are considering the need for guidelines to help discern discrepancies from violations.

2. Questions

1. Should we require discrepancies to be reported immediately so packages are still available for inspection? Should the term in § 175.31, ''as soon as practicable'' be further clarified? Would a time limit established in hours be a good alternative?

2. Should a formalized amnesty feature be considered for those who report discrepancies?

3. Should the requirement to report discrepancies be clarified as they apply to indirect air carriers and other shipping facilities after acceptance of cargo?

D. Exceptions

1. Company Materials

Section 175.10(a)(2) excepts from the HMR certain hazardous materials required to be aboard an aircraft in accordance with applicable airworthiness requirements and operating instructions. However, items of replacement for such materials and other company materials (COMAT) of an airline that are hazardous materials must be properly classed, described, marked, labeled, packaged, handled, stored, and secured in accordance with the HMR (Note: We published an advisory notice on COMAT on December 13, 1996 (61 FR 65479)).

The HMR provide the following limited exceptions for COMAT: (1) Items of replacement for installed equipment containing hazardous materials are excepted from the packaging requirements of the HMR if they are contained in specialized packaging providing at least an equivalent level of protection of required packaging; (2) aircraft batteries are excepted from the quantity limitations in §§ 172.101 and 175.75(a); and (3) an aircraft tire assembly is not subject to the HMR if it is not inflated to a gauge pressure exceeding the maximum rated pressure for the tire. Other materials such as paint, chemicals for corrosion removal, automotive batteries, wastes, and engine-powered ground equipment containing fuels do not qualify for this limited relief.

In some cases, items of replacement for installed equipment containing hazardous materials or for hazardous materials carried to meet airworthiness requirements, are owned by one air carrier but are transported by another air carrier as part of a ''parts pooling agreement.'' The COMAT exceptions in § 175.10 do not apply to transportation of another air carrier's materials. The purpose of the exceptions in § 175.10(a)(2) is based on the knowledge of an air carrier to handle and package materials specific to the owner's operational use. Therefore, transportation of another air carrier's materials must be conducted in full compliance with the HMR. We are considering the need to clarify that this exception only applies to the transportation of an airline's own material.

2. Passengers and Crew

Section 175.10 also provides limited exceptions for the transportation of certain personal items of passengers or crew members that are hazardous materials, such as toiletries, alcoholic beverages, and medicinal items. We are examining these exceptions to determine if any of them should be removed and if additional exceptions should be provided. We understand some persons are not aware that the HMR apply to aircraft passengers who are carrying hazardous materials on their person or in checked or carry-on baggage. For example, we are aware of situations where passengers with certain medical conditions must transport as carry-on baggage personal monitors and devices such as apnea and heart monitors, nebulizers, and nerve stimulators. These items would qualify as hazardous materials for purposes of the HMR. Therefore, we are considering clarifying the applicability of the HMR to aircraft passengers carrying hazardous materials and are considering moving the passenger exceptions to part 173. We request comments on the need for any additional exceptions and whether any of the existing exceptions should be removed or revised. We are also considering removing exceptions applicable to disabled persons with medical conditions from § 175.10 and placing them in a new section.

3. Special Operations

Section 175.10 also provides limited exceptions for the transportation of certain hazardous materials for special aircraft operations, such as avalanche control flights, aerial applications, and sport parachute jumping. We received a petition (P–846) to add an exception to § 175.10 for hazardous materials that are loaded onto and carried in an aircraft for the purpose of emergency response situations where a loss of life or property is imminent. These materials would include items such as self-contained breathing apparatus or other related emergency equipment necessary for each situation. The exception would provide an exception for hazardous materials transported for the purpose of emergency response from the subchapter. The exception would apply to materials in authorized packaging. Each operator transporting the materials would keep current a manual of operational guidelines and handling procedures, and the aircraft could only transport crew members, emergency

response personnel, FAA inspectors, or persons essential to handling the hazardous materials. We are considering adopting this proposal into the HMR. A copy of the petition is available for review in the public docket.

4. Questions

1. Should we reorganize § 175.10 into three section applicable to: (1) Passengers and crewmembers; (2) COMAT; and (3) special operations?

2. Should we remove the exceptions applicable to persons with medical conditions from § 175.10 and place them in a new section? Should we move these exceptions, in particular the exceptions for passengers and crew, to another part of the HMR? If so, what part?

3. Is it understood that the COMAT exception contained in § 175.10 does not apply to transportation of another air carrier's material? Should the COMAT exception apply only to the transportation of those materials intended for an aircraft-on-ground (AOG)?

4. Is clarification of the applicability of the HMR to passengers necessary? Is there a more effective way of communicating the applicable passenger provisions of this section, such as moving the exceptions to Part 173? Should we define the term ''passenger'' in § 171.8?

5. Should we provide additional exceptions in § 175.10, such as those for personal monitors and devices such as apnea and heart monitors, nebulizers and nerve stimulators? Should we remove or modify any of these exceptions?

6. Should we except hazardous materials necessary for emergency response situations where there is the possibility of imminent loss of life or property from the requirements of the HMR? What effect would this have on air safety?

7. Should we make changes as to which provisions require FAA approval?

E. Training Requirements

1. Discussion

Section 175.20 requires aircraft operators to comply with all applicable requirements in parts 106, 171, 172, and 175. In addition, hazmat employers must ensure all hazmat employees receive training in accordance with part 172. Initial training under the HMR must be conducted within 90 days after employment begins or a change in the employee's job function. Recurrent training must be conducted every three years. Section 175.20 also refers to the training requirements of the FAA under 14 CFR §§ 121.135, 121.401, 121.433a, 135.323, 135.327, and 135.333, which additionally address training for air carriers.

A ''hazmat employee'' is defined in § 171.8 to include ''all persons who in the course of employment perform functions that directly affect hazardous materials transportation safety.'' This does not include every person who works around an area where, for example, hazardous materials are loaded, unloaded, handled, and stored. The employee's functional relationship to hazardous materials transportation safety, rather than incidental contact with hazardous materials in the workplace, is the primary factor in determining whether an individual is a ''hazmat employee.''

We believe there is confusion over who is a hazmat employee and, must therefore receive hazmat training. An employee of (or an employee of a contractor for) an airline who performs security functions related to hazardous materials is a hazmat employee and must receive the training required by 49 CFR part 172 and by 14 CFR parts 121 and 135. Such security functions could include: loading cargo onto pallets and x-ray machines; opening cargo for inspection; and transporting cargo that may include hazardous materials. An employee of an airline, including an employee of a contractor, who is not responsible for performing any function addressed by the HMR is not considered to be a ''hazmat employee'' and is not subject to the training requirements of the HMR. We are considering the need to revise § 175.20 to clarify training requirements for certain air carrier personnel.

2. Questions

1. Are the requirements for training applicable to aircraft operators and hazmat employees clear and easy to understand?

2. Should we clarify that persons responsible for screening for unacceptable hazardous materials must be trained?

3. Should we require baggage handling, sorting, security, and other carrier personnel to receive training to help them to identify undeclared hazardous materials in cargo?

4. Do aircraft operators understand what training requirements apply to their personnel (*e.g.,* 49 CFR versus 14 CFR)?

F. Carriage of Radioactive Material Aboard Aircraft

1. Discussion

Section 5114 of the federal hazardous materials transportation law addresses ionizing radiation material transportation. It states that the material may be transported on a passenger-carrying aircraft in air commerce, only if the material is intended for use in, or incident to, research or medical diagnosis or treatment; and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation. Section 175.700 of the HMR prohibits, in addition to other requirements, any person from carrying in a passenger-carrying aircraft any package required to be labeled in accordance with § 172.403 of the HMR with a Radioactive Yellow II or III label, unless certain provisions are met. In addition, § 175.700(c) states that (except for limited quantities) no person shall carry any class 7 material aboard a passenger-carrying aircraft unless that material is intended for use in research, medical diagnosis, or treatment.

It appears some persons have misused the definition of research to avoid these restrictions. We do not consider research to include the application of existing technology to industrial endeavors. For example, the use of radioactive material (e.g., iridium-192) to detect cracks in oil field pipelines is not research, but the application of existing scientific knowledge. We are considering revising § 175.700 to clarify that research does not include the application of existing technology to industrial endeavors.

2. Question

Does the term ''research'' as used in § 175.700 require further clarification?

VI. Small Quantities, Limited Quantities and Consumer Commodities

A. Discussion

The HMR contain hazardous materials exceptions for small quantities, limited quantities, and consumer commodities. These exceptions allow materials to be transported at reduced levels of regulation. Small quantities of hazardous materials are excepted from all other requirements of the HMR, provided certain criteria in § 173.4 are met. Limited quantity exceptions in the HMR are based on the class of the hazardous material, and contain some additional requirements for air transportation. Materials that meet the limited quantity exception and also meet the definition of a consumer

commodity as provided by § 171.8, may be renamed ''Consumer Commodity'' and reclassed as ORM–D. Consumer commodities are excepted from specification packaging, labeling, placarding and quantity limitations applicable to air transportation. As currently written, these exceptions allow small quantities and consumer commodities to be transported by aircraft even though they may contain hazardous materials otherwise forbidden aboard aircraft. These exceptions are inconsistent with the ICAO Technical Instructions, which require that before a hazardous material may be transported as an excepted quantity (i.e. small quantity), it must be suitable for transportation aboard passenger aircraft. In addition, the HMR allows many more hazardous materials to be transported as a consumer commodity than do the ICAO Technical Instructions. The ICAO Technical Instructions restrict consumer commodities to include only non-toxic aerosols, Class 3 Packing Group II or III, Division 6.1 packing group III, and UN3175. Therefore, we are considering revising the small quantity, limited quantity and consumer commodity provisions to be consistent with the ICAO Technical Instructions.

B. Questions

1. Should the provisions for small quantity, limited quantity and consumer commodity be revised to be consistent with the ICAO Technical Instructions?
2. Should the § 173.4 package marking be amended to align it with the ICAO Technical Instructions excepted quantity package marking?

VII. Request for Additional Comments

Comments are invited on any items or issues pertinent to this topic not addressed by the above questions. There are a number of additional issues we must address in determining whether to proceed with rulemaking on this matter. These include the analyses required under the following statutes and Executive Orders:

A. Executive Order 12866: Regulatory Planning and Review

E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits associated with the issues addressed in this notice.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), we must consider whether a proposed rule would have a significant economic impact on a substantial number of ''small entities.'' ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. We invite comments as to the economic impact that the issues addressed in this notice may have on small businesses.

C. Executive Order 13132: Federalism

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) preempts many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. We invite comments on the effect that the issues addressed in this notice may have on state or local safety or emergency response programs.

D. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We do not believe there will be any effect on Indian tribes, but invite Indian tribal governments to provide comments as to the effect the issues addressed in this notice may have on Indian communities.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on February 20, 2002, under the authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–4482 Filed 2–25–02; 8:45 am]

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Notices

Federal Register

Vol. 67, No. 38

Tuesday, February 26, 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. 02–007–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection for collecting user fees, ensuring remittances in a timely manner, and determining proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 29, 2002.

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. 02–007–1, 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. 02–007–1. 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. 02–007–1'' 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: For information on user fees, contact Ms. Donna J. Ford, User Fees Section Head, FSSB, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5752. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: User Fee Regulations.

OMB Number: 0579–0094.

Type of Request: Extension of approval of an information collection.

Abstract: This information collection is necessary for the Animal and Plant Health Inspection Service (APHIS) to effectively collect fees, ensure remittances in a timely manner, and determine proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees. APHIS does not receive an appropriation to fund these activities; instead, user fees are calculated and assessed to ensure full cost recovery of each user fee program. If the information was not collected, the Agency would not be able to perform the services since the fees collected are necessary to fund the work.

Requesters of our services usually are repeat customers, and, in many cases, request that we bill them for our services. Also, the 1996 Debt Collection Improvement Act requires that agencies collect tax identification numbers (TINs) from all persons doing business with the Government for purposes of collecting delinquent debts. Without a TIN, service cannot be provided on a credit basis.

We are responsible for ensuring that the fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party (ticketing agents for transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require that whoever is responsible for making fee payments advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances.

The requests for our services are in writing, by telephone, or in person. The information contained in each request identifies the specific service requested and the time in which the requester wishes the service to be performed. This information is necessary in order for the animal import centers and port offices to schedule the work and to calculate the fees due.

We have reviewed the paperwork requirements of the user fee programs and have made every possible effort to streamline our processes and minimize the impact on the public. Whenever possible, we use existing billing/collection methods to minimize the cost to the Agency. If the work is not performed, individuals and businesses will not be able to import animals, fruits, vegetables, plants, and animal and plant products.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0341739 hours per response.

Respondents: Arriving international passengers, representatives of international means of conveyances, and importers/exporters who wish to import or export animals and animal products.

Estimated annual number of respondents: 88,453.

Estimated annual number of responses per respondent: 2.5274665.

Estimated annual number of responses: 223,562.

Estimated total annual burden on respondents: 7,640 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–4517 Filed 2–25–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 16, 2002–FEBRUARY 19, 2002

Firm name	Address	Date petition accepted	Product
Leach and Garner Company	57 John L. Dietsch Square, North Attleboro, MA 02761.	01/22/02	Precious metal jewelry findings and earrings.
Progress Press, Inc	2922 Nicholas Avenue N.E., Roanoke, VA 24012	01/22/02	Commercial printers.
Cooper Wood Products, Inc	2785 Grassy Hill Road, Rocky Mount, VA 24151	01/28/02	Wood components for occasional wood furniture.
Standard Printed Circuits, Inc	44 South Main Street, Sherburne, NY 13460	01/28/02	Printed circuit boards.
Marni Spring Corporation	100 Bastian Street, Rochester, NY 14621	01/28/02	Wire springs.
Clearwood, L.L.C	270 Clearwood Drive, Whittier, NC 28789	01/28/02	Finger joint board.
Davis Tool & Die Co., Inc	888 Bolger Court, Fenton, MO 63026	01/30/02	Metal industrial tooling and dies.
Sheffield Steel Corporation	2300 S. Highway 97, Sand Springs, OK 74063	01/30/02	Steel bars.
Atlas Foundry Factory Co., Inc	Factory & Henerson Avenue, Marion, IN 46952	01/30/02	Architectural/ornamental iron, industrial bearings and household water system hydrants.
H. O. Bostrom Co., Inc	818 Progress Avenue, Waukesha, WI 53186	01/31/02	Seats for power wheelchair scooters.
Tesh Manufacturing Inc	17035 U.S. Highway 89 North, Paris, ID 83261	02/04/02	Helmets.
Grown in Oregon, Inc. dba Oregon Log Home Co.	68175 Highway 20 West, Sisters, OR 97759	02/04/02	Log homes.
LMB, Inc. dba Alaskan Bowl Co	4630 Old Airport Road, Fairbanks, AK 99706	02/04/02	Wooden bowls.
Datrex, Inc	13878 Highway 165, Kinder, LA 70648	02/05/02	Marine equipment i.e. buoys, emergency rations, distress signals, survival craft spares and hammer hydrostatic releases.
Automated Engineering Corp	2802 Leslie Road, Tampa, FL 33619	02/04/02	Printed circuit boards.
Ameri-Cal Floral, Inc	2897 Freedom Boulevard, Watsonville, CA 95076	02/04/02	Roses and other cut flowers.
Team Manufacturing, Inc	2625 Homestead Place, Rancho Dominguez, CA 90220.	02/05/02	Precision metal stampings.
W. C. Redmon Company, Inc	200 Harrison, Peru, IN 46970	02/05/02	Infant and juvenile bassinets and clothes hampers made primarily of wicker.
Crystal Group, Inc	850 Kacena Road, Hiawatha, IA 52233	02/05/02	Data servers for telecommunications equipment.
Quality Custom Mold, Inc	3207 Innovation Place, Youngstown, OH 44509	02/08/02	Injection molds for automotive, commercial, retail, wholesale and private use.
H & H Meat Products Co., Inc. dba H & H Foods.	Expressway 83, Mercedes, TX 78570	02/08/02	Meat processing.
K.C.K. Tool and Die Company	13878 Highway 165, Kinder, LA 70648	02/14/02	Marine equipment—progressive and line dies.
Willis Family, Inc	2385 Eastside Road, Hood River, OR 97031	02/15/02	Pears and apples.
Triangle Farms, Inc	5648 Evans Valley Loop Rd., Silverton, OR 97381	02/15/02	Grass seed.
Maryland Brush Company	3221 Frederick Avenue, Baltimore, MD 21229	02/19/02	Paint brushes, rollers, and individual brushes.
Tessy Plastics, L.L.C	231 Jefferson Ridge Parkway, Lynchburg, VA 24501	02/19/02	Injection molds for for telephone housing.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 16, 2002–FEBRUARY 19, 2002—Continued

Firm name	Address	Date petition accepted	Product
Revolutionary Designs, Inc	240 Otter Lane, Hatfield, AR 71945	02/19/02	Decorative wood products, including fajita underliners, shaker boxes, and cases.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 20, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–4503 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
France: Anhydrous Sodium Metasilicate (ASM) A–427–098	1/1/01–12/31/01
Rhone-Poulenc, S.A.	
The People's Republic of China: Certain Cased Pencils A–570–827	12/1/00–11/30/01
Kaiyuan Group Corporation*	
Laizhou City Guangming Pencil-Making Co., Ltd.*	
*Inadvertently omitted from previous initiation notice.	
The People's Republic of China: Potassium Permanganate A–570–001	1/1/01/–12/31/01
Groupstars Chemicals, LLC	
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware A–580–601	1/1/01–12/31/01
Chefline Corp.	
Dae-Lim Trading Co., Ltd.	
Dong Won Metal Co., Ltd.	
Sam Yeung Ind. Co., Ltd.	
Namyang Kitchenflower Co., Ltd.	
Kyung-Dong Industrial Co., Ltd.	
Ssang Yong Ind. Co., Ltd.	
O. Bok Stainless Steel Co., Ltd.	
Dong Hwa Stainless Steel Co., Ltd.	
Il Shin Co., Ltd.	
Hai Dong Stainless Steel Ind. Co., Ltd.	
Han Il Stainless Steel Ind. Co., Ltd.	
Bae Chin Metal Ind. Co.	
East One Co., Ltd.	
Charming Art Co., Ltd.	
Poong Kang Ind. Co., Ltd.	
Won Jin Ind. Co., Ltd.	
Wonkwang Inc.	

	Period to be reviewed
Sungjin International Inc. Saekwang Aluminum Co., Ltd. Hanil Stainless Steel Ind. Co., Ltd. Seshin Co., Ltd. Pionix Corporation East West Trading Korea, Ltd. Clad Co., Ltd. B.Y. Enterprise, Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 20, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–4533 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–837]

Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On October 5, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of greenhouse tomatoes from Canada. The period of investigation is January 1, 2000, through December 31, 2000. On October 19, 2001, the Department published a notice of amended preliminary determination of sales at less than fair value and postponement of final determination of greenhouse tomatoes from Canada.

Based on our analysis of the comments received and certain findings from the verifications, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination and the amended preliminary determination.

We determine that greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less–than–fair–value prices as provided in section 735 of the Tariff Act of 1930, as amended. The estimated margins of sales at less than fair value are shown in the ''Final Determination'' section of this notice.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone; (202) 482–4794 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 351 (April 2000).

Case History

This investigation was initiated on April 17, 2001. See Initiation of Antidumping Duty Investigation: Greenhouse Tomatoes From Canada, 66 FR 20630 (April 24, 2001) (Initiation Notice). The preliminary determination in this investigation was published on October 5, 2001. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 66 FR 51010 (October 5, 2001) (Preliminary Determination). The Department also issued a Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Greenhouse Tomatoes From Canada, 66 FR 53203 (October 19, 2001) (Amended Preliminary Determination and Postponement of Final Determination).

In October, November, and December 2001, we conducted verification of the questionnaire responses of the five mandatory respondents in this case: BC Hot House Foods, Inc., Red Zoo Marketing (a.k.a. Produce Distributors, Inc.), Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.), J–D Marketing, Inc., and Mastronardi Produce Ltd. We also conducted verification of five cost respondents.

In January 2002, we received case briefs from the petitioners (i.e., Carolina Hydroponic Growers Inc., Eurofresh, HydroAge, Sunblest Management LLC, Sunblest Farms LLC, and Village Farms) and the mandatory respondents. The Department held a public hearing on January 22, 2002, at the request of the parties.

Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, e.g., common round tomatoes, cherry tomatoes, plum or pear

tomatoes, and cluster or ''on–the–vine'' tomatoes. Specifically excluded from the scope of this investigation are all field–grown tomatoes.

The merchandise subject to this investigation may enter the United States under item numbers 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, i.e., field–grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice (66 FR 20630). On May 14, 2001, BC Vegetable Greenhouse I, L.P. (BCVG), filed comments requesting that the scope be limited to include only hydroponic tomatoes and expressly exclude ''heirloom'' and ''organic'' tomatoes grown in greenhouses. On May 21, 2001, the petitioners filed comments opposing BCVG's request to limit the scope. After considering the respondent's request and the petitioners' objections, we determined that the scope of this investigation should remain as published in the Initiation Notice. Our analysis of this scope issue is detailed in the memorandum from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I, dated July 30, 2001, entitled ''Request to Limit Scope of Investigation.''

Period of Investigation

The period of investigation (POI) is January 1, 2000, through December 31, 2000.

Fair Value Comparisons

To determine whether sales of greenhouse tomatoes from Canada to the United States were made at less than fair value, we compared export price or constructed export price (CEP) to normal value. Our calculations followed the methodologies described in the Preliminary Determination, except as noted below, and in the February 19, 2002, Decision Memorandum and each individual respondent's calculation memorandum, which are on file in the Import Administration's Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly from the web at http://ia.ita.doc.gov. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Export Price and Constructed Export Price

For certain sales to the United States, we used export price as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated export price and CEP based on the same methodologies described in the Preliminary Determination with the following exceptions:

BC Hot House Foods, Inc.

We accepted the revised U.S. sales list that BC Hot House Foods, Inc., submitted on November 13, 2001, to incorporate corrections presented at the sales verification. Exhibit 1 of the December 20, 2001, sales verification report for this respondent contains a detailed list of the corrections. Further, as discussed in the Final Determination Analysis Memorandum from Mark Ross to the file, dated February 19, 2002, we recalculated the credit expenses, direct advertising expenses, and indirect selling expenses for BC Hot House Foods, Inc.'s U.S. sales. Finally, based on the comments we received on the level–of–trade methodology for BC Hot House Foods, Inc. and our reexamination of the information on the record relating to this issue, we revised the level–of–trade designations for this respondent. See comment 8 of the February 19, 2002, Decision Memorandum.

Red Zoo Marketing

We accepted Red Zoo Marketing's revised U.S. sales list pursuant to the corrections it presented at the start of verification, as described in Red Zoo Marketing's December 18, 2001, submission. We disregarded a billing adjustment that Red Zoo Marketing reported for one invoice where we found at verification that it did not make a billing adjustment. We adjusted the prices made for one U.S. customer where we found the customer only made a partial payment.

Veg Gro Sales, Inc.

We accepted Veg Gro Sales, Inc.'s revised U.S. sales list submitted on November 19, 2001, pursuant to changes incorporated as a result of verification. We included two sales which were shipped during the POI but invoiced outside the POI and used the shipment date as the sale date for these two observations. We adjusted the indirect selling expense ratio to reflect corrections submitted by the company and verified by us.

Mastronardi Produce Ltd.

We accepted Mastronardi Produce Ltd.'s revised U.S. sales list pursuant to changes incorporated as a result of verification. These changes affect the warehousing expenses, brokerage and handling expenses, packing expenses, and billing adjustments that Mastronardi Produce Ltd. reported as applicable to its U.S. sales.

J–D Marketing, Inc.

We accepted J–D Marketing, Inc.'s revised U.S. sales list pursuant to changes incorporated as a result of verification. These changes affect the credit expenses, inland–freight expenses, product codes, quantities, packing costs, indirect selling expenses, discounts, and brokerage and handling expenses that J–D Marketing, Inc., reported in relation to certain U.S. sales.

Normal Value

We used the same methodology as that described in the Preliminary Determination to determine the cost of production and normal value, with certain exceptions described below.

1. Cost–of–Production Analysis

BC Hot House Foods, Inc.

As discussed in the memorandum from Sheikh Hannan to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Canagro and Pacific Lagoon, we calculated the per–unit cost of manufacturing based on the production quantities maintained by two producers which supply BC Hot House Foods, Inc. (Canagro and Pacific Lagoon). We revised the general and administrative (G&A) amount applicable to Canagro and Pacific Lagoon's parent company that had been included in the G&A rate calculation. We calculated each company's financial–expense rate based on the highest level of consolidation normally prepared by the companies.

As discussed in the memorandum from Sheikh Hannan to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning the other cost respondent we selected for BC Hot House Foods, Inc., we adjusted the reported G&A rate to include the damaged–goods variance.

Additionally, as discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning BC Hot House Foods, Inc., we calculated BC Hot House Foods, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which BC Hot House Foods, Inc., obtained tomatoes.

Red Zoo Marketing

As discussed in the memorandum from Laurens van Houten to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Great Northern Hydroponics, we adjusted its reported costs to include the full amount the company incurred for heating costs during the POI. We removed the trough–system adjustment because at verification the company chose not to pursue those amounts. We included the full heating cost and the trough–system costs in the denominator of the revised G&A rate calculation. We calculated Great Northern Hydroponics's financial–expense rate based on the highest level of consolidation normally prepared by the company.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Red Zoo Marketing, we calculated its cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Red Zoo Marketing obtained tomatoes.

Veg Gro Sales, Inc.

As discussed in the memorandum from Heidi Norris to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Veg Gro Inc., we adjusted its reported costs to include the corrections presented on the first day of the cost verification. We adjusted Veg Gro Inc.'s reported costs to include the full amount the company incurred for heating costs during the POI. We also included the full amount of depreciation expense normally recorded in the company's financial statements that are prepared in accordance with Canadian Generally Accepted Accounting Principles (GAAP). Additionally, we included marketing–board fees and shareholder life–insurance expenses, and we revised the G&A rate calculation. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. Further, we revised Veg Gro Inc.'s financial–expense rate to exclude imputed short–term interest income and to include all interest expense incurred by the company. We also revised the reported packing costs to reflect the transfer price paid to an affiliate.

As discussed in the memorandum from Minoo Hatten to File, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Amco Farms, Inc., we adjusted its reported costs to include the full amount the company incurred for heating costs during the POI. We included the full amount of depreciation expense normally recorded in the company's financial statements that are prepared in accordance with Canadian GAAP. We revised Amco Farms Inc.'s fixed–overhead calculation to include the excluded costs for the cooler. We have revised the calculation of Amco Farms Inc.'s G&A rate to include management fees. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. We revised its financial–expense rate to include short–term interest income received from affiliates and all long–term interest expense incurred by the company.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Veg Gro Sales, Inc., we calculated Veg Gro Sales, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Veg Gro Sales, Inc., obtained tomatoes.

Mastronardi Produce Ltd.

As discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Mastron Enterprises, we adjusted its reported costs to include the full amount the company incurred for heating costs and repairs and maintenance during the POI. We revised the cost calculations to be based on acreage rather that management estimates. We revised the G&A rate calculation to include the full heating cost and repairs and maintenance amounts in the denominator. We revised the amount for indirect selling expenses to exclude the foreign–exchange gains on accounts payable that were not related to the sale of greenhouse tomatoes. We also included office–administration income and management bonuses in the revised calculation of indirect selling expenses.

Additionally, as discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Mastronardi Produce Ltd., we calculated its cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Mastronardi Produce Ltd. obtained tomatoes.

J–D Marketing, Inc.

As discussed in the memorandum from Laurens van Houten to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning I.P.R. Farms Ltd., we adjusted the acreage factors used to allocate costs to reflect the actual acreage for each product produced. We revised the seed cost to reflect the actual cost of seeds. We adjusted its reported costs to include the full amount the company incurred for heating costs and depreciation during the POI as recorded in its financial statements prepared in accordance with Canadian GAAP. We revised the reported G&A expenses to include the full amount incurred for executive salaries, marketing–board fees, and travel expenses, and we excluded a double–counted expense reimbursement from the G&A amount. We included the full amount of interest expense incurred by I.P.R. Farms Ltd. in the revised financial–expense calculation. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. We increased the packing costs to include interest and G&A of the packer.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19,

2002, concerning J–D Marketing, Inc., we calculated J–D Marketing, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which J–D Marketing, Inc. obtained tomatoes.

2. Calculation of Normal Value

BC Hot House Foods, Inc.

We accepted the revised home–market sales list that BC Hot House Foods, Inc., submitted on November 13, 2001, to incorporate corrections presented at the sales verification. Exhibit 1 of the December 20, 2001, verification report for BC Hot House Foods, Inc., contains a detailed list of these corrections. We corrected a billing adjustment that BC Hot House Foods, Inc., reported inaccurately for one home–market sale, and we corrected the quantity that it reported inaccurately for another home–market sale. Further, as discussed in the final determination analysis memorandum from Mark Ross to the file, dated February 19, 2002, we recalculated the credit expenses, direct advertising expenses, and indirect selling expenses for BC Hot House Foods, Inc.'s home–market sales. Finally, based on the comments we received on the level–of–trade methodology for BC Hot House Foods, Inc. and our reexamination of the information on the record relating to this issue, we revised the level–of–trade designations for this respondent. See comment 8 of the February 19, 2002, Decision Memorandum.

Red Zoo Marketing

We accepted Red Zoo Marketing's revised home–market sales list pursuant to the corrections the respondent presented at the start of verification as described in its December 18, 2001, submission.

Veg Gro Sales, Inc.

We accepted Veg Gro Sales, Inc.'s revised home–market sales list pursuant to changes incorporated as a result of verification as described in its November 19, 2001, submission. We deleted certain sales that Veg Gro Sales, Inc., made to an employee, corrected the payment date for one sale, and made an adjustment to indirect selling expenses to reflect corrections submitted by the company and which we verified.

Mastronardi Produce Ltd.

We accepted Mastronardi Produce Ltd.'s revised home–market sales list pursuant to changes incorporated as a result of verification. These changes affected the warehousing expenses, credit expenses, packing expenses, and billing adjustments Mastronardi Produce Ltd. reported for certain home–market sales.

J–D Marketing, Inc.

We accepted J–D Marketing, Inc.'s revised home–market sales list pursuant to changes incorporated as a result of verification. These changes affected the quantities, commissions, credit expenses, and inland–freight expenses that J–D Marketing, Inc., reported for certain home–market sales. The changes also resulted in the addition to the sales list of a sale and certain credits that the respondent had omitted from the home–market sales list.

3. Calculation of Constructed Value

For each of the respondents, we calculated the cost of materials and fabrication based on the methodology described in the ''Cost–of–Production Analysis'' section of this notice when calculating constructed value.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the Preliminary Determination.

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Final Determination

We determine that the following percentage weighted–average margins exist for the period January 1, 2000, through December 31, 2000:

Exporter/Grower	Weighted-average margin (percentage)
BC Hot House Foods, Inc.	18.21
Red Zoo Marketing (a.k.a. Produce Distributors, Inc.)	1.86
Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.)	3.85
J–D Marketing, Inc.	1.53
Mastronardi Produce Ltd.	14.89
All Others	16.22

Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all–others rate margins which are zero, de mimimis, or determined entirely on facts available. Because we calculated de minimis margins for Red Zoo Marketing and J–D Marketing, Inc., we calculated the all–others rate on the basis of the margins applicable to BC Hot House Foods, Inc., Mastronardi Produce Ltd., and Veg Gro Sales, Inc.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise except for exports by J–D Marketing, Inc. (and J–D Marketing, Inc.'s affiliate, Special Edition Marketing), and Red Zoo Marketing (which have zero or de minimis weighted–average margins), that are entered, or withdrawn from warehouse, for consumption on or after October 5, 2001, the date of publication of the Preliminary Determination in the Federal Register. We will instruct the Customs Service to continue to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds the export price or CEP, as indicated in the chart above, effective the date of publication of this final determination.

Because Red Zoo Marketing and J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), are non–producing exporters, in accordance with 19 CFR 351.204(e)(3), we are limiting the exclusion from these suspension–of–

liquidation instructions to entries only of subject merchandise exported by Red Zoo Marketing or J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), that is produced or supplied by the companies that supplied these respondents during the POI. Any entries of subject merchandise exported by Red Zoo Marketing or J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), which is not produced or supplied by the companies that supplied these respondents during the POI will be subject to the all–others rate.

For Red Zoo Marketing, because its estimated weighted–average final dumping margin is de minimis, we are directing Customs to terminate suspension of liquidation of entries of merchandise from Red Zoo Marketing that were produced by the companies that supplied Red Zoo Marketing during the POI and refund all bonds and cash deposits posted on such subject merchandise exported by Red Zoo Marketing. Because we never required suspension of liquidation or the posting of cash deposits or bonds for entries of merchandise from J–D Marketing, Inc., no such step is necessary.

These suspension–of–liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final antidumping determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury or threat of material injury to the U.S. industry. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

February 19, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Common Issues

1. Province–Specific All–Others Rate
2. Extraordinary Costs
3. Payments to Owners
4. Amortization of Assets
5. Averaging Prices Across Grades, Sizes, and Color for the Cost Test
6. Calculating a Difference–in–Merchandise Adjustment Based on Market Value
7. Weighted–Average Cost Versus Simple–Average Cost

Company–Specific Issues

BC Hot House Foods, Inc.

8. Level of Trade
9. Allocation of U.S. Advertising Expenses
10. Canagro's Start–Up Adjustment
11. Weight–Averaging the Cost for BCCH's Cost Respondents
12. Combined Interest and General and Administrative (G&A) Expenses
13. Accuracy of Canagro's Production Quantities
14. Use of Corrected BCHH Sales Lists
15. Reclassification of Certain BCHH Customers
16. Representativeness of Cost for BCHH

Red Zoo Marketing

17. Combined Financial Expense
18. Cost–Allocation Errors

Mastronardi Produce Limited

19. Capitalization of Costs
20. Cost Allocations Based on Supplier and Management Representations
21. Calculation of Mastronardi's Indirect Selling Expense Rate
22. Treatment of Mastronardi's Management Bonuses Veg Gro Sales, Inc.
23. Management Estimates
24. Arithmetical Error
25. Clerical Errors With Regard to Amco Farms, Inc.
26. Exporter G&A and Financial–Expense Ratios
27. Clerical Error Affecting COP and CV Calculations
28. Expenses Paid on Behalf of Owners

J–D Marketing, Inc.

29. Accuracy of Cost Data for IPR Farms
30. Representativeness and Accuracy of COP Analysis
31. Exclusion of Cluster–Roma and Cherry Tomatoes from Margin Calculations
32. Expenses Paid on Behalf of Owners

[FR Doc. 02–4532 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 011123281–2034–02]

Special American Business Internship Training Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT).

SUMMARY: The International Trade Administration publishes this notice to extend the closing date for the Special American Business Internship Training Program (SABIT) from March 1, 2002, to April 15, 2002.

DATES: To be considered, applications must be postmarked by April 15, 2002. Processing of complete applications takes approximately three to four months. All awards are expected to be made by August 15, 2002.

ADDRESSES: The SABIT Program, U.S. Department of Commerce, [FCB]—Fourth Floor—4100 W, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: This Notice amends the **Federal Register** Notice of December 13, 2001 (66 FR 64399–64402) announcing the availability of funds for the Special American Business Internship Training program (SABIT), for training business executives and scientists (also referred to as ''interns'') from the Newly Independent States of the former Soviet Union. This notice extends the closing date of the referenced **Federal Register** notice for six weeks to April 15, 2002. All applications must be postmarked by April 15, 2002. All information in the previous announcement remains current, except for the change of the closing date.

Dated: February 21, 2002.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 02–4547 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

Cancellation of a Meeting of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The closed meeting of the U.S. Automotive Parts Advisory Committee (APAC) originally scheduled for February 27, 2002 at the U.S. Department of Commerce has been canceled due to schedule conflicts.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 6498–6499, Feb. 12, 2002.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation.

Dated: February 20, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–4460 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Survey of Industrial Research Institute Members

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public. Law. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 1401 Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Barbara Lambis, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Administration Building, Room A333, Gaithersburg, MD 20899–4700. (Tel: 301–975–4447; e-mail: *barbara.lambis@nist.gov*)

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is part of a joint study being done by the Advanced Technology Program (ATP) and the Industrial Research Institute (IRI) to understand the investment-decision tools that medium-to-large companies use for funding high-risk technology development. This information collection from IRI member-companies will help ATP make more informed decisions when it evaluates proposals from medium-to-large firms.

II. Method of Collection

E-mail survey and telephone interviews.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost to the Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4486 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Technology Opportunities Program (TOP) Grant Recipient Survey.

Form Number(s): None.

OMB Approval Number: 0660–0013.

Type of Request: Regular submission.
Burden Hours: 210.
Number of Respondents: 210.
Average Hours Per Response: 1.
Needs and Uses: The purpose of the Technology Opportunities Program (TOP) is to promote the widespread availability and use of digital network technologies in the public and non-profit sectors to serve communities nationwide. As part of the Department of Commerce's National Telecommunications and Information Administration, TOP projects are nationally-significant demonstrations of how digital network technologies can be used to extend and improve the delivery of valuable services and opportunities to all Americans. It does this by providing matching funds to pubic and non-profit sector organizations to use these technologies to provide community-wide information, health, life-long learning, public safety and other public services. TOP will evaluate and actively share the lessons learned from these projects to ensure the benefits are broadly distributed. TOP will use this survey to ensure that grant recipients are effectively promoting the efficient and widespread use of advance telecommunications services to serve American communities and to comply with the Government Performance and Results Act.

NTIA is interested in the effects that the funded projects are having at the local level and, over the long term, at the national level. It is NTIA's intention to understand the nature and degree of those effects on the organizations that are involved with the projects, the individuals who are served by the projects, and the community as a whole. NTIA is especially interested in understanding the difference that the Federal grants have had in the creation, scale, scope and sustainability of the projects.

Affected Public: Not-for-profit institutions, and state, local or tribal government.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4487 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).
Title: Technology Opportunities Program (TOP) Reviewer Information Form.
Form Number(s): None.
OMB Approval Number: 0660–0010.
Type of Request: Regular submission.
Burden Hours: 42.
Number of Respondents: 252.
Average Hours Per Response: 10 minutes.
Needs and Uses: Technology Opportunities Program (TOP) promotes the widespread availability and use of digital network technologies in the public and non-profit sectors. To accomplish this objective, TOP provides matching grants to state, local, and tribal governments and non-profit entities for model projects that demonstrate innovative uses of digital network technologies in under-served communities. TOP projects address specific challenges and realize opportunities for change in such areas as lifelong learning, community and economic development, government and public services, safety, health, culture, and the arts.

As part of TOP's process to select projects for funding, external experts are used to review applications. The collection of information about potential reviewers is used to determine their eligibility and availability and to facilitate payment for services rendered if they are selected to review.

Affected Public: Individuals from state and local government, non-profit institutions, and business and other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4488 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Change in Meeting Date of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 1500, Wednesday, March 13, 2002.

ADDRESSES: The meeting will be held at the Seaside Room, Hyatt Moneterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and

development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4463 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 12 noon, Wednesday, March 13, 2002.

ADDRESSES: The meeting will be held at the Salinas Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4464 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, March 11, 2002.

ADDRESSES: The meeting will be held at the Spyglass Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4465 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, April 18, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group

meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4466 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on March 28, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on February 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 20, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF TRANSCOM A

SYSTEM NAME:

Joint Medical Evacuation System (TRAC^{2}ES).

SYSTEM LOCATION:

United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049, and Department of Defense medical treatment facilities, evacuation units and medical regulating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, Air National Guard, Army National Guard, Reserve components of the Air Force, Army, Marine Corps, Coast Guard, Public Health Services or National Oceanic and Atmospheric Administration who have been called to Federal Service, and retired personnel of all seven uniformed services as well as their family members, employees of any agency of the U.S. Government including non-appropriated fund and Army and Air Force Exchange Service employees, Air Reserve technicians performing duties as civil servants, and family members (dependents) who reside overseas and who civil service personnel sponsor is stationed overseas requiring transfer to another medical treatment at the request of U.S. Government medical treatment facilities through Patient Movement Requirements Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

TRAC^{2}ES contains information reported by the transferring medical facility which includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, home address of patient and/or duty station, and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. 2641, Transportation of Certain Veterans on DoD Aeromedical Evacuation Aircraft; DoD Directive 5154.6, Armed Services Medical Regulating; DoD Instruction 6000.11, Patient Movement; and E.O. 9397 (SSN).

PURPOSE(S):

Information collected is used to determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify medical treatment facilities of the transfer; to notify evacuation units and medical regulating offices; to evaluate the effectiveness of reported information; to establish the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To civilian hospitals for medical reference to ensure proper care is provided.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic back-up tape storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software, or in locked file cabinets, locked desk drawers, or locked offices. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Medical records of active duty U.S. military members are maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center (NPRC), St. Louis, MO or other designated depository, such as Commandant, US Coast Guard for that agency's personnel, to appropriate Department of Veterans Affairs Regional Office if a VA claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

System Administrator, United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number. Forward request to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Transferring and receiving treatment facilities, medical regulating offices, evacuation offices, agencies and commands relevant to the patient transfer, and from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–4468 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 28, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 20, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.50 CA

SYSTEM NAME:

Access and Badging Records (July 13, 2000, 65 FR 43301).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete ''CA'' from entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In the second sentence, delete ''address'' and replace with ''physical and electronic home addresses'' and delete ''date of birth'' and replace with ''date and place of birth.'' In addition, add ''blood type (for military members); fingerprint data;'' after ''eye color.''

* * * * *

PURPOSE(S):

Add ''police force and'' before ''security personnel'' in first sentence.

* * * * *

S500.50

SYSTEM NAME:

Access and Badging Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, Headquarters Defense Logistics Agency, ATTN: DSS–S, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Visitor security clearance data is also maintained by the Chief, Internal Review Group, Headquarters Defense Logistics Agency, ATTN: J–308, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, or computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; physical and electronic home addresses; Social Security Number; date and place of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; blood type (for military members); fingerprint data; handicap data; computer logon addresses,

passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6122, Flexible schedules, agencies authorized to use; 5 U.S.C. 6125, Flexible schedules, time recording devices; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; 18 U.S.C. 1030, Computer fraud; 23 U.S.C. 401 *et seq.*, National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10450 (Security Requirements for Government Employees).

PURPOSE(S):

Information is maintained by DLA police force and security personnel to control access onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.

Data is also used to manage reserved, handicap, and general parking. Clearance data is also used by the DLA Internal Review Group to control access to sensitive records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by name, Social Security Number, bar code number, or decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation; Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs. Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–4467 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 20, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: School Renovation Program Annual Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 112.

Abstract: ED will use the information collected from States and Outlying areas to evaluate Program implementation. The information will also be used to report to Congress and the public on the effectiveness of the Program in meeting the legislative goals of improving school facilities and ensuring the health and safety of students and staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–4498 Filed 2–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41416 entitled Advanced University Reciprocating Engine Program. The Department of Energy, National Energy Technology Laboratory, is seeking applications on behalf of the Office of Power Technologies in DOE's Office of Energy Efficiency and Renewable Energy, for support of projects that are consistent with the goals of the Advanced Natural Gas Reciprocating Engine Program. This solicitation is restricted to applications from only United States (US) universities and colleges for research activities that will make a significant impact on achieving program goals. In order to attain these goals, innovative and novel concepts need to be created and current obstacles need to be overcome.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about February 15, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.* All requests for technical explanation or interpretation shall be submitted through IIPS and must be received not later than 5 p.m. Eastern time on March 17, 2002. The Government reserves the right not to respond to technical questions submitted after this date.

FOR FURTHER INFORMATION CONTACT: Debra A. Duncan, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *duncan@netl.doe.gov,* Telephone Number: 412–386–5700.

SUPPLEMENTARY INFORMATION: The DOE, supports the development of promising advanced power technologies that will improve energy efficiency, meet or exceed emissions requirements, enhance durability, and lower the costs of installation and operation. The DOE is encouraging greater focus on a portfolio of advanced distributed energy systems. Current technology development efforts include industrial turbines, microturbines, reciprocating engines, and fuel cell technologies for use in industrial, commercial, institutional and residential applications. This solicitation focuses on the development of technologies that will enhance the performance of advanced natural gas reciprocating engines. This solicitation is restricted to US colleges, universities, and other institutions of higher education. Previous solicitations have already focused on reciprocating engine research restricted to manufacturers and national laboratories. US manufacturers and suppliers of reciprocating engines and the Federal government are partnering to develop the next generation of stationary natural gas internal combustion engines. These advanced systems will provide significant benefits to the nation and will position domestic engine manufacturers to better compete in what is becoming a more global market with significant opportunities in domestic power generation markets and emerging international markets. The Advanced Natural Gas Reciprocating Engine Program goals are:

1. *Energy Efficiency:* 50% electrical efficiency. Current spark-ignition natural gas engines range in efficiency from 34–38%. Application of high temperature materials, engine sensors and controls, improved combustion practices, and other advances may be able to attain efficiencies of 50%.

2. *Environmental Emissions:* NO_X target of 0.1 grams per horsepower-hour. Currently, the best domestic emission levels are 1.0 grams per horsepower-hour. In order to reduce NO_X emissions by an order of magnitude advances in combustion technology, sensors and controls, and emission reduction systems are critical to minimize environmental impacts.

3. *Cost:* Operating and maintenance 10% below today's costs for modern engines. Attaining this goal will result in $50 million savings to the nation between 2005–2010.

To achieve the project objectives, the applicant shall succinctly describe the proposed technical approach to solve the emissions challenge for reciprocating engines. Specifically, university research applications are being solicited for development of aftertreatment concepts for natural gas reciprocating engines. The nature of the application in response to this solicitation should be structured for longer term, basic and fundamental research appropriate for university research facilities. However, it is important that university researcher applicants be mindful of the US reciprocating manufacturer's needs. In other words, applications should propose research that has reasonable probability of contributing to long-term (5–7 year) manufacturer product development cycles. The most valuable contribution will be knowledge useful to reciprocating manufactures to decide which path, among many alternatives, that emissions equipment product development should proceed. With

considerable input from the Advanced Reciprocating Engines Systems (ARES) manufacturing consortium, DOE/NETL through the Office of Power Technologies Advanced Natural Gas Reciprocating Engine Program, is requesting applications under the topic area ''Aftertreatment Concepts for Advanced Natural Gas Reciprocating Engines.''

Background/Application: Catalytic reduction offers a direct path towards reducing natural gas engine NO_X emissions with minimal impact on design or program timing. Selective Catalytic Reduction (SCR) catalysts are used today in site-specific areas, but only as required due to their high initial cost, high maintenance cost, and control requirements. Three way catalysts are used more broadly, but are limited in application to smaller (under 500 kilowatt) engines, as manufacturers have integrated lean burn combustion for longer life on higher power ratings. Improvements in catalyst design have been in research stages for many years but have yet to result in a cost effective, simple solution that new engine products can use.

Technical and Commercial Barriers: Catalyst barriers include the presence of oxygen in the exhaust stream from modern lean burn natural gas engines, coupled with relatively low exhaust temperatures that can inhibit catalytic reaction. Material costs, along with expensive closed loop SCR controls, limit commercial attractiveness such that catalysts are often used as a last resort rather than first preference when addressing emissions non-attainment areas. Relatively weak sales and service infrastructure, coupled with a general lack of knowledge, or negative impressions about catalysts, further inhibit catalyst promulgation into the large stationary natural gas engine marketplace.

Technology Breakthrough(s) Needed: An effective catalyst reduction system is required that can reduce lean burn engine NO_X emissions from 6 pounds per megawatt hour by at least 90%. Several approaches need to be investigated, including:

1. Closed loop SCR designs, such that first costs are no greater than 10% of package costs, or approximately $50 per kilowatt (electric).
2. Three way catalyst designs, such that these simple designs could be coupled with lean burn engine applications.
3. Catalyst control technology that greatly reduces the cost to measure and control inlet and outlet NO_X conditions to and from the catalyst.
4. Basic field measurement technology, such that a technician or regulator can easily connect to and confidently measure NO_X output from a gas engine catalyst.
5. NO_X adsorbent technology, such that catalyst bed material life is sufficiently long to be economically justified, and that precious metal requirements are greatly reduced or eliminated.
6. Sulfur resistant catalyst technology, such that engines operating with significant sulfur pass-through can be coupled to an effective catalyst bed.
7. Catalysts using CH_4 as a supplemental reductant, such that currently available fuels can be used rather than ammonia systems in SCR designs.
8. Durable oxidation catalyst technology, such that methane is reduced by 80+% with a minimal use of precious metal.

These technologies are listed in no particular order, but could each play a major role in reducing NO_X emissions from current engines and upcoming advanced natural gas reciprocating engine designs.

Pursuant to 10 CFR 600.6(b) eligibility for award is restricted to US universities and colleges. Only universities, colleges, or university-affiliated research institutes located in the US and its territories, including the Commonwealth of Puerto Rico and the Virgin Islands, may submit applications for consideration under this Program Solicitation. Submissions from university-affiliated research institutes must be made through the university. The award will be with the university and *not* with the university-affiliated research institute.

DOE anticipates multiple cooperative agreement awards resulting from this solicitation. In accordance with 10 CFR 600.30, the DOE has determined that a minimum cost share of 20% of the total project costs will be required.

Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on February 15, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–4514 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

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), Idaho. 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: Tuesday, March 19, 2002 8 a.m.–6 p.m., Wednesday, March 20, 2002 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, March 19, 2002, 12:15–12:30 p.m., 5:45–6 p.m., Wednesday, March 20, 2002 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/*.)

- Dispute Resolution for Pit 9
- Fiscal Year 2003 Budget
- INEEL Long-Term Stewardship Strategic Overview
- Proposed Plan for Remedial Action at Waste Area Group 10
- Top-to-Bottom Review
- Dry Storage Facility
- Follow-up Activities to the Site Specific Advisory Board Groundwater Workshop
- DOE-ID Strategic Planning Process (not ranked)
- Community-Based Forum to Define Desired End State(s) for the INEEL
- Integration of Tribal Concerns into Planning for Long-Term Stewardship
- DOE and Contractor Roles and Responsibilities Regarding Intergovernmental Relations and Public Involvement
- Vadose Zone Integration Project
- INEEL Workforce Restructuring

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Desig-nated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC, on February 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–4512 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–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 meetings be announced in the **Federal Register**.

DATES: Wednesday, March 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, PO 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:

Discussion of General Board Issues

A final agenda will be available on the date of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat 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.

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, PO Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on February 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–4513 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Chairman's Participation in Congressional Hearing on Pending Matters

February 15, 2002.

Take notice that there will be a Congressional hearing before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the House of Representatives' Committee on Government Reform on February 22, 2002 at which Pat Wood III, Chairman, Federal Energy Regulatory Commission, will testify. The hearing will be held at 9:00 a.m. at the Sacramento County Board of Supervisors Chambers, 700 H Street, Sacramento, California.

The scope of the hearing includes the performance of the California Independent System Operator and wholesale electric energy market design in the State of California and nationally. During the course of this hearing, it is possible that discussion may overlap with issues pending in the dockets listed in the attached appendix. A transcript of the hearing will be placed in the dockets listed in the attached appendix if appropriate.

Magalie R. Salas,

Secretary.

Appendix

Docket Nos. EL01–35–000, Mirant Delta, LLC and Mirant Potrero LLC, v. California Independent System Operator Corp.,

Docket Nos. EL00–95–000, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System

Operator and the California Power Exchange
Docket No. EL00–98–000, Investigation into Practices of the California Independent System Operator and the California Power Exchange
Docket No. RT01–85–000, California Independent System Operator Corp.
Docket No. RT01–82–000, California Independent System Operator Corp., *et al.*
Docket No. RT01–83–000, California Independent System Operator Corp., *et al.*
Docket No. RT01–92–000, California Independent System Operator Corp., *et al.*
Docket No. EL01–68–000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
Docket No. PA02–1–000, Operational Audit of the California Independent System Operator Corp.
Docket No. ER02–651–000, California Independent System Operator Corp.
Docket No. ER01–889–000, California Independent System Operator Corp.
Docket No. EL02–48–000, California Power Exchange Corporation
Docket No. EL02–51–000, California Electricity Oversight Board v. Williams Energy Services Corp., *et al.*,
Docket No. ER99–3301–000, California Independent System Operator Corp,
Docket No. ER00–2019–000, California Independent System Operator Corp.
Docket No. ER00–1365–000, California Independent System Operator Corp.
Docket No. EL01–23–000, Dynegy Power Marketing, Inc. v. California Independent System Operator Corp.
Docket No. ER98–997–000, *et al.*, California Independent System Operator Corp
Docket No. ER98–495–000, *et al.*, Pacific Gas and Electric Company
Docket Nos. ER99–2730–000 and EL99–67–000, California Independent System Operator Corp.
Docket No. ER99–896–000, California Independent System Operator Corp.
Docket No. ER98–3760–000, *et al.*, California Independent System Operator Corp
Docket No. RM01–12–000, Electricity Market Design and Structure

[FR Doc. 02–4485 Filed 2–25–02; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–2114–104]

Yakama Nation, Complainant, v. Public Utility District No. 2 of Grant County, Washington, Respondent; Notice of Complaint

February 15, 2002.

Take notice on February 12, 2002, the Yakama Nation (Complainant) filed with the Federal Energy Regulatory Commission (Commission) a document entitled ''Complaint of Yakama Nation Requesting Fast Track Processing.'' The complainant requests, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find Public Utility District No. 2 of GrantCounty, Washington to be in violation of its license for the Priest Rapids Hydroelectric Project (''Project''), FERC Project No. 2114, Federal law authorizing the development of the Project, as well as sections 10, 19, and 20 Federal Power Act due to discriminatory and anticompetitive provisions contained in wholesale power contracts required under the Project license. The Complainant requests that the Commission require the Licensee to correct these violations and requests Fast Track Processing of the Complaint.

Pursuant to Rule 206(f) of the Commission's regulations, answers to complaints are due within 20 days after filing or, if noticed, after publication of the notice in the **Federal Register**, unless otherwise ordered. 18 CFR 385.206(f).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 4, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 4, 2002. 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, interventions and answers 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4484 Filed 2–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–92–000, et al.]

PSEG Poland Distribution B.V., et al.; Electric Rate and Corporate Regulation Filings

February 19, 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. PSEG Poland Distribution B.V.

[Docket No. EG02–92–000]

Take notice that on February 13, 2002, PSEG Poland Distribution B.V. (PSEG Poland) with its principal office at Weena 340, 3012 NJ Rotterdam, The Netherlands (mailing address: Postbus 21850, 3001 AW Rotterdam, The Netherlands), 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.

PSEG Poland is a company organized under the laws of The Netherlands. PSEG Poland states that it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of an approximately 590 MWe and 618 MWt coal-fired electrical and thermal plant, located in Krakow, Poland, selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment Date: March 12, 2002.

2. Crete Energy Venture, LLC

[Docket No. EG02–93–000]

Take notice that on February 14, 2002, Crete Energy Venture, LLC, c/o DTE Energy Services, Inc., 414 S. Main Street, Suite 600, Ann Arbor, Michigan 48104 filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

The applicant states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of developing and ultimately owning and/or operating a 315 megawatt gas-fired, simple cycle electric generating facility located in

Crete, Illinois and selling electric energy exclusively at wholesale.

Copies of the Application have been served upon the Securities and Exchange Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Arkansas Public Service Commission, the City Council of New Orleans, the Public Utility Commission of Texas, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Comment Date: March 12, 2002.

3. Duke Energy Sandersville, LLC

[Docket No. EG02–94–000]

Take notice that on February 14, 2002, Duke Energy Sandersville, LLC (Duke Sandersville) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Sandersville states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Washington County, Georgia. The eligible facilities will consist of an approximately 640 MW natural gas-fired, simple cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: March 12, 2002.

4. Duke Energy Washington, LLC

[Docket No. EG02–95–000]

Take notice that on February 14, 2002, Duke Energy Washington, LLC (Duke Washington) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Washington states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Washington County, Ohio. The eligible facilities will consist of an approximately 620 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: March 12, 2002.

5. PEI Power Corporation

[Docket No. ER98–2270–002]

Take notice that on January 23, 2002, PEI Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a Triennial Revised Market Analysis.

Comment Date: March 12, 2002.

6. Gilroy Energy Center, LLC; King City Energy Center, LLC

[Docket No. ER01–2688–003, Docket No. ER01–2689–003]

Take notice that on February 13, 2002, Gilroy Energy Center, LLC and King City Energy Center, LLC (the Applicants), resubmitted for filing with the Federal Energy Regulatory Commission (Commission) all of their tariff sheets to reflect the correct effective dates in compliance with the Commission order issued in these dockets on December 20, 2001.

Comment Date: March 6, 2002.

7. Arizona Independent Scheduling Administrator Association

[Docket No. ER02–348–001]

Take notice that on February 13, 2002, Arizona Independent Scheduling Administrator Association submitted supplemental information regarding its proposed revision to its Protocols Manual to extend the commitment of the Standard Offer Scheduling Coordinators to a mechanism whereby Standard Offer Scheduling Coordinators exchange an amount, in MW, of Allocated Retail Network Transmission to Scheduling Coordinators serving competitive retail access customers.

Comment Date: March 6, 2002.

8. Duke Energy Corporation

[Docket No. ER02–710–001]

Take notice that on February 13, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed an amendment to its filing in this docket.

Comment Date: March 6, 2002.

9. UtiliCorp United Inc.

[Docket No. ER02–765–001]

Take notice that on February 13, 2002, UtiliCorp United Inc. (UtiliCorp), filed a supplement to Service Agreement No. 109, which it filed on January 14, 2002 in this docket.

Comment Date: March 6, 2002.

10. West Texas Utilities Company

[Docket No. ER02–1001–000]

Take notice that on February 12, 2002, West Texas Utilities Company (WTU) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of cancellation of WTU Rate Schedule No. 40 (Agreement Providing for Partial Requirements Service by WTU to the City of Coleman, Texas).

Comment Date: March 5, 2002.

11. New England Power Pool

[Docket No. ER02–1003–000]

Take notice that on February 12, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Second Agreement Amending New England Power Pool Agreement, which proposes changes to Schedule 16 of the NEPOOL Open Access Transmission Tariff in connection with compensation for distribution companies that provide black start service to NEPOOL.

NEPOOL respectfully requests that the effective date be April 1, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: March 5, 2002.

12. New England Power Pool

[Docket No. ER02–1004–000]

Take notice that on February 12, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a filing requesting acceptance of proposed changes to Market Rule & Procedure 4 and Appendix 4–M that amend the procedures for submitting Participants' External Transactions for Installed Capability across the New York–NEPOOL interface.

NEPOOL requests the Commission to allow these proposed changes to become effective on May 1, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: March 5, 2002.

13. Michigan Electric Transmission Company

[Docket No. ER02–1005–000]

Take notice that on February 12, 2002, Michigan Electric Transmission Company (METC) tendered for filing with the Federal Energy Regulatory Commission (Commission), as transferee of Consumers Energy Company (Consumers), also known as Consumers Power Company, Service Agreement No. 33 under METC Electric Tariff No. 1, a Facilities Agreement with Wolverine Power Supply Cooperative, Inc. (Wolverine), dated January 31, 1996, as amended June 4, 1996. The facilities covered under the Agreement provide

an interconnection of 138 kV facilities owned by the parties thereunder (Oden Interconnection Facilities). The Agreement (a) describes the Oden Interconnection Facilities and their anticipated affect on the facilities of the respective parties, (b) establishes the ownership interests of the parties in the Oden Interconnect Facilities, and (c) sets forth the respective rights and obligations of the parties with respect thereto.

METC has requested that its aforementioned Service Agreement be allowed to become effective April 1, 2001.

Copies of the filing were served upon Wolverine and the Michigan Public Service Commission.

Comment Date: March 5, 2002.

14. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER02–1006–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 114 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply maintains the effective date of Service Agreement No. 114 of March 16, 2001 for service to Entergy-Koch Trading, LP.

Copies of the filing have been provided to all parties of record.

Comment Date: March 5, 2002.

15. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER02–1007–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 11 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 11 of December 2, 1999 for service to TXU Energy Trading Company LP.

Copies of the filing have been provided to all parties of record.

Comment Date: March 5, 2002.

16. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1008–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 373 and 374 to add Dominion Energy Marketing, Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is February 11, 2002.

Copies of the filing have been provided to the Customer.

Comment Date: March 5, 2002.

17. North Atlantic Energy Corporation

[Docket No. ER02–1009–000]

Take notice that on February 12, 2002, North Atlantic Energy Corporation (North Atlantic) filed proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedules Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested waiver of the notice and filing requirements to accept retroactive effective date of January 12, 2001.

North Atlantic states that copies of this filing were served upon North Atlantic's jurisdictional customer and the New Hampshire Public Utilities Commission.

Comment Date: March 5, 2002.

18. GNE, LLC

[Docket No. ER02–1010–000]

Take notice that on February 13, 2002, GNE, LLC (GNE) tendered its long-term Power Purchase and Sale Agreement (EEI–NEM Model) between Maclaren Energy Inc. (Maclaren) and GNE. The Agreement is designated as Service Agreement No. 1 under GNE's FERC Electric Tariff, Original Volume No. 1. Service commenced under the Agreement on February 1, 2002 pursuant to negotiated rates, terms and conditions.

Comment Date: March 6, 2002.

19. Florida Power Corporation

[Docket No. ER02–1011–000]

Take notice that on February 13, 2002, Florida Power Corporation (FPC) filed a Service Agreement with Calpine Energy Services, L.P. under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10.

FPC is requesting an effective date of January 18, 2002, for this Agreement.

A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: March 6, 2002.

20. Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (Collectively the Wildflower Entities)

[Docket No. ER02–1012–000]

Take notice that on February 13, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) rendered for filing an amendment to an agreement pursuant to which the Wildflower Entities will sell capacity, energy and ancillary services at market-based rates according to their FERC Electric Tariff, Original Volume No. 1 to their affiliate Coral Energy Management, LLC.

Comment Date: March 6, 2002.

21. Delmarva Power and Light Company

[Docket No. ER02–1013–000]

Take notice that on February 13, 2002, Delmarva Power and Light Company (Delmarva) filed proposed tariff sheets for the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff) to accommodate the Commonwealth of Virginia's retail access program. The proposed tariff sheets describe the procedures for determining the peak load contributions and hourly load obligations for Delmarva's retail customers located in the Delmarva zone. This information is used in the determination of capacity, transmission, and hourly energy obligations.

Copies of the filing have been served on all the members of the PJM Interconnection, LLC and the Virginia State Corporation Commission.

Comment Date: March 6, 2002.

22. PPL EnergyPlus, LLC

[Docket No. ER02–1014–000]

Take notice that on February 13, 2002, PPL EnergyPlus, LLC (PPL EnergyPlus) filed notice of termination of the Service Agreement between it and UGI Utilities, Inc. designated as Service Agreement

No. 123 under PPL EnergyPlus Rate Schedule FERC No. 1.

PPL EnergyPlus requests that the termination be effective on April 15, 2002.

Notice of the termination has been served upon UGI Utilities, Inc.

Comment Date: March 6, 2002.

23. Illinois Power Company

[Docket No. ER02–1015–000]

Take notice that on February 13, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed with the Commission a Fourth Revised Network Integration Transmission Service Agreement entered into by Illinois Power and Dynegy Power Marketing, Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of February 2, 2002, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: March 6, 2002.

24. MEP Flora Power, LLC

[Docket No. ER02–1016–000]

Take notice that on February 13, 2002, MEP Flora Power, LLC (MEPFP), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MEPFP included in its filing a proposed code of conduct.

MEPFP requests that the rate schedule become effective April 1, 2002.

Comment Date: March 6, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4483 Filed 2–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 20, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 27, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary.

Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the reference and information center.

786th Meeting—February 27, 2002, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1,000, Agency Administrative Matters

A–2.
Docket# AD02–7,000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–662, 000, Boston Edison Company

E–2.
Docket# ER02–653, 000, PacifiCorp

E–3.
Docket# ER02–658, 000, PJM Interconnection, L.L.C.

E–4.
Docket# ER02–700, 000, Florida Power & Light Company

E–5.
Omitted

E–6.
Docket# ER02–708, 000, Central Illinois Light Company

E–7.
Docket# ER01–890, 000, Boston Edison Company

E–8.
Omitted

E–9.
Docket# ER02–656, 000, New England Power Pool

E–10.
Omitted

E–11.
Docket# ER01–831, 000, San Diego Gas & Electric Company
Other#s ER01–832, 000, Southern California Edison Company
ER01–839, 000, Pacific Gas and Electric Company
ER01–839, 001, Pacific Gas and Electric Company
ER01–839, 003, Pacific Gas and Electric Company

E–12.
Docket# EL00–95, 051, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s EL00–98, 045, Investigation of Practices of the California Independent System Operator Corporation & California Power Exchange

E–13.
Omitted

E–14.
Docket# ER01–2967, 002, New York Independent System Operator, Inc.
Other#s ER01–2967, 003, New York Independent System Operator, Inc.

E–15.
Docket# ER99–1378, 000, Alliant Energy Corporation

E–16.
Docket# EC02–35, 000, Engage Energy America LLC., Frederickson Power L.P. and Duke Energy Corporation

E–17.
Docket# FA88–62, 000, Wisconsin Electric Power Company
Other#s EL94–16, 000, Wisconsin Electric Power Company

E–18.
Docket# TX96–2, 002, City of College Station, Texas

E–19.
Docket# EL01–19, 001, *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*
Other#s EL02–16, 001, *PSEG Energy Resources & Trade L.L.C.* v. *New York Independent System Operator, Inc.*

E–20.
Docket# ER01–2390, 003, Huntington Beach Development, L.L.C.

E–21.
Omitted

E–22.
Omitted

E–23.
Docket# EL00–95, 052, *San Diego Gas & Electric Company* v. *Sellers of Energy*

and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 046, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange
E–24.
Docket# ER01–3003, 001, Mid-Continent Area Power Pool
E–25.
Docket# EL02–18, 000, NEO, California Power L.L.C.
E–26.
Docket# RT01–98, 004, PJM Interconnection, L.L.C. and Allegheny Power
E–27.
Omitted
E–28.
Docket# EL01–105, 000, *The New Power Company* v. *PJM Interconnection, Inc.*
E–29.
Docket# EL02–19, 000, Illinois Municipal Electric Agency
E–30.
Omitted
E–31.
Docket# OA02–3, 000, Michigan Electric Transmission Company
E–32.
Docket# ER01–2020, 003, Carolina Power & Light Company and Florida Power Corporation
Other#s ER01–1807, 005, Carolina Power & Light Company and Florida Power Corporation
ER01–1807, 006, Carolina Power & Light Company and Florida Power Corporation
ER01–2020, 002, Carolina Power & Light Company and Florida Power Corporation
E–33.
Docket# ER01–2922, 001, New England Power Pool
E–34.
Docket# RM01–12, 000, Electricity Market Design and Structure
Other#s RT01–2, 000, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Public Service Electric & Gas Company and UGI Utilities, Inc.
RT01–10, 000, Allegheny Power
RT01–15, 000, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company
ER02–323, 000, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Sierra Pacific Power Company and TransConnect, LLC
RT01–34, 000, Southwest Power Pool, Inc.
RT01–35, 000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company and Sierra Power Company
RTO1–67, 000, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation and Tampa Electric Company
RTO1–74, 000, Carolina Power & Light Company, Duke Energy Corporation, GridSouth Transco, LLC and South Carolina Electric & Gas Company
RTO1–75, 000, Entergy Services, Inc.
RTO1–77, 000, Southern Company Services, Inc.
RT01–85, 000, California Independent System Operator Corporation
RTO1–86, 000, Bangor Hydro-Electric Company, Central Maine Power Company, ISO New England Inc., National Grid USA, Northeast Utilities Service Company, United Illuminating Company and the Vermont Electric Power Company, Inc.
RTO1–87, 000, Midwest Independent System Operator
RTO1–88, 000, Ameren Corporation, American Electric Power Service Corporation, American Transmission Systems, Inc., Appalachian Power Company, Central Illinois Public Service Company, Cleveland Electric Illuminating Company, Columbus Southern Power Company, Commonwealth Edison Company of Indiana, Inc., Commonwealth Edison Company, Consumers Energy Company, Dayton Power and Light Company, Detroit Edison Company, Exelon Corporation, FirstEnergy Corporation, Illinois Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, Toledo Edison Company, Union Electric Company, Virginia Electric & Power Company and Wheeling Power Company
RTO1–94, 000, NSTAR Services Company
RTO1–95, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
RTO1–98, 000, PJM Interconnection L.L.C., Monongahela Power Company, Potomac Edison Company and West Penn Power Company
RTO1–99, 000, Regional Transmission Organizations
RTO1–100, 000, Regional Transmission Organizations
RTO1–101, 000, International Transmission Company
EC01–146, 000, International Transmission Company and DTE Energy Company
ER01–3000, 000, International Transmission Company
RTO2–1, 000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company and WestConnect RTO, LLC
EL02–9, 000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company and WestConnect RTO, LLC
ECO1–156, 000, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, TRANSLink Transmission Company, L.L.C. and Xeel Energy Services, Inc.
ER01–3154, 000, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, TRANSLink Transmission Company, L.L.C. and Xeel Energy Services, Inc.
ELO1–80, 000, National Grid USA
E–35.
Docket# ADO1–3, 000, California Infrastructure Update

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP01–375, 002, Vector Pipeline, L.P.
G–2.
Docket# RP02–147, 000, ANR Pipeline Company
G–3.
Docket# RP02–157, 000, Transwestern Pipeline Company
G–4.
Docket# PR02–1, 000, Acacia Natural Gas Corporation
G–5.
Docket# RP96–312, 061, Tennessee Gas Pipeline Company
Other#s GT01–34, 001, Tennessee Gas Pipeline Company
G–6.
Omitted
G–7.
Docket# RP00–340, 000, Gulf South Pipeline Company, LP
Other#s RP00–340, 001, Gulf South Pipeline Company, LP
RP00–340, 002, Gulf South Pipeline Company, LP
RP01–7, 000, Gulf South Pipeline Company, LP
G–8.
Docket# RP01–183, 000, OkTex Pipeline Company
G–9.
Docket# RP00–463, 000, Williston Basin Interstate Pipeline Company
Other#s RP00–463, 001, Williston Basin Interstate Pipeline Company
RP00–600, 000, Williston Basin Interstate Pipeline Company
G–10.
Docket# RP02–118, 000, High Island Offshore System
G–11.
Docket# RP00–331, 000, Algonquin Gas Transmission Company
Other#s RP00–331, 001, Algonquin Gas Transmission Company
RP01–23, 000, Algonquin Gas Transmission Company
RP01–23, 002, Algonquin Gas Transmission Company
G–12.
Omitted
G–13.

Docket# RP00–468, 000, Texas Eastern Transmission, L.P.
Other#s RP00–468, 001, Texas Eastern Transmission, L.P.
RP01–25, 000, Texas Eastern Transmission, L.P.
RP01–25, 001, Texas Eastern Transmission, L.P.
G–14.
Docket# RP00–484, 000, Wyoming Interstate Company, Ltd.
Other#s RP00–484, 001, Wyoming Interstate Company, Ltd.
RP01–39, 000, Wyoming Interstate Company, Ltd.
RP01–39, 001, Wyoming Interstate Company, Ltd.
G–15.
Docket# RP00–472, 000, USG Pipeline Company
Other#s RP01–31, 000, USG Pipeline Company
G–16.
Docket# RP00–536, 000, Venice Gathering System, L.L.C.
Other#s RP01–104, 000, Venice Gathering System, L.L.C.
G–17.
Docket# RP99–274, 003, Kern River Gas Transmission Company
G–18.
Docket# RP00–336, 002, El Paso Natural Gas Company
Other#s RP00–139, 000, ONEOK Energy Marketing & Trading Company, L.P.
RP01–484, 000, Aera Energy LLC
RP01–486, 000, Apache Nitrogen Products, Inc.
G–19.
Docket# RP00–408, 001, Ozark Gas Transmission, L.L.C.
G–20.
Docket# RP02–13, 001, Portland Natural Gas Transmission System
G–21.
Docket# RP98–430, 001, Transcontinental Gas Pipe Line Corporation
G–22.
Docket# RP98–40, 027, Panhandle Eastern Pipe Line Company
G–23.
Docket# IS00–221, 000, ExxonMobil Pipeline Company
Other#s OR00–2, 000, ExxonMobil Pipeline Company
G–24.
Docket# RP00–241, 007, *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P. and El Paso Merchant Energy Company*
G–25.
Docket# IS02–42, 001, Amberjack Pipeline Company
G–26.
Docket# RP01–236, 002, Transcontinental Gas Pipe Line Corporation
Other#s RP00–481, 002, Transcontinental Gas Pipe Line Corporation
RP00–553, 005, Transcontinental Gas Pipe Line Corporation
G–27.
Docket# GT02–1, 001, ANR Pipeline Company
G–28.
Docket# RP96–312, 067, Tennessee Gas Pipeline Company
G–29.
Docket# RP00–260, 008, Texas Gas Transmission Corporation
Other#s RP00–260, 000, Texas Gas Transmission Corporation
RP00–260, 001, Texas Gas Transmission Corporation
RP00–260, 002, Texas Gas Transmission Corporation
G–30.
Docket# RM96–1, 019, Standards for Business Practices of Interstate Natural Gas Pipelines
G–31.
Docket# MG02–1, 000, Southern LNG Inc.
G–32.
Docket# RP01–245, 007, Transcontinental Gas Pipe Line Corporation
G–33.
Docket# OR02–1, 000, Plantation Pipe Line Company

Energy Projects—Hydro

H–1.
Docket# UL00–3, 002, Homestake Mining Company
Other#s UL00–4, 002, Homestake Mining Company
H–2. Omitted
H–3. Omitted
H–4.
Docket# P–696, 012, PacifiCorp
H–5.
Docket# P–6032, 041, Niagara Mohawk Power Corporation and Fourth Branch Associates
H–6.
Omitted
H–7.
Docket# P–2177, 041, Georgia Power Company

Energy Projects—Certificates

C–1.
Docket# CP02–63, 000, White Rock Pipeline, L.L.C and Tri-State Ethanol Company, L.L.C.
Other#s CP02–63, 001, White Rock Pipeline, L.L.C. and Tri-State Ethanol Company, L.L.C.
C–2.
Docket# CP01–260, 000, Columbia Gas Transmission Corporation
C–3.
Docket# CP01–422, 000, Kern River Gas Transmission Company
C–4.
Docket# CP02–22, 000, Michigan Gas Storage Company
C–5.
Docket# CP02–27, 000, Florida Gas Transmission Company
C–6.
Docket# RP02–29, 001, Young Gas Storage Co., Ltd.
C–7.
Omitted
C–8.
Docket# CP01–376, 001, Intermountain Municipal Gas Agency and Questar Gas Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–4558 Filed 2–21–02; 4:16 pm]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

New Exposure Draft Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of new exposure draft reclassification of stewardship responsibilities and eliminating the current services assessment.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, Reclassification of Stewardship Responsibilities and Eliminating the Current Assessment.

A summary of the proposed Statement follows: On February 19, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 5, Accounting for Liabilities of the Federal Government; Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards (SFFAS) 17, Accounting for Social Insurance. The amendment proposes that risk assumed information and the CSA be reclassified as required supplementary information (RSI).

Because it is deemed essential to fair presentation, Social Insurance information would be reclassified as an integral part of the basic financial statements. The exposure draft includes the Alternative Views of one Board member. The exposure draft also proposes that the requirement to report the CSA be eliminated after FY 2003, because improved timeliness in issuing audited financial statements should mean that these statements will be available before the President's Budget is published. The President's Budget is the source of the CSA. The exposure draft, entitled Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment, Amending Statement of Federal Financial Accounting Standards (SFFAS) 5, Accounting for Liabilities of the Federal Government, Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards

(SFFAS) 17, Accounting for Social Insurance, will be out for comment until May 19, 2002.

The exposure draft will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov/* Copies can be obtained by contacting FASAB at (202) 512–7350, or *bramlettr@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft.

Written comments are requested by May 19, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 20, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–4535 Filed 2–25–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the Technological Advisory Council (''Council'') under its new charter.

DATES: Wednesday, March 20, 2002 at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW, Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the fourth meeting under the Council's new charter will be to organize the Council's efforts to fulfill its responsibilities under the new charter and consider such questions as the Commission may put before it. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Council's Designated Federal Officer, before the meeting. Jeffery Goldthorp's e-mail address is *jgoldtho@fcc.gov*. His U.S. mail address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–4472 Filed 2–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2531]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 20, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by March 13, 2002. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MM Docket No. 00–39).

Number of Petitions Filed: 1.

Subject: Amendment of FM Table of Allotments (MM Docket No. 00–53, RM–9823).

Number of Petitions Filed: 2.

William F. Caton,

Acting Secretary.

[FR Doc. 02–4474 Filed 2–25–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Mr. C. Edward Floyd, Florence, South Carolina; to acquire additional voting shares of Sun Bancshares, Murrells Inlet, South Carolina, and thereby indirectly acquire addition voting shares of SunBank, National Association, Murrells Inlet, South Carolina.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4491 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. South Coastal Holdings MHC, Inc., Rockland, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of South Coastal Bank, Rockland, Massachusetts.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. HomeTown Financial Services, Inc., Longview, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of HomeTown National Bank, Longview, Washington.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4493 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 2002.

A.Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Allegiant Bancorp, Inc., Saint Louis, Missouri; to acquire Community Development Corporation, St. Louis, Missouri, and thereby to engage de novo in community development activities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–4492 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 14, 2002. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the various consumer financial services, and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Mortgage Disclosure Act - Discussion of issues related to recent amendments to Regulation C, which implements the Home Mortgage Disclosure Act.

Equal Credit Opportunity Act - Discussion of issues raised by proposed rules in the review of Regulation B, which implements the Equal Credit Opportunity Act.

Community Reinvestment Act - Discussion of issues identified in connection with the current review of Regulation BB, which implements the Community Reinvestment Act.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, February 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–4490 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, March 4, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4641 Filed 2–22–02 2:15 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1098]

Pro Forma Financial Statements for Federal Reserve Priced Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: After considering comments received in response to its requests for comment on a proposal to discontinue the quarterly publication of interim pro forma financial statements for Federal Reserve priced services in March 2001, the Board has determined that the priced-services pro forma financial statements will only be produced annually.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding the priced-services pro forma financial statements contact Gregory L. Evans, Manager (202/452–3945); or Elizabeth Miyagi, Financial Analyst (202/452–2222), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunication Device for the Deaf (TDD) only, please contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Board has published pro forma financial statements for Federal Reserve priced services (pro formas) quarterly and annually since 1984. Essentially, the purpose of the pro formas is to provide information to the public regarding the financial results of Reserve Bank priced services activities and to allow the public to assess Federal Reserve compliance with the Monetary Control Act (MCA).

The MCA requires the Federal Reserve to set fees for priced services to recover total costs over the long run. The Federal Reserve reviews cost recovery over a ten-year period to assess compliance with the MCA requirement. The Board believes that the ten-year historical recovery rate, together with the annual pro formas published in the Board's Annual Report and the additional cost-recovery information included in the annual repricing **Federal Register** notice, provides the relevant information to enable Congress and the public to evaluate the Federal Reserve's performance under MCA. The Board believes the information in the quarterly pro formas is of little value to parties interested in priced-services financial results because it does not provide a relevant long-term cost-recovery assessment. Given the staff resources required to produce, document, and review the pro formas, the Board believes the cost of producing quarterly pro formas exceeds the benefit.

The Board requested public comment on discontinuing quarterly pro formas in March 2001 (66 FR 16945, March 28, 2001). The Board received only two comments on the proposal to discontinue publication of the quarterly pro formas, both disagreeing with the Board's recommendation. The comment letters, one from the National Clearinghouse Association (NCHA) and one from the Electronic Check Clearing House Organization (ECCHO) were essentially identical and indicated that the quarterly pro formas were the only source of current information that could provide early warning of trends and developments for Federal Reserve priced services specifically and for payments more generally. The commenters believed that such information is particularly important in the current environment of rapid changes in the payment system. The commenters also expressed surprise with the proposal to provide less information to the public given a recent GAO report on potential conflicts of interest, which concluded that the System should provide more information to the payments industry about its services and product enhancements.

Although these comments clearly expressed a desire for the continuation of the quarterly pro formas, they were not responsive with regard to identifying which elements of the current pro formas provide the most relevant information. The Board continues to believe that the information provided in the quarterly pro formas is of little value to parties interested in the Federal Reserve's priced-services financial results when compared with the costs to produce them. Quarterly pro formas present data for priced services activities at an aggregate level and do not provide information such as volume trends that the commenters had indicated in their comment letters. The Board recently, however, started providing more useful quarterly payment system information including volume trends on the Board's public website. This information is more relevant to the public and the payment system industry.

Because of the limited interest expressed in retaining the quarterly pro formas, the availability of more relevant information on the Board's website, and the Board's continued belief that quarterly pro formas do not provide sufficient useful information to warrant the preparation costs, the Board is changing the publication frequency of pro formas to annually.

By order of the Board of Governors of the Federal Reserve System, February 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–4489 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the National Community Centers of Excellence in Women's Health Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office on Women's Health, HHS.

ACTION: Notice.

Authority: This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–3, and 300u–6(e).

Purpose

To provide recognition and funding to community-based programs that unite promising approaches in women's health through the integration of the following six components: (1) Comprehensive health service delivery; (2) training for lay and professional health providers; (3) community-based research; (4) public education and outreach; (5) leadership development for women as health care consumers and providers; and (6) technical assistance to ensure the replication of promising models and strategies that coordinate and integrate women's health activities at the community level and improve health outcomes for

underserved women. The National Community Centers of Excellence in Women's Health (CCOE) program is not for the development of new programs or to fund direct service but rather to integrate, coordinate, and strengthen linkages between activities/programs that are already underway in the community in order to reduce fragmentation in women's health services and activities.

The proposed CCOE program must address women's health from a women-centered, women-friendly, women-relevant, holistic, multi-disciplinary, cultural and community-based perspective. Information and services provided must be at the educational level and within the language and cultural context that are most appropriate for the individuals for whom the information and services are intended. Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people in their lives. This definition of women's health encompasses both mental and physical health (including oral health) and spans the life course.

The CCOE program will be supported through the cooperative agreement mechanism, to allow a collaborative relationship between CCOEs and the Department of Health and Human Services (DHHS) offices. The DHHS funding offices include the Office on Women's Health (OWH), the Office of Minority and Women's Health in the Bureau of Primary Health Care of the Health Resources and Services Administration, and the Office of Minority Health. These offices will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities. Specifically, the Federal Government will:

1. Participate in at least two annual meetings with the CCOE Center Directors in the Washington, DC area.
2. Participate in the development of a comprehensive national CCOE ''how-to'' manual.
3. Review and approve the CCOE's local evaluations.
4. Participate in a national evaluation of the CCOE programs using guidance/measurements provided by the OWH contractor.
5. Review and concur with project modifications.
6. Review the design of CCOE Web pages.
7. Make site visits to the CCOE facilities.
8. Review all quarterly and final progress reports.
9. Conduct an orientation meeting for the new CCOEs within the first month of funding.

The DHHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010.* Emphasis will be placed on aligning CCOE activities and programs with the *Healthy People 2010:* Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* Another reference is the *Healthy People 2010 Review—1998–99.* One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 [DHHS Publication No. (PHS) 99–1256]. This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.*

DATES: To be considered for review, applications must be Received by May 1, 2002. Applications will be considered as meeting the deadline if they are: (1) received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications that do not meet the deadline will be considered late and will be returned to the applicant unread.

ADDRESSES: Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* Complete applications should be submitted to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Room 1000, 5515 Security Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed in writing to Ms. Barbara James, CCOE Program Director, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *bjames1@osophs.dhhs.gov.* Technical assistance on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone: (301) 594–0758.

SUPPLEMENTARY INFORMATION:

Availability of Funds

The Office on Women's Health anticipates making up to 7 new awards in FY 2002. Awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to up to 7 competing applicants. However, the actual number of awards made will depend upon the amount of funds available for the CCOE program.

Period of Support

The start date for the cooperative agreement will be September 30, 2002. Support may be requested for a total project period not to exceed 5 years. Noncompeting continuation awards of up to $150,000 (total cost) per year will be made subject to satisfactory performance by the grantee and the availability of funds.

Eligible Applicants

The CCOE applicant must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Community health centers funded under Section 330 of the Public Health Service Act are encouraged to apply. All applicants receiving Section 330 funding must identify themselves as recipients of these funds in the Background section of the application and by checking the appropriate response on the OWH Project Profile form. Community entities/organizations, including faith-based organizations, that have alliances, partnerships, networks with, or have other affiliations with an academic health center are also eligible to apply for a CCOE grant as long as the community entity/organization has a leading management role in the activity and maintains control of all funding. Organizations that have previously submitted CCOE applications, but were not funded, are also eligible to reapply for this award. Academic health centers and state, county, and local health

departments are not eligible for this program.

To ensure a wide geographic distribution of the Centers of Excellence in Women's Health model, applications will be accepted from organizations in all of the American States and Territories except those that already have a National Center of Excellence in Women's Health (CoE) program or a National Community Center of Excellence in Women's Health (CCOE) program. Thus, applications will not be accepted from programs in the following states: AZ, CA, IL, IN, LA, MA, MI, MO, MN, NM, NY, OH, PA, PR, VT, WA, and WI. Preference will be given to DHHS regions that do not have a CCOE or a CoE program and to programs proposed to be implemented in medically underserved areas, enterprise communities, and empowerment zones. We encourage the submission of applications from eligible organizations in DHHS Regions IV and VIII.

Program Goals

The goals of the CCOE program are to:

1. Reduce the fragmentation of services and access barriers that women encounter using a framework that coordinates and integrates comprehensive health services with research, training, education, and leadership activities in the community to advance women's health.
2. Create healthier communities with a more integrated and coordinated women's health delivery system targeted to underserved women.
3. Empower underserved women as health care consumers and decision-makers.
4. Increase the women's health knowledge base using community-based research that involves the community in identifying research areas that address the health needs, and respond to, issues of concern to underserved women.
5. Increase the number of health professionals trained to work with underserved communities and increase their leadership and advocacy skills.
6. Increase the number of young women who pursue health careers and also increase the leadership skills and opportunities for women in the community.
7. Spread the successes, through technical assistance, of model women's health program strategies and new innovations to communities across the country that may be interested in replicating the model.
8. Eliminate health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation.

Project Requirements

A CCOE program must: (1) Develop and/or strengthen a framework to bring together a comprehensive array of services for women; (2) develop promising strategies to train a cadre of health care providers capable of addressing issues at the community level that impact underserved women's health needs; (3) develop strategies to prevent and/or reduce illness or injuries that appear controllable through individual knowledge and behavior; (4) conduct community-based research in women's health; (5) enhance public education and outreach activities in women's health with an emphasis on prevention and/or reduction of illness or injuries that appear controllable through increased knowledge that leads to a modification of behavior; (6) promote leadership/career development for women in the health professions and women/girls in the community; (7) demonstrate an ability to foster the transfer of lessons learned to other communities interested in improvements in women's health; (8) evaluate their program; and (9) participate in a national evaluation of the CCOE program. A CCOE program may develop outreach and education materials, training programs, and leadership development activities/materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community. In addition, the CCOE program must contribute to the development of a comprehensive national CCOE ''how-to'' manual by submitting, as part of their annual report, a section on steps taken to implement each component of the CCOE program, a discussion of the effectiveness of the implementation strategy(s) and how measured, and the impact of the program on the targeted community/population. A draft manual will be developed and made available to other organizations interested in establishing a CCOE program. The OWH plans to publish a final ''how-to'' manual near the end of the third cycle of funding for the CCOE program.

At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and, at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidiscliplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Application Requirements

Each applicant for a cooperative agreement funded under this CCOE announcement must, at a minimum:

1. Present a plan to integrate all six components of the CCOE program by the end of the first year of funding, although only four components have to be in place at the time the application is submitted. The challenge of the CCOE model is to stretch the ''medical health care model'' and ''think out of the box'' about ways to improve the health status of underserved women. Applicant are encouraged to be creative in suggesting ways to increase integration among the CCOE components.
2. Develop a CCOE advisory board or ensure that their already established advisory board is included in the decision-making process for CCOE program development, identification of community-based research questions, and formulation of CCOE policies. Applicants should also ensure that the advisory board includes representative(s) from their community partner organizations.
3. Be a sustainable organization with an established network of partners capable of providing coordinated and integrated women's health services in the targeted community. The network of partner organizations must have the capability to coordinate and provide comprehensive, seamless health services for women and empower them with community-based women's health research information that addresses issues of particular concern to the women, teaching/training opportunities in women's health, leadership opportunities for community women in health, and community outreach/education activities in women's health to improve the health status of women in the community. The applicant will need to define the components of comprehensive care, demonstrate that they are culturally, linguistically, and gender appropriate, and show that they have a clear and sustainable framework for providing those services.
4. Have an established clinical care center/facility, an operating public educational/outreach program, and a community identified as the recipient of technical assistance at the time the

application is submitted. A time line and plans for phasing in the remaining CCOE components by the end of Year 1 must be described in detail in the application.

5. Demonstrate the ways in which the organization and the care that are coordinated through its partners are women-focused, women-friendly, women-relevant, and sensitive to the importance of patient/provider communication/relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment.

6. Detail/specify the roles and resources/services that each partner organization brings to the program, the duration and terms of agreement as confirmed by a signed agreement between the applicant organization and each partner, and describe how the partner organizations will operate within the CCOE structure. The partnership agreement(s) must name the individual who will work with the CCOE program, describe their function, and state their qualifications. The documents, specific to each organization (form letters are not acceptable), must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director) and submitted as part of the grant application.

7. Describe in detail plans for the local evaluation of the CCOE program and when and how information obtained from the evaluation will be used to enhance the CCOE program. The applicant must also indicate their willingness to participate in a national evaluation of the CCOE program to be conducted under the leadership of the OWH contractor.

8. Describe in detail the planned community-based research and the research methodology/procedure. Applicants may: (a) Propose original patient-oriented research; (b) enter into a formal agreement with institutions conducting population-based research to facilitate women's entry into clinical trial(s)/patient-oriented research; (c) participate in the national evaluation of the CCOE program (required of all awardees); (d) link with organizations conducting community-based research; and/or (e) propose other original/creative research projects. To satisfy the community-based research component of the CCOE program, all applicants must undertake at least two of the research activities listed above, in addition to the required participation in the national CCOE evaluation. However, if a CCOE proposes to conduct original research and participate in the national evaluation of the CCOE program, these activities will satisfy the community-based research component.

Use of Grant Funds

A majority of the funds from the CCOE award must be used to support staff and efforts aimed at coordinating and integrating the major components of the CCOE program. The Center Director, or the person responsible for the day-to-day management of the CCOE program, must devote at least a 75 percent level of effort to the program. Additionally, 25 percent of the funds must target efforts to foster the transfer of lessons learned/successful strategies from the CCOE program (technical assistance). These may include either process-based lessons (*i.e.,* How to bring multiple community partners together) or outcomes-based lessons (*i.e.,* How to increase diabetes screening and control through improved outreach, education, and treatment). The CCOEs must foster the replication of the entire integrated CCOE model through activities such as showcasing them at meetings and workshops; providing direct technical assistance to other communities; participating in the development of national replication guidelines/materials; and providing technical assistance to health professionals, directly or through their professional organizations, interested in working with underserved women in the community. Applicants must provide a plan for how they will provide technical assistance in the first year. They will be expected to identify at least one community that they will work closely with to help them replicate all the components of the CCOE model, beginning no later than 6 months after receipt of the CCOE award, and provide materials for the development of a manual that describes how to link, coordinate, and partner within the community to form the CCOE infrastructure. The CCOEs must help the technical assistance community implement all components of the CCOE program (the entire integrated CCOE model) except technical assistance.

Funds may be used for personnel, consultants, supplies (including screening, education, and outreach supplies), and grant related travel. Items costing less than $5,000 are considered to be supplies. Funds may not be used for construction, building alterations, equipment, medical treatment, or renovations. All budget requests must be justified fully in terms of the proposed CCOE goals and objectives and include a computational explanation of how costs were determined.

The CCOE Center Directors will meet twice a year in the Washington metropolitan area. The CCOE's budget should include a request for funds to pay for the travel, lodging, and meals for the first Center Directors' meeting of each year. The first meeting is usually held between mid-November and mid-December. The OWH will pay the travel and other expenses associated with the second annual CCOE meeting which is usually held in May. Center Directors are encouraged to bring their Program Manager/Coordinators to these meetings.

In the first year of the award, the new CCOE Center Directors and Program Managers are required to attend an orientation meeting that will be held in the Washington metropolitan area in October 2002. Funds to attend this meeting should also be included as part of the CCOE budget request.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, arrive after the deadline, or are from states that already have a CCOE or a CoE program will be returned without review or comment. Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, community service delivery, community outreach, health education, community-based research, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of services, community-based research, education, training, leadership/career development, and technical assistance to other communities. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit and to the definitions provided.

Organization of Application

Applicants are required to submit an original ink-signed and dated application and 15 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″x11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of 25

double-spaced pages, excluding the appendices. The original and each copy must be stapled and/or otherwise securely bound. The application should be organized in accordance with the format presented in the Program Guidelines. An outline for the minimum information to be included in the ''Project Narrative'' section is presented below. Applications not adhering to these guidelines may not be reviewed.

I. Background
A. Local CCOE purpose(s) and goals
B. Section 330 funding
C. Local CCOE program objectives
1. Tied to program goal(s)
2. Measurable with time frame
3. Elements identified in Factor 5: Objectives
D. CCOE organization charts that include partners and a discussion of the resource being contributed to the CCOE, partners, personnel and their expertise and how their involvement will help achieve the CCOE program goals
II. Implementation Plan (Approach to the establishment of the CCOE program)
A. Components in place and plans with a timetable for phasing in the other CCOE components
B. Partnerships and referral system/follow up
C. Community-based research
D. National CCOE ''how-to'' manual
E. Elements identified in Factor 1: Implementation Plan
III. Management Plan
A. Key project staff
B. To-be-hired staff and their qualifications
C. Staff responsibilities
D. Management experience of the lead agency and partners as related to their role in the CCOE program
E. Advisory board
F. Elements identified in Factor 2: Management Plan
IV. Local CCOE Evaluation Plan
A. Purpose
B. Design/methodology
C. Use of results to enhance programs
D. Elements identified in Factor 3: Evaluation Plan
V. Technical Assistance/Replication Strategy
A. Identification of Technical Assistance community
B. Reason for selection of Technical Assistance community
C. Technical Assistance plans/strategies/time line
D. Plans for sustaining Technical Assistance
E. Elements identified in Factor 4: Technical Assistance
Appendices
A. Memorandums of Agreement/Understanding/Partnership Letters
B. Required Forms (Assurance of Compliance Form, etc.)
C. Other Attachments

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45%

This section must discuss:

1. Appropriateness of the existing community resources and linkages established to deliver coordinated women's services to meet the requirements of the CCOE program.

2. Appropriateness of proposed approach, component integration, and specific activities described to address each element of the National Community Center of Excellence in Women's Health program including: (a) Comprehensive women's health services, (b) outreach and education, (c) training for professional and lay health care workers serving underserved women, (d) community-based research that involves the community in substantive roles/ways, (e) leadership/career development for women providers, and women/girls in the community across the life span, and (f) technical assistance-the ability to train others in lessons learned and replication of successful strategies. Although all components of the CCOE do not have to be in place/operational at the time the application is submitted, the applicant must discuss/describe the resources available to support each component, time lines and plans for phasing in each component, and the relationship of each component to the overall goals and objectives of the CCOE program.

3. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

4. Willingness to participate in the national CCOE evaluation.

5. Willingness to contribute to the development of a comprehensive national CCOE ''how-to'' manual.

Factor 2: Management Plan—15%

Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff or requirements for ''to be hired'' staff, proposed staff level of effort, management experience of the lead agency and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the CCOE program, diversity of the CCOE staff as it relates to and reflects the community and populations served, and integration of the advisory board into the CCOE activities.

Factor 3: Evaluation Plan—10%

A clear statement of program goal(s) and thoroughness, feasibility and appropriateness of the local CCOE evaluation design, data collection plan, analysis of results, and procedures to determine if program goals are met. A clear statement of willingness to be involved actively in the national CCOE evaluation.

Factor 4: Technical Assistance—10%

Plans for the provision of technical assistance and the potential for replication of the CCOE model in similar populations and communities. The plan must include the name of and justification for the community selected and a detailed discussion of how the applicant will sustain interaction with the community. Technical assistance to the selected community must begin no later than 6 months after receipt of the CCOE award.

Factor 5: Objectives—10%

Merit of the objectives outlined by the applicant to address the CCOE program discussed in the program goals section in a way relevant to the targeted community needs and available resources. Objectives must be measurable and attainable within a stated time frame.

Factor 6: Background—10%

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed local community and target population of underserved women; demonstrated support and established linkages in place to operate a fully functional CCOE program; demonstrated access to medically underserved women; and documented past efforts/activities outcome with underserved women.

Award Criteria

Funding decisions will be made by the Office on Women's Health, and will take into consideration the recommendations and ratings of the review panel, program needs, geographic location, stated preferences, and the recommendations of DHHS Regional Women's Health Coordinators (RWHC). A pre-site visit, conducted by DHHS RWHCs will be scheduled prior to the award of a grant with all applicants with scores in the funding range. The purpose of the visit will be to assess the applicants' readiness to implement a CCOE program. The OWH plans to conduct the pre-site visits during the week of July 22, 2002.

Reporting (Other Requirements)

Provision of Smoke-Free Workplace and Nonuse of Tobacco Products by Recipients of PHS Grants

DHHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition,

Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. The due date for State process recommendations is 60 days after the application deadline. The Office on Women's Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

General Reporting Requirements

In addition to those listed above, a successful applicant will submit an annual progress report that includes a summary of the local CCOE evaluation and a discussion of steps taken to implement each component of the CCOE program and the impact of the program on the targeted community/population, an annual Financial Status Report, a final Progress Report, a final Financial Status Report, an Audit Report, and a Technical Assistance Documentation Report in the format established by the Office on Women's Health, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR part 74, subpart J and part 92.

Additionally, a successful applicant will submit quarterly progress reports. An original and two copies of the quarterly progress report must be submitted by January 1, April 1, July 1, and September 15. The last quarterly report will serve as the annual progress report and will describe all project activities for the entire year. The annual progress report must be submitted by September 15 of each year.

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

Clinical Care Center: At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Community-based: The locus of control and decision making powers are located at the community level, representing the service area of the community or a significant segment of the community.

Community-based organization: Public and private, nonprofit organizations that are representative of communities or significant segments of communities.

Community-based research: Community members work with researchers to help determine research issues, shape the research process/objectives, and bring research results back to the community. Community members' participation maximizes the potential for exchange in knowledge and implementation of research findings. The shared goal is to maintain scientific integrity in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes, but is not limited to, programs reimbursed through the Federally Qualified Health Centers mechanism, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services, and physical activity); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, social services referral, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate support that enable better coordination of women's health resources and help underserved women to navigate systems to obtain the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended.

Cultural perspective: Recognizes that culture, language, and country of origin have an important and significant impact on the health perceptions and health behaviors that produce a variety of health outcomes.

Enabling services: Services that help women access health care, such as

transportation, translation, child care, and case management.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. *Healthy People 2010* identifies the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate *Healthy People 2010* into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes mental as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity (6 CCOE components) that touch women's health, including clinical services, research, health training, public health outreach and education, leadership development for women, and technical assistance. The goal of this approach is to unite the strengths of each of these areas, and create a more informed, less fragmented, and efficient system of women's health for underserved women that can be replicated in other populations and communities.

Lifespan: Recognizes that women have different health and psycho-social needs as they encounter transitions across their lives and that the positive and negative effects of health and health behaviors are cumulative across a woman's life.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, dental health, etc.

Social Role: Recognizes that women routinely perform multiple, overlapping social roles that require continuous multi-tasking.

Sustainability: An organization's or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded by the CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: poverty, ethnicity and culture, mental or physical state, housing status, geographic location, language, sexual orientation, age, and lack of health insurance/under-insured.

Women-centered/women-focused: Addressing the needs and concerns of women (women-relevant) in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women, not for women. Women clients are considered active partners in their own health and wellness.

Dated: February 8, 2002.

Wanda K. Jones,

Deputy Assistant Secretary for Health.

[FR Doc. 02–4470 Filed 2–25–02; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: State Fatality Surveillance and Field Investigations of Occupational Injuries: Fatality Assessment and Control Evaluation, RFA CC–02–012

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): State Fatality Surveillance and Field Investigations of Occupational Injuries: Fatality Assessment and Control Evaluation (FACE), RFA CC–02–012.

Times and Dates: 8:30 a.m.-8:30 a.m., March 15, 2002 (Open), 9 a.m.-5 p.m., March 15, 2002 (Closed).

Place: Hotel Washington, 515 15th Street, NW., Washington DC 20004–2099.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA CC–02–012.

FOR MORE INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., Health Science Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, M/S E74, telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 20, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–4507 Filed 2–25–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Musculoskeletal Disorders: Prevention and Treatment, RFA OH–02–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Musculoskeletal Disorders: Prevention and Treatment, RFA OH–02–004.

Times and Dates: 8 a.m.–8:30 a.m., March 12, 2002 (Open), 8:40 a.m.–5 p.m., March 12, 2002 (Closed), 8 a.m.–5 p.m., March 13, 2002 (Closed).

Place: Harbor Court Hotel, 550 Light Street, Baltimore MD 21202.

Status: Portions of the meeting will be closed to the public in accordance with

provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–004.

CONTACT PERSON FOR MORE INFORMATION: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 20, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–4508 Filed 2–25–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the ''Medicare Exclusion Database (MED),'' HHS/CMS/OFM/ No. 09–70–0534. The primary purpose of this system of records is to retrieve information that will be used to aid in the ability of CMS and its contractors (private insurance companies contracted to receive, check and pay bills submitted by providers of services) to ensure that no Medicare payments are made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS' proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 12, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Angela Brice-Smith (410) 786–4340, Office of Financial Management, CMS, and 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

Statutory and Regulatory Basis for System of Records

Under sections 1128 A and B and 1156 of the Social Security Act the Department of Health and Human Services through the Office of the Inspector General (OIG) was given the authority to Exclude certain individuals and entities from participation in the Medicare and other Federal and State health care programs. The Medicare contractors are responsible for ensuring that no payment is made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The exclusion also covers orders and referrals for items or services, as well as ownership or management of entities that provide items or services to Medicare beneficiaries.

CMS has recently surveyed the Medicare contractors regarding their ability to successfully enforce OIG exclusions. A number of problems with the current operational process have been identified, some of which directly relate to the data that CMS receives from the OIG and provides to the contractors. The data problems include a lack of standardized format for the cumulative exclusion database, incomplete data, and lack of a process to update exclusion data. Additionally, CMS currently does not have an efficient mechanism to determine which organizations employ excluded individuals.

In order to assist our contractors in determining that no excluded individual or entity receives Medicare payment, CMS will create and maintain a cumulative exclusion database. CMS will be able to match this database against files of providers billing Medicare to ensure that excluded individuals and entities do not violate the terms of their exclusion. In the long term, the MED will be available to a number of users, including all Medicare contractors, the Provider Enrollment Chain and Ownership System (PECOS) and, potentially, Medicaid State Agencies.

The MED project is divided into three phases. Phase I requires that a database be developed, populated and maintained in a standard format which contains the cumulative exclusion database containing all individuals and entities excluded from the Medicare program. The goals of Phase I are to analyze the OIG Exclusion file, clean up

and standardize the data, load a Medicare Exclusion Database (MED) and produce an extract file from the cleaned and standardized data.

Phase II requires that the data from the (MED) database is matched against data from CMS's Online Survey Certification and Reporting System (OSCAR) file, National Supplier Clearinghouse (NSC) file, Unique Physician Identification Number (UPIN) Registry, and Medicare contractor (fiscal intermediaries and carriers) provider files to determine that no excluded individual or entity is doing business with Medicare or Medicare providers and suppliers. Phase II will produce some basic Medicare Exclusion Database reporting for CMS's internal use.

Phase III will involve an open-ended analysis to identify additional tools CMS might use to determine who employs excluded individuals to ensure that employers of excluded individuals are not receiving payments from the Medicare program.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system of records will contain data elements that identify individuals and entities excluded from participation in the Medicare program:

Individual/Entity Name
Unique Physician Identification Number (UPIN)
Date of Birth
SSN
Address
Sanction Type
Sanction Date
Reinstatement Date
Date of Death
Name History
Date of Birth History
Address History
SSN History
UPIN History
EIN History
UPIN Match
OSCAR Match
NSC Match

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MED information that can be associated with an individual patient as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with MED information and identifiers. Non-identifiable data includes individual records with MED information and masked identifiers or MED information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the MED. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent

b. Unauthorized use of disclosure of the record;

c. Remove or destroy at the earliest time all patient-identifiable information; and

d. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MED without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To the agency of a State Government, or established by State law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare and other Federal and State health care programs.

MED data may potentially be released to the State only on those individuals who are either individuals or entities excluded from participation in the Medicare and other Federal and State health care programs, or employers of excluded individuals or entities, or are legal residents of the State, irrespective of the location of provider or supplier furnishing items or services.

3. To another Federal or State Agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that

implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or State agencies in their administration of a Federal health program may require MED information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The MED data will provide the research and evaluations a broader, longitudinal, national perspective of the status of individuals that are excluded from participation in Medicare. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other State agencies in their administration of a Federal health program may require MED information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The MED system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not

to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MED data. MED information is submitted to CMS through standard systems. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of MED data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: February 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0534

SYSTEM NAME:

Medicare Exclusion Database (MED).

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain data elements that identify individuals and entities excluded from participation in the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain the individual-level identifying data such as name, addresses, dates of birth and death, Medicare provider identification number, SSN, sanction and reinstatement information, and identifying historical data including name, address, dates of birth, SSN and provider numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 1128 A and B and 1156 of the Social Security Act.

PURPOSE(S):

The primary purpose of this system of records is to retrieve information that will be used to aid in the ability of CMS and its contractors (private insurance companies contracted to receive, check and pay bills submitted by providers of services) to ensure that no Medicare payments are made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS's proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MED without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To the agency of a State Government, or established by State law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare and other Federal and State health care programs.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, or for understanding and improving payment projects.

5. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic, optical and other electronic media

RETRIEVABILITY:

The records are retrieved by the Medicare provider number or the National Provider Identifier (NPI).

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and

National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

CMS will retain identifiable MED data for a total period of 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

CMS, Director, Office of Financial Management/Program Integrity Group, Division of Program Integrity Operations, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, age, and sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

The OIG Exclusion file, Online Survey Certification and Reporting System (OSCAR) file, National Supplier Clearing House (NSC) file, Unique Physician Identification Number (UPIN) Registry, Medicare contractor provider files and Social Security Administration (SSA) withholding records or other information services to determine who employs excluded individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–4469 Filed 2–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review GuidE (SARGe).

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress about the extent of problems facing these children or the effectiveness of assistance provided to these populations, without access to timely and accurate information. Currently, SACWIS systems support State efforts to meet the following Federal reporting requirements: the Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the new Chafee Independence Living Program. Forty-seven States and the District of Columbia have developed or have committed to develop a SACWIS system with Federal financial participation. The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document, have been adequately completed, and conform to applicable regulations and policies.

To initiate a review, States will submit the completed SACWIS Assessment Review GuidE (SARGe) and other documentation at the point that they have completed system development and the system is operational statewide. The additional documents submitted as part of this process should all be readily available to the State as a result of good project management.

The information collected in the SACWIS Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for title IV–E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process in their own system development efforts.

Respondents: State Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SARGe	5	1	200	1000

Estimated Total Annual Burden Hours: 1000.

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: February 20, 2002.

Bob Sargis,

Reports Clearance, Officer.

[FR Doc. 02–4546 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of the Assistant Secretary; Compassion Capital Fund

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Solicitation of public comments.

SUMMARY: ACF is preparing guidelines to award funds in fiscal year 2002, as allowed by the newly funded Compassion Capital Fund. In order to obtain a wide range of views and comments, ACF is soliciting comments from the public and other Federal agencies on the important issues that ACF should consider in developing such guidelines.

DATES: In order to be considered, comments must be received by ACF on or before March 29, 2002.

ADDRESSES: Comments sent by mail should be addressed to: Mr. Bobby Polito, Administration for Children and Families, 6th Floor—West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be sent by email to: *ccf@acf.dhhs.gov,* or faxed to Bobby Polito at 202–401–5770.

FOR FURTHER INFORMATION CONTACT: Mr. Bobby Polito, Administration for Children and Families, 6th Floor—West, 370 L'Enfant Promenade, SW., Washington, DC 20447 or phone: 202–690–6241.

SUPPLEMENTARY INFORMATION: In fiscal year 2002, the Congress funded the establishment of a Compassion Capital Fund. This new program is part of the Administration's Faith-Based Initiative. Funds will be used to support public/private partnerships to help small faith- and community-based organizations replicate or expand model social service programs and conduct evaluations of ''best practices'' among charitable organizations so that successful models can be emulated and expanded by others.

The Administration for Children and Families (ACF) within the Department of Health and Human Services has been given administrative responsibility for implementing this program. ACF is inviting public comment to help make informed deliberations about the parameters for this new program, as well as ways to support and promote rigorous evaluations on the ''best practices'' among charitable organizations.

Request for Comments

ACF is seeking public comment on the following topics and other topics that responders choose to address. Among things we are considering are: (1) Providing technical assistance for faith- and community-based organizations, such as—(A) grant writing and grant management assistance, which may include assistance provided through workshops and other guidance; (B) legal assistance with incorporation and with obtaining tax-exempt status; and (C) information on, and referrals to, other non-governmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and on a variety of other organizational topics; (2) providing information and assistance for faith- and community-based organizations on capacity building; (3) providing for faith- and community-based organizations information on and assistance in identifying and using best practices for delivering assistance to persons, families, and communities in need; (4) providing information on, and assistance in, utilizing regional intermediary organizations to increase and strengthen the capabilities of nonprofit faith- and community-based organizations; (5) assisting faith- and community-based organizations in replicating social programs of demonstrated effectiveness; and (6) encouraging research on the best practices of social service organizations.

Dated: February 20, 2002.

Robert J. Polito,

Special Assistant for Faith-Based Initiatives Office of the Assistant Secretary.

[FR Doc. 02–4544 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KB, the Administration on Children, Youth and Families (ACYF) (67 FR 4453), as last amended January 30, 2002; Chapter KF, the Office of Child Support Enforcement (OCSE) (66 FR 13934), as last amended March 8, 2001; and Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA) (66 FR 52627), as last amended, October 16, 2001. This notice reflects the realignment of the discretionary, formula, entitlement and block grant functions within ACF.

These Chapters are amended as follows:

I. Chapter KB, Administration on Children, Youth and Families

A. Delete KB.10 Organization in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Office of Management Services (KBA1)
Head Start Bureau (KBC)
Program Operations Division (KBC1)
Program Support Division (KBC2)
Program Management Division (KBC3)
Children's Bureau (KBD)
Office of Child Abuse and Neglect (KBD1)
Division of Policy (KBD2)
Division of Program Implementation (KBD3)
Division of Data, Research and Innovation (KBD4)
Division of Child Welfare Capacity Building (KBD5)
Division of State Systems (KBD6)
Family and Youth Services Bureau (KBE)
Child Care Bureau (KBG)
Immediate Office/Administration (KBG1)
Program Operations Division (KBG2)
Policy Division (KBG3)
Technical Assistance Division (KBG4)

Delete KB.20 Functions, Paragraph A, in its entirety and replace with the following:

KB.20 Functions. A. The Office of the Commissioner serves as principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other officials of the Department on the sound development of children, youth, and families. It provides executive direction and management strategy to ACYF components. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office. In addition to the Immediate Office, the Office of the Commissioner contains the Office of Management Services. In support of the Commissioner and Deputy

Commissioner and in consultation with ACYF programs the:

Office of Management Services manages the formulation and execution of the budgets for ACYF programs and for federal administration; serves as the central control point for operational and long range planning; functions as Executive Secretariat for ACYF; including managing correspondence, correspondence systems, and electronic mail requests; reviews and manages clearance for program announcements for ACYF, the Administration for Native Americans (ANA), and the Administration on Developmental Disabilities (ADD); plans for/coordinates the provision of staff development and training; provides support for ACYF's personnel administration, including staffing, employee and labor relations, performance management and employee recognition; manages procurement planning and provides technical assistance regarding procurement; plans for/oversees the discretionary grant paneling process; manages ACYF-controlled space and facilities; performs manpower planning and administration; plans for, acquires, distributes and controls ACYF supplies; provides mail and messenger services; maintains duplicating, fax, and computer computer peripheral equipment; supports and manages automation within ACYF; provides for health and safety; and oversees travel, time and attendance, and other administrative functions for ACYF.

II. Chapter KF, Office of Child Support Enforcement

A. Delete KF.10 Organization in its entirety and replace with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director/Deputy Director/ Commissioner (KFA)
Office of Audit (KFAA)
Office of the Deputy Commissioner (KFB)
Office of Automation and Program Operations (KFB1)
Division of Federal Systems (KFB11)
Division of State and Tribal Systems (KFB12)
Division of Management Services (KFB2)
Division of Consumer Services (KFB3)
Division of Planning, Research, and Evaluation (KFB4)
Division of Policy (KFB5)
Division of Special Staffs (KFB6)
Division of State, Tribal and Local Assistance (KFB7)

B. Delete KF.20 Functions. Paragraph KFA, in its entirety and replace with the following:

KF.20 Functions. KFA. The Office of the Director and Deputy Director/ Commissioner. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/ Commissioner has day-to-day operational responsibility for Child Support Enforcement programs. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the Office of the Deputy Commissioner, the Office of Automation and Program Operations, and the Office of Audit.

The Office is responsible for developing regulations, guidance and standards for States/Tribes to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, State and tribal and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; outreach to the communities of faith and service, as well as access/visitation programs and advocacy interests and approving all instructions, policies and publications issued by OCSE staff. The Office is responsible for Child Support Enforcement financial analysis and strategy development; internal OCSE compliance operations; and the management of large-scale or high profile assistance activities involving multiple OCSE areas of responsibility.

C. Delete KF.20 Functions, Paragraph KFB2 Division of Management Services, in its entirety and replace with the following:

KFB2. The Division of Management Services manages the formulation and execution of the budgets for OCSE operated programs and for federal administration of the CSE program; serves as the central control point for operational and long-range planning of the needs of the OCSE; plans for and coordinates the provision of staff development and training; provides support for OCSE's personnel administration, including staffing, employee and labor relations, performance management, and employee recognition; manages procurement planning and provides technical assistance regarding procurement; manages OCSE-controlled space and facilities; performs manpower planning and administration; plans for, acquires, distributes, and controls OCSE supplies; provides mail and messenger services; maintains duplicating, fax, computer and computer peripheral equipment; supports and manages automation acquisition within OCSE; provides for health and safety; and overseas travel. In addition, the Division reviews and manages clearance of Federal Register Notices and program announcements for OCSE, the Office of Refugee Resettlement, the Office of Community Services, and the Office of Research and Evaluation.

D. Delete KF.20 Functions, Paragraph KFAB Office of Grants Management, in its entirety.

E. Delete KF.20 Functions, Paragraph KFAC Office of Mandatory Grants, in its entirety.

III. Chapter KP, Office of the Deputy Assistant Secretary for Administration

A. Delete KP.10 Organization in its entirety and replace with the following:

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Deputy Assistant Secretary for Administration (KPA)
Office of Information Services (KPB)
Office of Financial Services (KPC)
Office of Organizational Development Services (KPD)
Office of Customer Service and Administration (KPE)
Office of Grants Management (KPG)
Equal Employment Opportunity and Civil Rights Staff (KPH)
Office of Administrative Services and Facilities Management (KPL)

B. Amend KP.20 Functions to add the following new paragraph:

G. The Office of Grants Management is headed by a Director who reports to the Deputy Assistant Secretary for Administration and provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment

systems; and provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. The Office serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management.

Dated: February 19, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–4545 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0398]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 28, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling (OMB Control No. 0910–0340)

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA amended its regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products. The rule requires OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. The rule is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products. FDA concludes that the labeling statements required under this rule are not subject to review by OMB because they are ''originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501 *et seq.*).

Section 201.66 (21 CFR 201.66) of the labeling requirements requires all OTC drug manufacturers to format labeling as set forth in paragraphs (c) and (d) of that section. FDA has learned from the industry that OTC drug product manufacturers routinely redesign the labeling of their products as part of their usual and customary business practice. The rule provides varied timeframes for implementing the labeling requirements. Therefore, the majority of respondents will be able to format OTC drug product labeling in accordance with § 201.66 as part of their routine redesign practice, creating no additional paperwork or economic burden.

In discussing the collection of information under the PRA in the final rule (64 FR 13254 at 13274 to 13276), the agency stated that of the 39,310 stockkeeping units (SKUs) (individual products, packages, and sizes) currently marketed under a final monograph, approximately 32 percent, or 12,573 products, may necessitate labeling changes sooner than provided under their usual and customary practice of label design. FDA estimated that of the 400 respondents who produce OTC drug products, including the 12,573 products described above, each may be required to respond approximately 31.4 times to this rule outside of their usual and customary practice. Each response was estimated to take, on the average of, 4 hours, for a total of 50,292 hours per year. The burden was expected to be a one-time burden.

The agency stated that although the usual and customary practice of label redesign would minimize the burden for the remaining 68 percent of SKUs currently marketed, or 26,737 products, additional time may be necessary for each company to make the format changes under this rule. FDA estimated that of the 400 respondents, who produce OTC drug products, each may be required to respond approximately 66.8 times to bring the 26,737 products into compliance with this rule. FDA estimated that for this group, each response will take an average of 2.5 hours for a total of 66,842 hours. The burden was expected to be a one-time burden.

Finally, the agency estimated that approximately 61 respondents hold new drug applications (NDAs) and abbreviated new drug applications (ANDAs) (41 NDA holders and 20 ANDA holders) for which supplements and amendments will be required. FDA expected that 522 submissions (350 to NDAs and 172 to ANDAs) will be required for labeling changes under 21 CFR 201.66(c) and (d), which averages to 8.5 submissions per respondent. The agency estimated that each submission will take an average of 2 hours to prepare for a total of 1,040 hours annually. The burden was also expected to be a one-time burden.

Since the final rule was issued on March 17, 1999, the agency has extended the April 16, 2001, compliance date by 1 year to April 16, 2002 (with a corresponding extension of the April 16, 2002, compliance date for products with annual sales of less than $25,000 to April 16, 2003) (65 FR 38191, June 20, 2000). During this time, the agency has published only one major final rule (which has had its effective date extended from May 21, 2001, to December 31, 2002) (65 FR 36319, June 8, 2000) and several minor amendments to existing final rules. These monograph amendments have an effective date of May 16, 2002, so that the relabeling required by the amendments may be coordinated with the relabeling required by the OTC drug product labeling final rule. For these reasons, the agency believes that the numbers of affected products in the different categories discussed in the collection of information in the final rule are little changed. Accordingly, the agency is listing the same number of respondents, annual frequency per response, and total annual responses in this notice.

The agency believes the hours per response and total hours may be less than the numbers stated in the final rule

for several reasons. First, respondents have made a number of inquiries already since the final rule was issued in 1999. The agency's experience with these inquires made to the agency is that inquiries have been less than 2.5 or 4 hours per response, generally averaging 0.25 to 0.5 hours per inquiry. Second, the agency issued a draft guidance for industry entitled ''Labeling Over-the-Counter Human Drug Products; Updating Labeling in ANDA's'' (66 FR 11174, February 22, 2001), which included a number of labeling examples to assist holders of ANDAs for OTC drug products and manufacturers of reference listed drugs for the ANDAs to implement the new OTC drug product labeling regulation. This guidance should have reduced some of the hours per response and total hours for some NDA and ANDA holders. However, the agency is not currently able to estimate how much the time has been reduced. Accordingly, the agency is listing the same hours per response and total hours in this notice as appeared in the final rule.

In the **Federal Register** of September 27, 2001 (66 FR 49388), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.66	400	31.43	12,573	4	50,292
201.66	400	66.8	26,737	2.5	66,842
201.66(c) and (d)	61	8.5	522	2	1,044
201.66(e)	25	4	100	24	2,400
Total					120,578

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4511 Filed 2–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301 443–1129).

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (OMB No. 0915–0233)—Revision

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (sections 740 and 739 of the Public Health Service (PHS) Act, respectively) provide opportunities for under-represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR) is used to track program participants throughout the health professions pipeline into the health care workforce. This request includes minor revisions to the previously approved data collection instrument that will address a number of data collection, data entry, as well as analytical problems encountered by the respondents.

The DATOR, to be completed annually by HCOP and COE grantees, includes basic data on student participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument is not expected to add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. The reporting burden includes the total time, effort, and financial resources expended to maintain, retain and provide the information including: (1) Reviewing instructions; (2) downloading and utilizing technology for the purposes of collecting, validating, and processing the data; and (3) transmitting electronically, or otherwise disclosing the information. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
DATOR	150	1	1	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 19, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–4461 Filed 2–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at The Library of Congress, Newspaper and Current Periodical Reading Room, James Madison Memorial Building, Room 133, Independence Avenue, SE., between 1st and 2nd Streets, Washington, DC.

Copies may be obtained from: Christopher DeGraw, M.D., M.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Parklawn Building, Room 18A–55, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2340.

Dated: February 20, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–4462 Filed 2–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–6333–PF; GP2–0098]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Salem Oregon BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Salem BLM Resource Advisory Committee include: development of rules of conduct, develop criteria for and select 2002 projects, public forum, identification of opportunities for future field trips.

DATES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 9 a.m. to 3 p.m., on March 28, and April 12, 2002.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Rd. SE, Salem, Oregon 97306. (503–375–5657).

Dated: February 5, 2002.

Denis Williamson,

District Manager.

[FR Doc. 02–4543 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–922 (Final)]

Automotive Replacement Glass Windshields From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On September 19, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigation (**Federal Register** 66 FR 53630, October 23, 2001). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by the U.S. Department of Commerce, which was on February 12, 2002 (**Federal Register** 66 FR 6482, February 12, 2002). The Commission, therefore, is revising its schedule.

The Commission's new schedule for the investigation is as follows: the Commission will make its final release of information on March 13, 2002; and final party comments are due on March 15, 2002.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 20, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4496 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–925 (Final)]

Greenhouse Tomatoes From Canada; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of Eurofresh LLC; Village Farms, LLC; Sunblest Management LLC; Sunblest Farms LLC; and Hydroage (collectively ''Petitioners''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for February 21, 2002, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Office of General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3095, e-mail mdiehl@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioners have justified the need for a closed session. Petitioners seek a closed session to allow testimony concerning the reliability of pricing data on the record and the concerning financial data of the Petitioners. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held *in camera.* In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by Petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a confidential presentation by Petitioners and a rebuttal presentation by respondents. Questions from the Commission relating to the BPI will follow each of the *in camera* presentations. During the *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: On behalf of the General Counsel, the Deputy General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in his opinion, a portion of the Commission's hearing in Greenhouse Tomatoes from Canada, Inv. No. 731–TA–925 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: February 19, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4459 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–439]

U.S.-Singapore Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 19, 2002.

SUMMARY: Following receipt of a request on February 11, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–439, *U.S.-Singapore Free Trade Agreement: Advice Concerning the Probable Economic Effect*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from John Davitt, Project Leader (202–205–3407 or *jdavitt@usitc.gov*) or Chris Johnson, Deputy Project Leader (202–205–3488 or *cjohnson@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Peg O'Laughlin of the Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by USTR, the Commission will provide advice as to the probable economic effects of providing duty-free treatment for imports of products of Singapore on industries in the United States producing like or directly competitive articles, and on consumers. The analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The advice will be based on the 2002 Harmonized Tariff System nomenclature and trade data for the year 2000. The USTR requested the Commission to provide the advice in a confidential report, by June 11, 2002, if possible. In his letter to the Commission, the USTR stated that ''* * *, the United States and the Republic of Singapore are engaged in negotiations to reach a comprehensive bilateral free trade agreement (FTA). Among other things, the agreement will eliminate tariffs on substantially all trade in goods between the United States and Singapore.'' He noted that a previous U.S. International Trade Commission report, *U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects*, Inv. No. 332–422 (January 2001) had served as a useful tool in helping formulate U.S. negotiating positions and in conducting an environmental review of the proposed agreement and that the additional advice he is now requesting will assist them in carrying out tariff negotiations with Singapore.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 25, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary,

United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 16, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 18, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 9, 2002. In the event that, as of the close of business on April 16, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 16, 2002, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted by interested parties in its report to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 9, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

List of Subjects

Singapore, tariffs, and imports.

By order of the Commission.

Issued: February 20, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4497 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Alien Labor Certification Activity Report

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the State Alien Labor Certification Activity Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 29, 2002.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9037, State Alien Labor Certification Activity Report, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210 ((202) 693–3010 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

Alien labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) require State Employment Security Agencies (SESAs) to initially process applications for permanent and temporary labor certifications filed by U.S. employers on behalf of alien workers seeking to be employed in the U.S. SESAs are also responsible for issuing prevailing wage determinations, reviewing employer-provided wage surveys or other source data, conducting housing inspections of facilities offered to migrant and seasonal workers, and conducting and monitoring recruitment activities seeking qualified U.S. workers for the jobs employers are attempting to fill with foreign workers. The SESAs perform these functions under a reimbursable grant that is awarded annually. The information pertaining to these functions is collected on the Form ETA 9037 and will be used by Departmental staff to manage alien labor certification programs in the SESAs. The Department will be able to monitor the number of applications that the State has received, processed, and forwarded to ETA Regional offices, and the number of prevailing wage determinations issued to employers under the permanent and temporary labor certification programs, as well as the H–1B program for nonimmigrant professionals in specialty occupations. The information on workload will be used for formulating budget estimates for both state and Federal workloads, and for monitoring a State's performance against the Grant Statement of Work and Work Plan. Without such information, the budget workload figures will be estimates and the allocation of funding to the SESAs will not reflect the true workload in a State.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, e.g., permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to the State Alien Labor Certification Activity Report.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Agency Number: Form ETA 9037.

Recordkeeping: Semi-Annually.

Affected Public: State governments.

Total Responses: 108.

Average Time per Response: 2 hours.

Total Burden Cost (Capital/Startup): 0.

Total Burden Cost (Operating/Maintaining): $50 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington DC, this 19th day of February, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–4521 Filed 2–25–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10949]

Kimball International, Inc. Retirement Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

On January 9, 2002 (67 FR 1242), the Department published in the **Federal Register** an exemption (the Exemption) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986, which would allow the sale by the Plan of stock of SVB&T Corporation.

The Department notes that in the second column, in the first paragraph of the Exemption on page 1246 of the **Federal Register** the operative language should read as follows: ''The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of SVB&T Corporation (Springs Valley) to Springs Valley, the parent company of the Plan trustee, Springs Valley Bank & Trust, and a party in interest with respect to the Plan, provided that the following conditions are met.''

The Department hereby amends the Exemption to incorporate such change.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

Signed at Washington, DC, this 20th day of February, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–4500 Filed 2–25–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 145th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 8, 2002, from 9:00 a.m. to 11:45 a.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be a tribute to Chairman Michael Hammond featuring cellist Norman Fischer of the Concord Quartet from Rice University. This will be followed by Congressional and budget updates. Other topics will include: Application Review for Access, Arts Learning, Heritage/Preservation, Challenge America, Partnership Agreements, Leadership Initiatives and Policy Research & Analysis; review of Guidelines for Arts Learning, Arts on Radio & Television, American Jazz Masters Fellowships, Folk Arts Infrastructure Initiative, National Heritage Fellowships, Partnership Agreements, and Resources for Change: Technology; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: February 20, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines, Panel & Council Operations.

[FR Doc. 02–4473 Filed 2–25–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval Continue an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the

submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by April 29, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703–292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Approval Number: 3145–0035.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to continue an information collection for three years.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

Use of the Information: The Foundation has the following honorary award programs:

• *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980. The Committee agreed that such a form standardized the nomination format, benefiting the nominator, making the Committee's review process more efficient and permitted better staff work in a shorter period of time. Form NSF–1122 will be used to further standardize the nomination procedures, thus continuing to allow for more effective committee review, and permitting better staff work in a shorter period of time.

The Committee has established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering, or social and behavioral sciences is to be the principal criterion.

2. Achievements of an unusually significant nature in relation to the potential effects of such achievements on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.

4. Recognition by peers within the scientific community.

5. Contributions to innovation and industry.

6. Influence on education through publications, students.

7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

Nominations remain active for a period of four years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Nomination forms should be typewritten, single-spaced using a font no smaller than 12 characters per inch. Renominations may be submitted via an updated nomination form.

• *Alan T. Waterman Award.* Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Pub. L. 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendations to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the Ph.D. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innnovation, and significant impact on the field.

• *Vannevar Bush Award.* The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The annual award recognizes an individual who, through public service activities in science and technology, has made an outstanding ''contribution toward the welfare of mankind and the Nation.''

The NSB ad hoc Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished him/herself through public service activities in science and technology.

2. Pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Leadership and creativity has inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Leadership and creativity has helped mold the history of advancements in the Nation's science, technology, and education.

Nomination submissions are in letter format, accompanied by a curriculum vitae (without publication), a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science, and two reference letters. Nominations remain active for three years, including the year of nomination.

• *NSB Public Service Award*. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations who have increased the public understanding of science or engineering. This award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientists and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nomination Procedures

1. Prepare a summary of the nominee's activities as they relate to the selection criteria. Include the nominator's name, address and telephone number, and the name, address, and telephone number of the nominee, as well as the nominee's vita, if appropriate (no more than three pages).

2. The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

3. Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the selection committee.

4. Nominations should be mailed or faxed to the NSB Public Service Award Advisory Committee. Electronic mail does not protect confidentiality and should not be used for this purpose.

Estimate of Burden: These are annual programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 1,242 hours, broken down by 450 hours for the President's National Medal of Science (10 hours per 45 respondents); 600 hours for the Alan T. Waterman Award (10 hours per 60 respondents); 72 hours for the Vannevar Bush Award (6 hours per 12 respondents); and 120 hours for the Public Service Award (6 hours per 20 respondents).

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 21, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–4542 Filed 2–25–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, March 5, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7444—Railroad Accident Brief and Safety Recommendation Letters—Derailment of Amtrak Train No. 5–17 on Burlington Northern and Santa Fe Railway Track near Nodaway, Iowa, March 17, 2001.

7445—Railroad Accident Report—Derailment of CSX Transportation Coal Train V986–26 at Bloomington, Maryland, January 30, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 22, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–4656 Filed 2–22–02; 2:15 pm]

BILLING CODE 7533–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2 PM, Thursday, February 28, 2002.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

AGENDA:

I. Call to Order
II. Introductions
III. Approval of Minutes—12/17/2001
IV. Audit Committee Report—1/22/2002
  A. Financial Statements
  B. OMB A–133 Report
V. Budget Committee Report—1/31/2002
VI. Resolution Appreciation
VII. Treasurer's Report
VIII. Executive Directors Management Report
  A. NHSA
  B. Campaign on Homeownership Presentation
IX. Adjournment

Jeffrey T. Bryson,
General Counsel/Secretary.

[FR Doc. 02–4556 Filed 2–21–02; 4:11 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit No. 1; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC/the licensee) is the holder of Facility Operating License No. DPR–66 which authorizes operation of Beaver Valley Power Station, Unit No. 1 (BVPS–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Beaver County, Pennsylvania.

2.0 Discussion

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.60(a), requires that ''all light-water nuclear power reactors . . . must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to this part.'' appendix G to 10 CFR part 50 requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Code. In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references made to the ASME Code denote the 1995 Edition of the ASME Code, including the 1996 Addenda.

In order to support a proposed amendment to the BVPS–1 Technical Specification (TS) P–T limit curves, FENOC requested in its application dated June 29, 2001, that the staff exempt BVPS–1 from application of specific requirements of 10 CFR Part 50, Section 50.60(a), and 10 CFR Part 50, Appendix G, and substitute use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials for use in determining the P–T limits. The proposed exemption is consistent with, and is needed to support, the BVPS–1 TS amendment request that was contained in the same application. The proposed BVPS–1 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) to 22 effective full power years (EFPYs).

The proposed TS amendment to revise the P–T limits for BVPS–1 relies in part on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Code Section XI, Appendix A, Figure A–2200–1, as the basis fracture toughness curve for defining the BVPS–1 P–T limits in lieu of using the lower bound K_{IA} fracture toughness curve of ASME Code Section XI, Appendix G, Figure G–2210–1. The other margins involved with the ASME Code, Section XI, Appendix G, process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect public health and safety from potential RPV failure. In addition, P–T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low-temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Code, Section XI, and the minimum required pressure for the reactor coolant pump (RCP) seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system (OPPS) actuation. This OPPS actuation could be caused by pressure surges associated with normal plant evolutions such as starting RCS pumps or switching operating charging pumps while the RCS is in a water-solid condition.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G procedure, continued operation of BVPS–1 with these P–T curves without the relief provided by ASME Code Case N–640 may unnecessarily restrict the P–T operating window, especially at low-temperature conditions. The operating window becomes more restrictive with continued reactor vessel service. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(iii), regarding undue hardship, and requested the exemption to use the provisions of ASME Code Case N–640 in the development of BVPS–1 RPV P–T limit curves.

The Nuclear Regulatory Commission (NRC) staff has reviewed the exemption request submitted by FENOC and has concluded that an exemption should be granted to permit the licensee to use the provisions of ASME Code Case N–640 for the purpose of developing BVPS–1 RPV P–T limit curves. However, the

NRC staff does not agree with the special circumstances cited by FENOC in its June 29, 2001, application regarding the basis for granting the exemption. The NRC staff did not conclude that the circumstances cited above constitute ''undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated,'' pursuant to 10 CFR 50.12(a)(2)(iii). Rather, the NRC staff concluded that the application of the technical provisions of ASME Code Case N–640 provided sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations, Appendix G to 10 CFR Part 50, will continue to be met and that the specific conditions required by the regulations (i.e., use of all provisions in Appendix G to Section XI of the ASME Code) were not necessary. Therefore, the NRC staff grants the requested exemption to FENOC based on the special circumstances of 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME Code, Section XI, Appendix G procedure, was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G requirements, by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

3.0 Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The NRC staff accepts the licensee's determination that an exemption would be required to approve the use of ASME Code Case N–640. The NRC staff concluded that the use of ASME Code Case N–640 would meet the underlying intent of Appendix G to 10 CFR part 50.

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50, Appendix G to Section XI of the ASME Code, and RG 1.99, Revision 2, the staff concluded that application of ASME Code Case N–640 as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

Therefore, the staff concludes that granting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of ASME Code Case N–640 may be used to revise the P–T limits for the BVPS–1 RCS.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants First Energy Nuclear Operating Company an exemption from the requirements of 10 CFR 50.60(a), and 10 CFR part 50, Appendix G, for the development of P–T limit curves for the BVPS–1 reactor coolant system.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 7405).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of February 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–4518 Filed 2–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendments would be a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications (STS) for Westinghouse Plants,'' Revision 1, dated April 1995. The STS have been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and have been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TS) for nuclear power plants. As part of the proposed amendments, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and, using NUREG–1431 as a basis, proposed ITS for North Anna Power Station, Units 1 and 2. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated specifications changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, complex rearranging of requirements, and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1431

and do not involve technical changes to the existing TS. The proposed changes include: (a) Identifying plant-specific wording for system names, etc.; (b) changing the wording of specification titles in the CTS to conform to the STS; (c) splitting up requirements that are currently grouped, or combining requirements that are currently in separate specifications; (d) deleting specifications whose applicability has expired; and (e) changing the wording that is consistent with the CTS but that more clearly or explicitly states existing requirements. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated specifications changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TS. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents. The licensee's application of the screening criteria to North Anna Power Station, Units 1 and 2, is described in the December 11, 2000, application. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the Updated Final Safety Analysis Report (UFSAR), the ITS Bases, the Technical Requirements Manual that is incorporated by reference in the UFSAR, the Core Operating Limits Report, the Offsite Dose Calculation Manual, the Inservice Testing Program, the Inservice Inspection Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the plant. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses.

Less restrictive changes are those where CTS requirements are relaxed, relocated, eliminated, or where new plant operational flexibility has been provided. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new staff positions that have evolved from the technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITS. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also (1) changes proposed that are different from the requirements in both the CTS and the STS, and (2) changes that are in addition to those changes that are needed to meet the overall purpose of the conversion. These changes are referred to as beyond-scope changes and would:

1. Change the Allowable Value for engineered safety feature actuation system (ESFAS) interlock P–12 from ≤ 545 degrees F and ≥ 541 degrees F to ≤ 545 degrees F and > 542 degrees F. (ITS 3.3.2)

2. Remove the trip setpoints and change the Allowable Values for the ESFAS Instrumentation. (ITS 3.3.2)

3. Add a note to Action C to indicate that the accumulator isolation is only applicable when accumulator pressure is greater than the power-operated relief valve (PORV) setting, add REQUIRED ACTION C.2 to state ''Remove power from affected accumulator isolation valve operators,'' and add a note in the Limiting Condition for Operation (LCO) section that states ''Accumulator isolation with power removed from the isolation valve operators is only required when accumulator pressure is greater than the PORV lift setting.'' (ITS 3.4.12)

4. Revise required Actions A.2, B.2, C.2, and D.2 to allow verification by administrative controls to ensure the Main Feedwater Isolation Valves, Main Feedwater Regulating Valves, Main Feedwater Pump Discharge Valves, and Main Feedwater Regulating Bypass Valves are closed. (ITS 3.7.3)

5. Remove Component Cooling Water System from ITS LCO 3.7.7. (ITS 3.7.7)

6. Remove the North Anna Reservoir from the Ultimate Heat Sink requirements of ITS. The CTS defines the Ultimate Heat Sink as both the Service Water Reservoir and North Anna Reservoir. (ITS 3.7.9)

7. Revise the surveillance requirement (SR) frequency from ''18 months'' to ''18 months on a staggered test basis'' for the Main Control Room (MCR)/Emergency Switchgear Room (ESGR) Air Conditioning System. (ITS 3.7.11.1)

8. Add a note to allow the emergency core cooling system (ECCS) pump room boundary openings, which were not open by design, to be opened intermittently under administrative control. (ITS 3.7.12)

9. Add an SR to actuate each ECCS pump room exhaust air cleanup system train by aligning the safeguards area exhaust flow and auxiliary building central exhaust flow through the auxiliary building high-efficiency particulate air filter and charcoal adsorber assembly. Change current SRs to verify each safeguards area exhaust flow is diverted and each auxiliary building filter bank is actuated on an actual or simulated actuation signal. (ITS 3.7.12.2 and 3.7.12.4)

10. Add ACTION B to allow two or more required MCR/ESGR bottled air system trains to be inoperable for up to 24 hours. (ITS 3.7.13)

11. Delete testing requirements for the fuel building filtration system. (ITS 3.7.15)

12. Delete the requirements to obtain NRC approval prior to plant operations whenever a steam generator is found to be in Category C–3. (ITS Table 5.5.8–2)

13. Implement plant-specific equations for the overtemperature and overpower delta T equations presently used for the CTS. (ITS 3.3.1)

14. Change SR 3.3.1.2 and the CTS by only requiring an adjustment of the power range channel if the indicated

power of the nuclear instrumentation channel is more than 2% lower than the calculated power of the calorimetric. (ITS 3.3.1)

15. Revise the allowable values of the setpoint for the P–7 low power reactor trips block interlock to a value that differs from the CTS. (ITS 3.3.1, Table 3.3.1–1)

16. Revise the ITS to require entry into ACTION if less than 100% of MCR/ESGR air conditioning system is available. (ITS 3.7.11)

17. Add a function to Table 3.3.2–1 for automatic swichover to containment sump to occur when the refueling water storage tank level is at low—low level. (ITS 3.3.2)

18. Revise the CTS values for reactor trip system instrumentation interlocks by not requiring these specific interlocks to state the reset values for the allowable values. (ITS 3.3.1)

19. Review Technical Report EE–0116, Revision 1 ''Allowable Values for Surry and North Anna Improved Technical Specifications (ITS) Tables 3.3.1–1 and 3.3.2–1.''

Before issuance of the license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 28, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Route 156, Waterford, CT 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, and January 31, 2002, which are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet

at the NRC Web site, http://www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of February 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section I, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–4520 Filed 2–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 25, March 4, 11, 18, 25, April 1, 2002.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

NOTE: MATTERS TO BE CONSIDERED:

Week of February 25, 2002

Friday, March 1, 2002

9:30 a.m.
Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday, March 4, 2002

2:00 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting)
(Contact: Claudia Seelig, 301–415–7243)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)
This meeting will be webcast live at the Web address—*www. nrc.gov*

Week of March 25, 2002—Tentative

There are no meetings scheduled for the Week of March 25, 2002.

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 21, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–4575 Filed 2–22–02; 10:18 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under the PBGC's regulation on Annual Financial and Actuarial Information Reporting, 29 CFR part 4010 (OMB control number 1212–0049; expires March 31, 2002). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by March 28, 2002.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) may be obtained without charge by writing to or visiting the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4040). The regulation on Annual Financial and Actuarial Information Reporting can be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a controlled group to submit identifying, financial, and actuarial information to the PBGC in certain circumstances. Reporting is required (1) if the aggregate unfunded vested benefits of all defined benefit pension plans maintained by the controlled group exceed $50 million, (2) if the controlled group maintains any plan with missed contributions aggregating more than $1 million (unless paid within a ten-day grace period), or (3) if the controlled group maintains any plan with funding waivers in excess of $1 million and any portion is still outstanding (taking into account certain credit balances in the funding standard account). The PBGC's regulation on Annual Financial and Actuarial Information Reporting (29

CFR part 4010) implements section 4010.

The regulation requires the controlled group to file certain identifying information, certain financial information, each plan's actuarial valuation report, certain participant information, and a determination of the amount of each plan's benefit liabilities. The information submitted under the regulation allows the PBGC (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities.

The collection of information under the regulation has been approved by OMB under control number 1212–0049, expiring March 31, 2002. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 70 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 7.9 hours and $10,000 per controlled group, for a total burden of 552 hours and $700,000.

Issued in Washington, D.C., this 20th day of February, 2002.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–4502 Filed 2–25–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45456; File No. SR–Phlx–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program to Implement its Existing Fee Schedule for Electronic Communication Networks

February 19, 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 28, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx proposes to extend its one-year pilot program for an additional one-year period, in order to continue to impose a $2,500 monthly fee for Electronic Communications Networks (''ECNs'') that are member organizations and send order flow to the Exchange's equity trading floor.[3] The Exchange believes that the original pilot program was due to expire on January 31, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

[4] *See* Exchange Act Release No. 44155 (April 5, 2001), 66 FR 19274 (April 13, 2001).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's current ECN pilot program until January 31, 2003, thereby continuing to impose a $2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor.[5] According to the Exchange, the continuation of the $2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.[6]

The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the program. The $2,500 fee would continue to apply to trades where the ECN was not acting as a Phlx specialist or floor broker.[7]

Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it would be subject to various floor-related fees respecting its floor operation.[8] In addition, an ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.[9] Even if the ECN was acting as a floor broker or specialist with

[5] The $2,500 monthly fee will apply regardless of the ECN's average daily Phlx equity volume.

[6] In order to recoup costs due from the Exchange to the Commission pursuant to Section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects. This fee is currently $15 per $1,000,000 of the aggregate dollar amount of the sale of securities.

[7] An ECN would continue to incur specialist or floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

[8] These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

[9] The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges.

An ECN that only operates as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee and Annual Fee.

Because the $2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction value charge (that would otherwise apply to an ECN's equity trades) ranges from $.015 to $.14 per $1,000 of transaction value, with a $50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly $2,500 fee is generally more favorable than the equity transaction value charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that $2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity, and improve the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and section 6(b)(4) of the Act,[11] 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. The Exchange notes the unique character of ECNs, and believes that the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

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) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] 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 Phlx.

All submissions should refer to File No. SR–Phlx–2002–08 and should be submitted by March 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–4475 Filed 2–25–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3396]

State of California

San Diego County and the contiguous counties of Imperial, Orange and Riverside in the State of California constitute a disaster area as a result of damages caused by a severe wildfire that occurred February 10 through February 14, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 22, 2002 and for economic injury until the close of business on November 19, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 339605 and for economic damage is 905700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–4504 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3395]

State of New York

Erie County and the contiguous counties of Cattaraugus, Chautauqua, Genesee, Niagara and Wyoming in the State of New York constitute a disaster area as a result of a record-breaking lake effect snowstorm that occurred from December 24 through December 29, 2001. Applications for loans for physical damage may be filed until the close of business on April 16, 2002 and for economic injury until the close of business on November 15, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 339511 and for economic injury the number is 905600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–4505 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Supplemental Public Comment on Scope of Environmental Review of United States-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for supplemental comments.

SUMMARY: Pursuant to Executive Order 13141, 64 FR 63,169 (Nov. 18, 1999), and implementing guidelines, 65 FR 79442 (Dec. 19, 2000), this notice requests supplemental comments on the scope of the environmental review of the proposed United States-Singapore Free Trade Agreement (FTA) currently under negotiation. In November 2000, the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), previously initiated an environmental review of the proposed U.S.-Singapore FTA and requested public comments on the environmental implications of the negotiations and the scope of the review. 65 FR 71197 (Nov. 29, 2000). At that time, the parties anticipated that the negotiating schedule would be very compressed. Because the schedule has since been extended, the TPSC wishes to provide the public with an opportunity to provide any additional information or analysis concerning relevant environmental issues that should be addressed in the review. It is not necessary to repeat comments submitted in response to the November 29 notice; those comments are being considered and are available for public inspection in USTR's reading room (*see* below).

DATES: Public comments should be received no later than March 29, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Alice Mattice or Darci Vetter, Environment and Natural Resources Section, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: In November 2000, Singapore's Prime Minister Goh and President Clinton announced that the governments of the United States and Singapore would enter into negotiations on a bilateral free trade agreement (FTA). Negotiations were launched in December 2000. In early 2001, the Bush Administration reaffirmed the United States' commitment to the negotiations. The parties have made good progress, and expect that negotiations will intensify in the coming months.

As described in the previous notice, see 65 FR 71197, the United States and Singapore are seeking to eliminate duties and commercial barriers to bilateral trade in U.S. and Singaporean-origin goods. The agreement is also expected to include provisions on trade in services, investment, trade-related aspects of intellectual property rights, competition, government procurement, electronic commerce, trade-related environmental and labor matters, and other issues.

The TPSC has taken comments received in response to the previous notice into account in developing U.S. negotiating positions and in determining the scope of the environmental review. However, in light of the revised negotiating schedule, the TPSC believes that provision of an opportunity for the public to provide supplemental comments would be useful in the review process. The TPSC anticipates that a draft review should be available for public comment in the spring of 2002.

Executive Order 13141 and implementing guidelines formalize the U.S. policy of conducting environmental reviews for certain major trade agreements. Reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. The Order requires environmental reviews of certain types of agreements, including bilateral free trade agreements such as the Singapore FTA. See 64 FR 63169. Reviews address potential environmental impacts that may be associated with projected economic changes associated with the proposed agreement, and potential implications for U.S. environmental laws and regulations. The focus of the reviews is on impacts on the United States, although global and transboundary impacts will be considered, where appropriate and prudent.

Written Comments

To ensure prompt consideration of responses, the TPSC strongly encourages interested persons to submit comments by electronic mail to the following e-mail address: *FR0014@ustr.gov.* Documents may also

be submitted by fax to (202) 395–5141, attention: Gloria Blue.

Comments submitted by electronic mail and comments submitted by fax will be available for public inspection in the USTR Reading Room, in Room 3 of the annex of the Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–4522 Filed 2–25–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects on the topic of research test procedures for measurement of vehicle rollover propensity.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations on research test procedures for measurement of vehicle rollover propensity on Thursday, March 14, 2002, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. Questions may be submitted in advance regarding the Agency's research and development projects, and they are not limited to the topic under discussion at the March 14, 2002, meeting. They must be submitted in writing by Tuesday, March 5, 2002, to the address given below. If sufficient time is available, questions received after the March 5 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by March 5 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Best Western Gateway International Hotel, 9191 Wickham, Romulus, Michigan, telephone number (734) 728–2800. Questions for the March 14, 2002, meeting relating to the Agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: *rgibbons@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. This is the thirty-first meeting in that series, and it will be held on Thursday, March 14, 2002, at the Best Western Gateway International Hotel, 9191 Wickham, Romulus, Michigan.

Before the meeting, NHTSA will publish a notice with an agenda listing the scheduled presentations and presenting organizations. The agenda can also be obtained by calling or faxing the request to the telephone numbers listed in this notice, through the E-mail address listed in this notice, or from NHTSA's Web site at URL *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.*

Additionally, if any interested parties would like to make a presentation regarding technical issues concerning NHTSA's rollover research program, information concerning the proposed topic and speaker should be submitted in writing by 5:00 p.m. on March 5, 2002, to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

Separately, questions regarding research projects that have been submitted in writing not later than 5:00 p.m. on March 5, 2002, will be answered. Copies of materials handed out at the meeting and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The handouts and answers to the questions will also be available on NHTSA's Web site at *http://www-nrd.nhtsa.dot.gov/departments/nrd-01/presentations/NRDmtgs.html.*

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, Braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5:00 p.m. by March 5, 2002.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site URL *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.* If you do not have access to the Web site, you may call for information at the contact listed below and leave your telephone or telefax number. You will be called only if the meeting is postponed or canceled.

Issued: February 20, 2002.

H. Keith Brewer,

Acting Associate Administrator for Research and Development.

[FR Doc. 02–4476 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 67, No. 38

Tuesday, February 26, 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. 02–007–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection for collecting user fees, ensuring remittances in a timely manner, and determining proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 29, 2002.

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. 02–007–1, 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. 02–007–1. 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. 02–007–1'' 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: For information on user fees, contact Ms. Donna J. Ford, User Fees Section Head, FSSB, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–5752. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: User Fee Regulations.

OMB Number: 0579–0094.

Type of Request: Extension of approval of an information collection.

Abstract: This information collection is necessary for the Animal and Plant Health Inspection Service (APHIS) to effectively collect fees, ensure remittances in a timely manner, and determine proper credit for payment of international air passenger, aircraft clearance, commercial truck, commercial railroad car, commercial vessel, phytosanitary certificate, import/export, and veterinary diagnostic user fees. APHIS does not receive an appropriation to fund these activities; instead, user fees are calculated and assessed to ensure full cost recovery of each user fee program. If the information was not collected, the Agency would not be able to perform the services since the fees collected are necessary to fund the work.

Requesters of our services usually are repeat customers, and, in many cases, request that we bill them for our services. Also, the 1996 Debt Collection Improvement Act requires that agencies collect tax identification numbers (TINs) from all persons doing business with the Government for purposes of collecting delinquent debts. Without a TIN, service cannot be provided on a credit basis.

We are responsible for ensuring that the fees collected are correct and that they are remitted in full and in a timely manner. To ensure this, the party (ticketing agents for transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We also require that whoever is responsible for making fee payments advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances.

The requests for our services are in writing, by telephone, or in person. The information contained in each request identifies the specific service requested and the time in which the requester wishes the service to be performed. This information is necessary in order for the animal import centers and port offices to schedule the work and to calculate the fees due.

We have reviewed the paperwork requirements of the user fee programs and have made every possible effort to streamline our processes and minimize the impact on the public. Whenever possible, we use existing billing/collection methods to minimize the cost to the Agency. If the work is not performed, individuals and businesses will not be able to import animals, fruits, vegetables, plants, and animal and plant products.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0341739 hours per response.

Respondents: Arriving international passengers, representatives of international means of conveyances, and importers/exporters who wish to import or export animals and animal products.

Estimated annual number of respondents: 88,453.

Estimated annual number of responses per respondent: 2.5274665.

Estimated annual number of responses: 223,562.

Estimated total annual burden on respondents: 7,640 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of February 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–4517 Filed 2–25–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 16, 2002–FEBRUARY 19, 2002

Firm name	Address	Date petition accepted	Product
Leach and Garner Company	57 John L. Dietsch Square, North Attleboro, MA 02761.	01/22/02	Precious metal jewelry findings and earrings.
Progress Press, Inc	2922 Nicholas Avenue N.E., Roanoke, VA 24012	01/22/02	Commercial printers.
Cooper Wood Products, Inc	2785 Grassy Hill Road, Rocky Mount, VA 24151	01/28/02	Wood components for occasional wood furniture.
Standard Printed Circuits, Inc	44 South Main Street, Sherburne, NY 13460	01/28/02	Printed circuit boards.
Marni Spring Corporation	100 Bastian Street, Rochester, NY 14621	01/28/02	Wire springs.
Clearwood, L.L.C	270 Clearwood Drive, Whittier, NC 28789	01/28/02	Finger joint board.
Davis Tool & Die Co., Inc	888 Bolger Court, Fenton, MO 63026	01/30/02	Metal industrial tooling and dies.
Sheffield Steel Corporation	2300 S. Highway 97, Sand Springs, OK 74063	01/30/02	Steel bars.
Atlas Foundry Factory Co., Inc	Factory & Henerson Avenue, Marion, IN 46952	01/30/02	Architectural/ornamental iron, industrial bearings and household water system hydrants.
H. O. Bostrom Co., Inc	818 Progress Avenue, Waukesha, WI 53186	01/31/02	Seats for power wheelchair scooters.
Tesh Manufacturing Inc	17035 U.S. Highway 89 North, Paris, ID 83261	02/04/02	Helmets.
Grown in Oregon, Inc. dba Oregon Log Home Co.	68175 Highway 20 West, Sisters, OR 97759	02/04/02	Log homes.
LMB, Inc. dba Alaskan Bowl Co	4630 Old Airport Road, Fairbanks, AK 99706	02/04/02	Wooden bowls.
Datrex, Inc	13878 Highway 165, Kinder, LA 70648	02/05/02	Marine equipment i.e. buoys, emergency rations, distress signals, survival craft spares and hammer hydrostatic releases.
Automated Engineering Corp	2802 Leslie Road, Tampa, FL 33619	02/04/02	Printed circuit boards.
Ameri-Cal Floral, Inc	2897 Freedom Boulevard, Watsonville, CA 95076	02/04/02	Roses and other cut flowers.
Team Manufacturing, Inc	2625 Homestead Place, Rancho Dominguez, CA 90220.	02/05/02	Precision metal stampings.
W. C. Redmon Company, Inc	200 Harrison, Peru, IN 46970	02/05/02	Infant and juvenile bassinets and clothes hampers made primarily of wicker.
Crystal Group, Inc	850 Kacena Road, Hiawatha, IA 52233	02/05/02	Data servers for telecommunications equipment.
Quality Custom Mold, Inc	3207 Innovation Place, Youngstown, OH 44509	02/08/02	Injection molds for automotive, commercial, retail, wholesale and private use.
H & H Meat Products Co., Inc. dba H & H Foods.	Expressway 83, Mercedes, TX 78570	02/08/02	Meat processing.
K.C.K. Tool and Die Company	13878 Highway 165, Kinder, LA 70648	02/14/02	Marine equipment—progressive and line dies.
Willis Family, Inc	2385 Eastside Road, Hood River, OR 97031	02/15/02	Pears and apples.
Triangle Farms, Inc	5648 Evans Valley Loop Rd., Silverton, OR 97381	02/15/02	Grass seed.
Maryland Brush Company	3221 Frederick Avenue, Baltimore, MD 21229	02/19/02	Paint brushes, rollers, and individual brushes.
Tessy Plastics, L.L.C	231 Jefferson Ridge Parkway, Lynchburg, VA 24501	02/19/02	Injection molds for for telephone housing.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JANUARY 16, 2002–FEBRUARY 19, 2002—Continued

Firm name	Address	Date petition accepted	Product
Revolutionary Designs, Inc	240 Otter Lane, Hatfield, AR 71945	02/19/02	Decorative wood products, including fajita underliners, shaker boxes, and cases.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 20, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–4503 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
France: Anhydrous Sodium Metasilicate (ASM) A–427–098	1/1/01–12/31/01
Rhone-Poulenc, S.A.	
The People's Republic of China: Certain Cased Pencils A–570–827	12/1/00–11/30/01
Kaiyuan Group Corporation*	
Laizhou City Guangming Pencil-Making Co., Ltd.*	
*Inadvertently omitted from previous initiation notice.	
The People's Republic of China: Potassium Permanganate A–570–001	1/1/01/–12/31/01
Groupstars Chemicals, LLC	
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware A–580–601	1/1/01–12/31/01
Chefline Corp.	
Dae-Lim Trading Co., Ltd.	
Dong Won Metal Co., Ltd.	
Sam Yeung Ind. Co., Ltd.	
Namyang Kitchenflower Co., Ltd.	
Kyung-Dong Industrial Co., Ltd.	
Ssang Yong Ind. Co., Ltd.	
O. Bok Stainless Steel Co., Ltd.	
Dong Hwa Stainless Steel Co., Ltd.	
Il Shin Co., Ltd.	
Hai Dong Stainless Steel Ind. Co., Ltd.	
Han Il Stainless Steel Ind. Co., Ltd.	
Bae Chin Metal Ind. Co.	
East One Co., Ltd.	
Charming Art Co., Ltd.	
Poong Kang Ind. Co., Ltd.	
Won Jin Ind. Co., Ltd.	
Wonkwang Inc.	

	Period to be reviewed
Sungjin International Inc. Saekwang Aluminum Co., Ltd. Hanil Stainless Steel Ind. Co., Ltd. Seshin Co., Ltd. Pionix Corporation East West Trading Korea, Ltd. Clad Co., Ltd. B.Y. Enterprise, Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 20, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–4533 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–837]

Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: On October 5, 2001, the Department of Commerce published its preliminary determination of sales at less than fair value of greenhouse tomatoes from Canada. The period of investigation is January 1, 2000, through December 31, 2000. On October 19, 2001, the Department published a notice of amended preliminary determination of sales at less than fair value and postponement of final determination of greenhouse tomatoes from Canada.

Based on our analysis of the comments received and certain findings from the verifications, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination and the amended preliminary determination.

We determine that greenhouse tomatoes from Canada are being, or are likely to be, sold in the United States at less–than–fair–value prices as provided in section 735 of the Tariff Act of 1930, as amended. The estimated margins of sales at less than fair value are shown in the ''Final Determination'' section of this notice.

EFFECTIVE DATE: February 26, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone; (202) 482–4794 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR part 351 (April 2000).

Case History

This investigation was initiated on April 17, 2001. See Initiation of Antidumping Duty Investigation: Greenhouse Tomatoes From Canada, 66 FR 20630 (April 24, 2001) (Initiation Notice). The preliminary determination in this investigation was published on October 5, 2001. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada, 66 FR 51010 (October 5, 2001) (Preliminary Determination). The Department also issued a Notice of Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Greenhouse Tomatoes From Canada, 66 FR 53203 (October 19, 2001) (Amended Preliminary Determination and Postponement of Final Determination).

In October, November, and December 2001, we conducted verification of the questionnaire responses of the five mandatory respondents in this case: BC Hot House Foods, Inc., Red Zoo Marketing (a.k.a. Produce Distributors, Inc.), Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.), J–D Marketing, Inc., and Mastronardi Produce Ltd. We also conducted verification of five cost respondents.

In January 2002, we received case briefs from the petitioners (i.e., Carolina Hydroponic Growers Inc., Eurofresh, HydroAge, Sunblest Management LLC, Sunblest Farms LLC, and Village Farms) and the mandatory respondents. The Department held a public hearing on January 22, 2002, at the request of the parties.

Scope of Investigation

The merchandise subject to this investigation consists of all fresh or chilled tomatoes grown in greenhouses in Canada, e.g., common round tomatoes, cherry tomatoes, plum or pear

tomatoes, and cluster or ''on–the–vine'' tomatoes. Specifically excluded from the scope of this investigation are all field–grown tomatoes.

The merchandise subject to this investigation may enter the United States under item numbers 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, i.e., field–grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice (66 FR 20630). On May 14, 2001, BC Vegetable Greenhouse I, L.P. (BCVG), filed comments requesting that the scope be limited to include only hydroponic tomatoes and expressly exclude ''heirloom'' and ''organic'' tomatoes grown in greenhouses. On May 21, 2001, the petitioners filed comments opposing BCVG's request to limit the scope. After considering the respondent's request and the petitioners' objections, we determined that the scope of this investigation should remain as published in the Initiation Notice. Our analysis of this scope issue is detailed in the memorandum from Laurie Parkhill, Director, Office 3, to Richard W. Moreland, Deputy Assistant Secretary, Group I, dated July 30, 2001, entitled ''Request to Limit Scope of Investigation.''

Period of Investigation

The period of investigation (POI) is January 1, 2000, through December 31, 2000.

Fair Value Comparisons

To determine whether sales of greenhouse tomatoes from Canada to the United States were made at less than fair value, we compared export price or constructed export price (CEP) to normal value. Our calculations followed the methodologies described in the Preliminary Determination, except as noted below, and in the February 19, 2002, Decision Memorandum and each individual respondent's calculation memorandum, which are on file in the Import Administration's Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly from the web at http://ia.ita.doc.gov. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Export Price and Constructed Export Price

For certain sales to the United States, we used export price as defined in section 772(a) of the Act. For the remaining sales to the United States, we used CEP as defined in section 772(b) of the Act. We calculated export price and CEP based on the same methodologies described in the Preliminary Determination with the following exceptions:

BC Hot House Foods, Inc.

We accepted the revised U.S. sales list that BC Hot House Foods, Inc., submitted on November 13, 2001, to incorporate corrections presented at the sales verification. Exhibit 1 of the December 20, 2001, sales verification report for this respondent contains a detailed list of the corrections. Further, as discussed in the Final Determination Analysis Memorandum from Mark Ross to the file, dated February 19, 2002, we recalculated the credit expenses, direct advertising expenses, and indirect selling expenses for BC Hot House Foods, Inc.'s U.S. sales. Finally, based on the comments we received on the level–of–trade methodology for BC Hot House Foods, Inc. and our reexamination of the information on the record relating to this issue, we revised the level–of–trade designations for this respondent. See comment 8 of the February 19, 2002, Decision Memorandum.

Red Zoo Marketing

We accepted Red Zoo Marketing's revised U.S. sales list pursuant to the corrections it presented at the start of verification, as described in Red Zoo Marketing's December 18, 2001, submission. We disregarded a billing adjustment that Red Zoo Marketing reported for one invoice where we found at verification that it did not make a billing adjustment. We adjusted the prices made for one U.S. customer where we found the customer only made a partial payment.

Veg Gro Sales, Inc.

We accepted Veg Gro Sales, Inc.'s revised U.S. sales list submitted on November 19, 2001, pursuant to changes incorporated as a result of verification. We included two sales which were shipped during the POI but invoiced outside the POI and used the shipment date as the sale date for these two observations. We adjusted the indirect selling expense ratio to reflect corrections submitted by the company and verified by us.

Mastronardi Produce Ltd.

We accepted Mastronardi Produce Ltd.'s revised U.S. sales list pursuant to changes incorporated as a result of verification. These changes affect the warehousing expenses, brokerage and handling expenses, packing expenses, and billing adjustments that Mastronardi Produce Ltd. reported as applicable to its U.S. sales.

J–D Marketing, Inc.

We accepted J–D Marketing, Inc.'s revised U.S. sales list pursuant to changes incorporated as a result of verification. These changes affect the credit expenses, inland–freight expenses, product codes, quantities, packing costs, indirect selling expenses, discounts, and brokerage and handling expenses that J–D Marketing, Inc., reported in relation to certain U.S. sales.

Normal Value

We used the same methodology as that described in the Preliminary Determination to determine the cost of production and normal value, with certain exceptions described below.

1. Cost–of–Production Analysis

BC Hot House Foods, Inc.

As discussed in the memorandum from Sheikh Hannan to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Canagro and Pacific Lagoon, we calculated the per–unit cost of manufacturing based on the production quantities maintained by two producers which supply BC Hot House Foods, Inc. (Canagro and Pacific Lagoon). We revised the general and administrative (G&A) amount applicable to Canagro and Pacific Lagoon's parent company that had been included in the G&A rate calculation. We calculated each company's financial–expense rate based on the highest level of consolidation normally prepared by the companies.

As discussed in the memorandum from Sheikh Hannan to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning the other cost respondent we selected for BC Hot House Foods, Inc., we adjusted the reported G&A rate to include the damaged–goods variance.

Additionally, as discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning BC Hot House Foods, Inc., we calculated BC Hot House Foods, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which BC Hot House Foods, Inc., obtained tomatoes.

Red Zoo Marketing

As discussed in the memorandum from Laurens van Houten to Neal Halper entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Great Northern Hydroponics, we adjusted its reported costs to include the full amount the company incurred for heating costs during the POI. We removed the trough–system adjustment because at verification the company chose not to pursue those amounts. We included the full heating cost and the trough–system costs in the denominator of the revised G&A rate calculation. We calculated Great Northern Hydroponics's financial–expense rate based on the highest level of consolidation normally prepared by the company.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Red Zoo Marketing, we calculated its cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Red Zoo Marketing obtained tomatoes.

Veg Gro Sales, Inc.

As discussed in the memorandum from Heidi Norris to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Veg Gro Inc., we adjusted its reported costs to include the corrections presented on the first day of the cost verification. We adjusted Veg Gro Inc.'s reported costs to include the full amount the company incurred for heating costs during the POI. We also included the full amount of depreciation expense normally recorded in the company's financial statements that are prepared in accordance with Canadian Generally Accepted Accounting Principles (GAAP). Additionally, we included marketing–board fees and shareholder life–insurance expenses, and we revised the G&A rate calculation. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. Further, we revised Veg Gro Inc.'s financial–expense rate to exclude imputed short–term interest income and to include all interest expense incurred by the company. We also revised the reported packing costs to reflect the transfer price paid to an affiliate.

As discussed in the memorandum from Minoo Hatten to File, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Amco Farms, Inc., we adjusted its reported costs to include the full amount the company incurred for heating costs during the POI. We included the full amount of depreciation expense normally recorded in the company's financial statements that are prepared in accordance with Canadian GAAP. We revised Amco Farms Inc.'s fixed–overhead calculation to include the excluded costs for the cooler. We have revised the calculation of Amco Farms Inc.'s G&A rate to include management fees. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. We revised its financial–expense rate to include short–term interest income received from affiliates and all long–term interest expense incurred by the company.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Veg Gro Sales, Inc., we calculated Veg Gro Sales, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Veg Gro Sales, Inc., obtained tomatoes.

Mastronardi Produce Ltd.

As discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning Mastron Enterprises, we adjusted its reported costs to include the full amount the company incurred for heating costs and repairs and maintenance during the POI. We revised the cost calculations to be based on acreage rather that management estimates. We revised the G&A rate calculation to include the full heating cost and repairs and maintenance amounts in the denominator. We revised the amount for indirect selling expenses to exclude the foreign–exchange gains on accounts payable that were not related to the sale of greenhouse tomatoes. We also included office–administration income and management bonuses in the revised calculation of indirect selling expenses.

Additionally, as discussed in the memorandum from Sheikh Hannan to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19, 2002, concerning Mastronardi Produce Ltd., we calculated its cost for each type of tomato by weight–averaging the cost of all the cost respondents from which Mastronardi Produce Ltd. obtained tomatoes.

J–D Marketing, Inc.

As discussed in the memorandum from Laurens van Houten to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination'' dated February 19, 2002, concerning I.P.R. Farms Ltd., we adjusted the acreage factors used to allocate costs to reflect the actual acreage for each product produced. We revised the seed cost to reflect the actual cost of seeds. We adjusted its reported costs to include the full amount the company incurred for heating costs and depreciation during the POI as recorded in its financial statements prepared in accordance with Canadian GAAP. We revised the reported G&A expenses to include the full amount incurred for executive salaries, marketing–board fees, and travel expenses, and we excluded a double–counted expense reimbursement from the G&A amount. We included the full amount of interest expense incurred by I.P.R. Farms Ltd. in the revised financial–expense calculation. In the revised G&A rate calculation, we included the full heating cost and depreciation amounts in the denominator. We increased the packing costs to include interest and G&A of the packer.

Additionally, as discussed in the memorandum from Laurens van Houten to Neal Halper, ''Weighted–Average Cost of Production and Constructed Value Calculation for the Final Determination'' dated February 19,

2002, concerning J–D Marketing, Inc., we calculated J–D Marketing, Inc.'s cost for each type of tomato by weight–averaging the cost of all the cost respondents from which J–D Marketing, Inc. obtained tomatoes.

2. Calculation of Normal Value

BC Hot House Foods, Inc.

We accepted the revised home–market sales list that BC Hot House Foods, Inc., submitted on November 13, 2001, to incorporate corrections presented at the sales verification. Exhibit 1 of the December 20, 2001, verification report for BC Hot House Foods, Inc., contains a detailed list of these corrections. We corrected a billing adjustment that BC Hot House Foods, Inc., reported inaccurately for one home–market sale, and we corrected the quantity that it reported inaccurately for another home–market sale. Further, as discussed in the final determination analysis memorandum from Mark Ross to the file, dated February 19, 2002, we recalculated the credit expenses, direct advertising expenses, and indirect selling expenses for BC Hot House Foods, Inc.'s home–market sales. Finally, based on the comments we received on the level–of–trade methodology for BC Hot House Foods, Inc. and our reexamination of the information on the record relating to this issue, we revised the level–of–trade designations for this respondent. See comment 8 of the February 19, 2002, Decision Memorandum.

Red Zoo Marketing

We accepted Red Zoo Marketing's revised home–market sales list pursuant to the corrections the respondent presented at the start of verification as described in its December 18, 2001, submission.

Veg Gro Sales, Inc.

We accepted Veg Gro Sales, Inc.'s revised home–market sales list pursuant to changes incorporated as a result of verification as described in its November 19, 2001, submission. We deleted certain sales that Veg Gro Sales, Inc., made to an employee, corrected the payment date for one sale, and made an adjustment to indirect selling expenses to reflect corrections submitted by the company and which we verified.

Mastronardi Produce Ltd.

We accepted Mastronardi Produce Ltd.'s revised home–market sales list pursuant to changes incorporated as a result of verification. These changes affected the warehousing expenses, credit expenses, packing expenses, and billing adjustments Mastronardi Produce Ltd. reported for certain home–market sales.

J–D Marketing, Inc.

We accepted J–D Marketing, Inc.'s revised home–market sales list pursuant to changes incorporated as a result of verification. These changes affected the quantities, commissions, credit expenses, and inland–freight expenses that J–D Marketing, Inc., reported for certain home–market sales. The changes also resulted in the addition to the sales list of a sale and certain credits that the respondent had omitted from the home–market sales list.

3. Calculation of Constructed Value

For each of the respondents, we calculated the cost of materials and fabrication based on the methodology described in the ''Cost–of–Production Analysis'' section of this notice when calculating constructed value.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the Preliminary Determination.

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Final Determination

We determine that the following percentage weighted–average margins exist for the period January 1, 2000, through December 31, 2000:

Exporter/Grower	Weighted-average margin (percentage)
BC Hot House Foods, Inc.	18.21
Red Zoo Marketing (a.k.a. Produce Distributors, Inc.)	1.86
Veg Gro Sales, Inc. (a.k.a. K & M Produce Distributors, Inc.)	3.85
J–D Marketing, Inc.	1.53
Mastronardi Produce Ltd.	14.89
All Others	16.22

Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all–others rate margins which are zero, de mimimis, or determined entirely on facts available. Because we calculated de minimis margins for Red Zoo Marketing and J–D Marketing, Inc., we calculated the all–others rate on the basis of the margins applicable to BC Hot House Foods, Inc., Mastronardi Produce Ltd., and Veg Gro Sales, Inc.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise except for exports by J–D Marketing, Inc. (and J–D Marketing, Inc.'s affiliate, Special Edition Marketing), and Red Zoo Marketing (which have zero or de minimis weighted–average margins), that are entered, or withdrawn from warehouse, for consumption on or after October 5, 2001, the date of publication of the Preliminary Determination in the Federal Register. We will instruct the Customs Service to continue to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds the export price or CEP, as indicated in the chart above, effective the date of publication of this final determination.

Because Red Zoo Marketing and J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), are non–producing exporters, in accordance with 19 CFR 351.204(e)(3), we are limiting the exclusion from these suspension–of–

liquidation instructions to entries only of subject merchandise exported by Red Zoo Marketing or J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), that is produced or supplied by the companies that supplied these respondents during the POI. Any entries of subject merchandise exported by Red Zoo Marketing or J–D Marketing, Inc. (and its affiliate, Special Edition Marketing), which is not produced or supplied by the companies that supplied these respondents during the POI will be subject to the all–others rate.

For Red Zoo Marketing, because its estimated weighted–average final dumping margin is de minimis, we are directing Customs to terminate suspension of liquidation of entries of merchandise from Red Zoo Marketing that were produced by the companies that supplied Red Zoo Marketing during the POI and refund all bonds and cash deposits posted on such subject merchandise exported by Red Zoo Marketing. Because we never required suspension of liquidation or the posting of cash deposits or bonds for entries of merchandise from J–D Marketing, Inc., no such step is necessary.

These suspension–of–liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final antidumping determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury or threat of material injury to the U.S. industry. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

February 19, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

Common Issues

1. Province–Specific All–Others Rate
2. Extraordinary Costs
3. Payments to Owners
4. Amortization of Assets
5. Averaging Prices Across Grades, Sizes, and Color for the Cost Test
6. Calculating a Difference–in–Merchandise Adjustment Based on Market Value
7. Weighted–Average Cost Versus Simple–Average Cost

Company–Specific Issues

BC Hot House Foods, Inc.

8. Level of Trade
9. Allocation of U.S. Advertising Expenses
10. Canagro's Start–Up Adjustment
11. Weight–Averaging the Cost for BCCH's Cost Respondents
12. Combined Interest and General and Administrative (G&A) Expenses
13. Accuracy of Canagro's Production Quantities
14. Use of Corrected BCHH Sales Lists
15. Reclassification of Certain BCHH Customers
16. Representativeness of Cost for BCHH

Red Zoo Marketing

17. Combined Financial Expense
18. Cost–Allocation Errors

Mastronardi Produce Limited

19. Capitalization of Costs
20. Cost Allocations Based on Supplier and Management Representations
21. Calculation of Mastronardi's Indirect Selling Expense Rate
22. Treatment of Mastronardi's Management Bonuses Veg Gro Sales, Inc.
23. Management Estimates
24. Arithmetical Error
25. Clerical Errors With Regard to Amco Farms, Inc.
26. Exporter G&A and Financial–Expense Ratios
27. Clerical Error Affecting COP and CV Calculations
28. Expenses Paid on Behalf of Owners

J–D Marketing, Inc.

29. Accuracy of Cost Data for IPR Farms
30. Representativeness and Accuracy of COP Analysis
31. Exclusion of Cluster–Roma and Cherry Tomatoes from Margin Calculations
32. Expenses Paid on Behalf of Owners

[FR Doc. 02–4532 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 011123281–2034–02]

Special American Business Internship Training Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT).

SUMMARY: The International Trade Administration publishes this notice to extend the closing date for the Special American Business Internship Training Program (SABIT) from March 1, 2002, to April 15, 2002.

DATES: To be considered, applications must be postmarked by April 15, 2002. Processing of complete applications takes approximately three to four months. All awards are expected to be made by August 15, 2002.

ADDRESSES: The SABIT Program, U.S. Department of Commerce, [FCB]—Fourth Floor—4100 W, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: This Notice amends the **Federal Register** Notice of December 13, 2001 (66 FR 64399–64402) announcing the availability of funds for the Special American Business Internship Training program (SABIT), for training business executives and scientists (also referred to as ''interns'') from the Newly Independent States of the former Soviet Union. This notice extends the closing date of the referenced **Federal Register** notice for six weeks to April 15, 2002. All applications must be postmarked by April 15, 2002. All information in the previous announcement remains current, except for the change of the closing date.

Dated: February 21, 2002.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 02–4547 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

Cancellation of a Meeting of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The closed meeting of the U.S. Automotive Parts Advisory Committee (APAC) originally scheduled for February 27, 2002 at the U.S. Department of Commerce has been canceled due to schedule conflicts.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 6498–6499, Feb. 12, 2002.

PREVIOUSLY ANNOUNCED DATE OF THE MEETING: February 27, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation.

Dated: February 20, 2002.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 02–4460 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Survey of Industrial Research Institute Members

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public. Law. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 29, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 1401 Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Barbara Lambis, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Administration Building, Room A333, Gaithersburg, MD 20899–4700. (Tel: 301–975–4447; e-mail: *barbara.lambis@nist.gov*)

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is part of a joint study being done by the Advanced Technology Program (ATP) and the Industrial Research Institute (IRI) to understand the investment-decision tools that medium-to-large companies use for funding high-risk technology development. This information collection from IRI member-companies will help ATP make more informed decisions when it evaluates proposals from medium-to-large firms.

II. Method of Collection

E-mail survey and telephone interviews.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost to the Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4486 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Technology Opportunities Program (TOP) Grant Recipient Survey.

Form Number(s): None.

OMB Approval Number: 0660–0013.

Type of Request: Regular submission.
Burden Hours: 210.
Number of Respondents: 210.
Average Hours Per Response: 1.
Needs and Uses: The purpose of the Technology Opportunities Program (TOP) is to promote the widespread availability and use of digital network technologies in the public and non-profit sectors to serve communities nationwide. As part of the Department of Commerce's National Telecommunications and Information Administration, TOP projects are nationally-significant demonstrations of how digital network technologies can be used to extend and improve the delivery of valuable services and opportunities to all Americans. It does this by providing matching funds to pubic and non-profit sector organizations to use these technologies to provide community-wide information, health, life-long learning, public safety and other public services. TOP will evaluate and actively share the lessons learned from these projects to ensure the benefits are broadly distributed. TOP will use this survey to ensure that grant recipients are effectively promoting the efficient and widespread use of advance telecommunications services to serve American communities and to comply with the Government Performance and Results Act.

NTIA is interested in the effects that the funded projects are having at the local level and, over the long term, at the national level. It is NTIA's intention to understand the nature and degree of those effects on the organizations that are involved with the projects, the individuals who are served by the projects, and the community as a whole. NTIA is especially interested in understanding the difference that the Federal grants have had in the creation, scale, scope and sustainability of the projects.

Affected Public: Not-for-profit institutions, and state, local or tribal government.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4487 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).
Title: Technology Opportunities Program (TOP) Reviewer Information Form.
Form Number(s): None.
OMB Approval Number: 0660–0010.
Type of Request: Regular submission.
Burden Hours: 42.
Number of Respondents: 252.
Average Hours Per Response: 10 minutes.
Needs and Uses: Technology Opportunities Program (TOP) promotes the widespread availability and use of digital network technologies in the public and non-profit sectors. To accomplish this objective, TOP provides matching grants to state, local, and tribal governments and non-profit entities for model projects that demonstrate innovative uses of digital network technologies in under-served communities. TOP projects address specific challenges and realize opportunities for change in such areas as lifelong learning, community and economic development, government and public services, safety, health, culture, and the arts.

As part of TOP's process to select projects for funding, external experts are used to review applications. The collection of information about potential reviewers is used to determine their eligibility and availability and to facilitate payment for services rendered if they are selected to review.

Affected Public: Individuals from state and local government, non-profit institutions, and business and other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 20, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–4488 Filed 2–25–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Change in Meeting Date of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 1500, Wednesday, March 13, 2002.

ADDRESSES: The meeting will be held at the Seaside Room, Hyatt Moneterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and

development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4463 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 12 noon, Wednesday, March 13, 2002.

ADDRESSES: The meeting will be held at the Salinas Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4464 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, March 11, 2002.

ADDRESSES: The meeting will be held at the Spyglass Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4465 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, April 18, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group

meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–4466 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on March 28, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on February 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 20, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF TRANSCOM A

SYSTEM NAME:

Joint Medical Evacuation System (TRAC^{2}ES).

SYSTEM LOCATION:

United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049, and Department of Defense medical treatment facilities, evacuation units and medical regulating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, Air National Guard, Army National Guard, Reserve components of the Air Force, Army, Marine Corps, Coast Guard, Public Health Services or National Oceanic and Atmospheric Administration who have been called to Federal Service, and retired personnel of all seven uniformed services as well as their family members, employees of any agency of the U.S. Government including non-appropriated fund and Army and Air Force Exchange Service employees, Air Reserve technicians performing duties as civil servants, and family members (dependents) who reside overseas and who civil service personnel sponsor is stationed overseas requiring transfer to another medical treatment at the request of U.S. Government medical treatment facilities through Patient Movement Requirements Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

TRAC^{2}ES contains information reported by the transferring medical facility which includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, home address of patient and/or duty station, and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. 2641, Transportation of Certain Veterans on DoD Aeromedical Evacuation Aircraft; DoD Directive 5154.6, Armed Services Medical Regulating; DoD Instruction 6000.11, Patient Movement; and E.O. 9397 (SSN).

PURPOSE(S):

Information collected is used to determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify medical treatment facilities of the transfer; to notify evacuation units and medical regulating offices; to evaluate the effectiveness of reported information; to establish the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To civilian hospitals for medical reference to ensure proper care is provided.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Air Force's compilation of systems of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic back-up tape storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software, or in locked file cabinets, locked desk drawers, or locked offices. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Medical records of active duty U.S. military members are maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center (NPRC), St. Louis, MO or other designated depository, such as Commandant, US Coast Guard for that agency's personnel, to appropriate Department of Veterans Affairs Regional Office if a VA claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

System Administrator, United States Transportation Command, Global Patient Movement Requirements Center, Building 505, Rimkus Drive, Room 100, Scott AFB, IL 62225–5049.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals requesting information should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number. Forward request to Chief, Patient Administration of the Military Treatment Facility where treatment was provided.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Transferring and receiving treatment facilities, medical regulating offices, evacuation offices, agencies and commands relevant to the patient transfer, and from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–4468 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 28, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 15, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 20, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.50 CA

SYSTEM NAME:

Access and Badging Records (July 13, 2000, 65 FR 43301).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete ''CA'' from entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In the second sentence, delete ''address'' and replace with ''physical and electronic home addresses'' and delete ''date of birth'' and replace with ''date and place of birth.'' In addition, add ''blood type (for military members); fingerprint data;'' after ''eye color.''

* * * * *

PURPOSE(S):

Add ''police force and'' before ''security personnel'' in first sentence.

* * * * *

S500.50

SYSTEM NAME:

Access and Badging Records.

SYSTEM LOCATION:

Staff Director, Office of Command Security, Headquarters Defense Logistics Agency, ATTN: DSS–S, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Visitor security clearance data is also maintained by the Chief, Internal Review Group, Headquarters Defense Logistics Agency, ATTN: J–308, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations, facilities, or computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and issuance of facility entry badges and passes, motor vehicle registration, and access to DLA computer systems or databases. The records contain the individual's name; physical and electronic home addresses; Social Security Number; date and place of birth; a DLA-assigned bar code number; dates and times of building entry; current photograph; physical descriptors such as height, hair color, and eye color; blood type (for military members); fingerprint data; handicap data; computer logon addresses,

passwords, and user identification codes; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; state tag data; operator's permit data; inspection and insurance data; vehicle decal number; parking lot assignment; and parking infractions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 3, Powers; 5 U.S.C. 6122, Flexible schedules, agencies authorized to use; 5 U.S.C. 6125, Flexible schedules, time recording devices; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; 18 U.S.C. 1030, Computer fraud; 23 U.S.C. 401 *et seq.*, National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10450 (Security Requirements for Government Employees).

PURPOSE(S):

Information is maintained by DLA police force and security personnel to control access onto DLA-managed installations and activities; access into DLA-controlled buildings and facilities, and access to DLA computer systems or databases.

Data is also used to manage reserved, handicap, and general parking. Clearance data is also used by the DLA Internal Review Group to control access to sensitive records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by name, Social Security Number, bar code number, or decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation; Individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

Database access records are maintained for the life of the employee and destroyed 1 year after employee departs. Visitor and temporary passes, permits, and registrations are destroyed 2 years after final entry or 2 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is supplied by security personnel and by individuals applying for access to DLA controlled installations, facilities, or databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–4467 Filed 2–25–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 20, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: School Renovation Program Annual Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 112.

Abstract: ED will use the information collected from States and Outlying areas to evaluate Program implementation. The information will also be used to report to Congress and the public on the effectiveness of the Program in meeting the legislative goals of improving school facilities and ensuring the health and safety of students and staff.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–4498 Filed 2–25–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41416 entitled Advanced University Reciprocating Engine Program. The Department of Energy, National Energy Technology Laboratory, is seeking applications on behalf of the Office of Power Technologies in DOE's Office of Energy Efficiency and Renewable Energy, for support of projects that are consistent with the goals of the Advanced Natural Gas Reciprocating Engine Program. This solicitation is restricted to applications from only United States (US) universities and colleges for research activities that will make a significant impact on achieving program goals. In order to attain these goals, innovative and novel concepts need to be created and current obstacles need to be overcome.

DATES: The solicitation will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about February 15, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.* All requests for technical explanation or interpretation shall be submitted through IIPS and must be received not later than 5 p.m. Eastern time on March 17, 2002. The Government reserves the right not to respond to technical questions submitted after this date.

FOR FURTHER INFORMATION CONTACT: Debra A. Duncan, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *duncan@netl.doe.gov,* Telephone Number: 412–386–5700.

SUPPLEMENTARY INFORMATION: The DOE, supports the development of promising advanced power technologies that will improve energy efficiency, meet or exceed emissions requirements, enhance durability, and lower the costs of installation and operation. The DOE is encouraging greater focus on a portfolio of advanced distributed energy systems. Current technology development efforts include industrial turbines, microturbines, reciprocating engines, and fuel cell technologies for use in industrial, commercial, institutional and residential applications. This solicitation focuses on the development of technologies that will enhance the performance of advanced natural gas reciprocating engines. This solicitation is restricted to US colleges, universities, and other institutions of higher education. Previous solicitations have already focused on reciprocating engine research restricted to manufacturers and national laboratories. US manufacturers and suppliers of reciprocating engines and the Federal government are partnering to develop the next generation of stationary natural gas internal combustion engines. These advanced systems will provide significant benefits to the nation and will position domestic engine manufacturers to better compete in what is becoming a more global market with significant opportunities in domestic power generation markets and emerging international markets. The Advanced Natural Gas Reciprocating Engine Program goals are:

1. *Energy Efficiency:* 50% electrical efficiency. Current spark-ignition natural gas engines range in efficiency from 34–38%. Application of high temperature materials, engine sensors and controls, improved combustion practices, and other advances may be able to attain efficiencies of 50%.

2. *Environmental Emissions:* NO_X target of 0.1 grams per horsepower-hour. Currently, the best domestic emission levels are 1.0 grams per horsepower-hour. In order to reduce NO_X emissions by an order of magnitude advances in combustion technology, sensors and controls, and emission reduction systems are critical to minimize environmental impacts.

3. *Cost:* Operating and maintenance 10% below today's costs for modern engines. Attaining this goal will result in $50 million savings to the nation between 2005–2010.

To achieve the project objectives, the applicant shall succinctly describe the proposed technical approach to solve the emissions challenge for reciprocating engines. Specifically, university research applications are being solicited for development of aftertreatment concepts for natural gas reciprocating engines. The nature of the application in response to this solicitation should be structured for longer term, basic and fundamental research appropriate for university research facilities. However, it is important that university researcher applicants be mindful of the US reciprocating manufacturer's needs. In other words, applications should propose research that has reasonable probability of contributing to long-term (5–7 year) manufacturer product development cycles. The most valuable contribution will be knowledge useful to reciprocating manufactures to decide which path, among many alternatives, that emissions equipment product development should proceed. With

considerable input from the Advanced Reciprocating Engines Systems (ARES) manufacturing consortium, DOE/NETL through the Office of Power Technologies Advanced Natural Gas Reciprocating Engine Program, is requesting applications under the topic area ''Aftertreatment Concepts for Advanced Natural Gas Reciprocating Engines.''

Background/Application: Catalytic reduction offers a direct path towards reducing natural gas engine NO_X emissions with minimal impact on design or program timing. Selective Catalytic Reduction (SCR) catalysts are used today in site-specific areas, but only as required due to their high initial cost, high maintenance cost, and control requirements. Three way catalysts are used more broadly, but are limited in application to smaller (under 500 kilowatt) engines, as manufacturers have integrated lean burn combustion for longer life on higher power ratings. Improvements in catalyst design have been in research stages for many years but have yet to result in a cost effective, simple solution that new engine products can use.

Technical and Commercial Barriers: Catalyst barriers include the presence of oxygen in the exhaust stream from modern lean burn natural gas engines, coupled with relatively low exhaust temperatures that can inhibit catalytic reaction. Material costs, along with expensive closed loop SCR controls, limit commercial attractiveness such that catalysts are often used as a last resort rather than first preference when addressing emissions non-attainment areas. Relatively weak sales and service infrastructure, coupled with a general lack of knowledge, or negative impressions about catalysts, further inhibit catalyst promulgation into the large stationary natural gas engine marketplace.

Technology Breakthrough(s) Needed: An effective catalyst reduction system is required that can reduce lean burn engine NO_X emissions from 6 pounds per megawatt hour by at least 90%. Several approaches need to be investigated, including:

1. Closed loop SCR designs, such that first costs are no greater than 10% of package costs, or approximately $50 per kilowatt (electric).
2. Three way catalyst designs, such that these simple designs could be coupled with lean burn engine applications.
3. Catalyst control technology that greatly reduces the cost to measure and control inlet and outlet NO_X conditions to and from the catalyst.
4. Basic field measurement technology, such that a technician or regulator can easily connect to and confidently measure NO_X output from a gas engine catalyst.
5. NO_X adsorbent technology, such that catalyst bed material life is sufficiently long to be economically justified, and that precious metal requirements are greatly reduced or eliminated.
6. Sulfur resistant catalyst technology, such that engines operating with significant sulfur pass-through can be coupled to an effective catalyst bed.
7. Catalysts using CH_4 as a supplemental reductant, such that currently available fuels can be used rather than ammonia systems in SCR designs.
8. Durable oxidation catalyst technology, such that methane is reduced by 80+% with a minimal use of precious metal.

These technologies are listed in no particular order, but could each play a major role in reducing NO_X emissions from current engines and upcoming advanced natural gas reciprocating engine designs.

Pursuant to 10 CFR 600.6(b) eligibility for award is restricted to US universities and colleges. Only universities, colleges, or university-affiliated research institutes located in the US and its territories, including the Commonwealth of Puerto Rico and the Virgin Islands, may submit applications for consideration under this Program Solicitation. Submissions from university-affiliated research institutes must be made through the university. The award will be with the university and *not* with the university-affiliated research institute.

DOE anticipates multiple cooperative agreement awards resulting from this solicitation. In accordance with 10 CFR 600.30, the DOE has determined that a minimum cost share of 20% of the total project costs will be required.

Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on February 15, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–4514 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

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), Idaho. 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: Tuesday, March 19, 2002 8 a.m.–6 p.m., Wednesday, March 20, 2002 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, March 19, 2002, 12:15–12:30 p.m., 5:45–6 p.m., Wednesday, March 20, 2002 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/*.)

- Dispute Resolution for Pit 9
- Fiscal Year 2003 Budget
- INEEL Long-Term Stewardship Strategic Overview
- Proposed Plan for Remedial Action at Waste Area Group 10
- Top-to-Bottom Review
- Dry Storage Facility
- Follow-up Activities to the Site Specific Advisory Board Groundwater Workshop
- DOE-ID Strategic Planning Process (not ranked)
- Community-Based Forum to Define Desired End State(s) for the INEEL
- Integration of Tribal Concerns into Planning for Long-Term Stewardship
- DOE and Contractor Roles and Responsibilities Regarding Intergovernmental Relations and Public Involvement
- Vadose Zone Integration Project
- INEEL Workforce Restructuring

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Desig-nated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC, on February 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–4512 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–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 meetings be announced in the **Federal Register**.

DATES: Wednesday, March 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, PO 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:

Discussion of General Board Issues

A final agenda will be available on the date of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat 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.

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, PO Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on February 21, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–4513 Filed 2–25–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Chairman's Participation in Congressional Hearing on Pending Matters

February 15, 2002.

Take notice that there will be a Congressional hearing before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the House of Representatives' Committee on Government Reform on February 22, 2002 at which Pat Wood III, Chairman, Federal Energy Regulatory Commission, will testify. The hearing will be held at 9:00 a.m. at the Sacramento County Board of Supervisors Chambers, 700 H Street, Sacramento, California.

The scope of the hearing includes the performance of the California Independent System Operator and wholesale electric energy market design in the State of California and nationally. During the course of this hearing, it is possible that discussion may overlap with issues pending in the dockets listed in the attached appendix. A transcript of the hearing will be placed in the dockets listed in the attached appendix if appropriate.

Magalie R. Salas,

Secretary.

Appendix

Docket Nos. EL01–35–000, Mirant Delta, LLC and Mirant Potrero LLC, v. California Independent System Operator Corp.,

Docket Nos. EL00–95–000, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System

Operator and the California Power Exchange
Docket No. EL00–98–000, Investigation into Practices of the California Independent System Operator and the California Power Exchange
Docket No. RT01–85–000, California Independent System Operator Corp.
Docket No. RT01–82–000, California Independent System Operator Corp., *et al.*
Docket No. RT01–83–000, California Independent System Operator Corp., *et al.*
Docket No. RT01–92–000, California Independent System Operator Corp., *et al.*
Docket No. EL01–68–000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
Docket No. PA02–1–000, Operational Audit of the California Independent System Operator Corp.
Docket No. ER02–651–000, California Independent System Operator Corp.
Docket No. ER01–889–000, California Independent System Operator Corp.
Docket No. EL02–48–000, California Power Exchange Corporation
Docket No. EL02–51–000, California Electricity Oversight Board v. Williams Energy Services Corp., *et al.*,
Docket No. ER99–3301–000, California Independent System Operator Corp,
Docket No. ER00–2019–000, California Independent System Operator Corp.
Docket No. ER00–1365–000, California Independent System Operator Corp.
Docket No. EL01–23–000, Dynegy Power Marketing, Inc. v. California Independent System Operator Corp.
Docket No. ER98–997–000, *et al.*, California Independent System Operator Corp
Docket No. ER98–495–000, *et al.*, Pacific Gas and Electric Company
Docket Nos. ER99–2730–000 and EL99–67–000, California Independent System Operator Corp.
Docket No. ER99–896–000, California Independent System Operator Corp.
Docket No. ER98–3760–000, *et al.*, California Independent System Operator Corp
Docket No. RM01–12–000, Electricity Market Design and Structure

[FR Doc. 02–4485 Filed 2–25–02; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–2114–104]

Yakama Nation, Complainant, v. Public Utility District No. 2 of Grant County, Washington, Respondent; Notice of Complaint

February 15, 2002.

Take notice on February 12, 2002, the Yakama Nation (Complainant) filed with the Federal Energy Regulatory Commission (Commission) a document entitled ''Complaint of Yakama Nation Requesting Fast Track Processing.'' The complainant requests, pursuant to 18 CFR 385.206 of the Commission's regulations, that the Commission find Public Utility District No. 2 of GrantCounty, Washington to be in violation of its license for the Priest Rapids Hydroelectric Project (''Project''), FERC Project No. 2114, Federal law authorizing the development of the Project, as well as sections 10, 19, and 20 Federal Power Act due to discriminatory and anticompetitive provisions contained in wholesale power contracts required under the Project license. The Complainant requests that the Commission require the Licensee to correct these violations and requests Fast Track Processing of the Complaint.

Pursuant to Rule 206(f) of the Commission's regulations, answers to complaints are due within 20 days after filing or, if noticed, after publication of the notice in the **Federal Register**, unless otherwise ordered. 18 CFR 385.206(f).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 4, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 4, 2002. 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, interventions and answers 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4484 Filed 2–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–92–000, et al.]

PSEG Poland Distribution B.V., et al.; Electric Rate and Corporate Regulation Filings

February 19, 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. PSEG Poland Distribution B.V.

[Docket No. EG02–92–000]

Take notice that on February 13, 2002, PSEG Poland Distribution B.V. (PSEG Poland) with its principal office at Weena 340, 3012 NJ Rotterdam, The Netherlands (mailing address: Postbus 21850, 3001 AW Rotterdam, The Netherlands), 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.

PSEG Poland is a company organized under the laws of The Netherlands. PSEG Poland states that it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of an approximately 590 MWe and 618 MWt coal-fired electrical and thermal plant, located in Krakow, Poland, selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment Date: March 12, 2002.

2. Crete Energy Venture, LLC

[Docket No. EG02–93–000]

Take notice that on February 14, 2002, Crete Energy Venture, LLC, c/o DTE Energy Services, Inc., 414 S. Main Street, Suite 600, Ann Arbor, Michigan 48104 filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

The applicant states that it is a limited liability company that will be engaged directly or indirectly and exclusively in the business of developing and ultimately owning and/or operating a 315 megawatt gas-fired, simple cycle electric generating facility located in

Crete, Illinois and selling electric energy exclusively at wholesale.

Copies of the Application have been served upon the Securities and Exchange Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Arkansas Public Service Commission, the City Council of New Orleans, the Public Utility Commission of Texas, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Comment Date: March 12, 2002.

3. Duke Energy Sandersville, LLC

[Docket No. EG02–94–000]

Take notice that on February 14, 2002, Duke Energy Sandersville, LLC (Duke Sandersville) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Sandersville states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Washington County, Georgia. The eligible facilities will consist of an approximately 640 MW natural gas-fired, simple cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: March 12, 2002.

4. Duke Energy Washington, LLC

[Docket No. EG02–95–000]

Take notice that on February 14, 2002, Duke Energy Washington, LLC (Duke Washington) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Duke Washington states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Washington County, Ohio. The eligible facilities will consist of an approximately 620 MW natural gas-fired, combined cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: March 12, 2002.

5. PEI Power Corporation

[Docket No. ER98–2270–002]

Take notice that on January 23, 2002, PEI Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a Triennial Revised Market Analysis.

Comment Date: March 12, 2002.

6. Gilroy Energy Center, LLC; King City Energy Center, LLC

[Docket No. ER01–2688–003, Docket No. ER01–2689–003]

Take notice that on February 13, 2002, Gilroy Energy Center, LLC and King City Energy Center, LLC (the Applicants), resubmitted for filing with the Federal Energy Regulatory Commission (Commission) all of their tariff sheets to reflect the correct effective dates in compliance with the Commission order issued in these dockets on December 20, 2001.

Comment Date: March 6, 2002.

7. Arizona Independent Scheduling Administrator Association

[Docket No. ER02–348–001]

Take notice that on February 13, 2002, Arizona Independent Scheduling Administrator Association submitted supplemental information regarding its proposed revision to its Protocols Manual to extend the commitment of the Standard Offer Scheduling Coordinators to a mechanism whereby Standard Offer Scheduling Coordinators exchange an amount, in MW, of Allocated Retail Network Transmission to Scheduling Coordinators serving competitive retail access customers.

Comment Date: March 6, 2002.

8. Duke Energy Corporation

[Docket No. ER02–710–001]

Take notice that on February 13, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed an amendment to its filing in this docket.

Comment Date: March 6, 2002.

9. UtiliCorp United Inc.

[Docket No. ER02–765–001]

Take notice that on February 13, 2002, UtiliCorp United Inc. (UtiliCorp), filed a supplement to Service Agreement No. 109, which it filed on January 14, 2002 in this docket.

Comment Date: March 6, 2002.

10. West Texas Utilities Company

[Docket No. ER02–1001–000]

Take notice that on February 12, 2002, West Texas Utilities Company (WTU) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of cancellation of WTU Rate Schedule No. 40 (Agreement Providing for Partial Requirements Service by WTU to the City of Coleman, Texas).

Comment Date: March 5, 2002.

11. New England Power Pool

[Docket No. ER02–1003–000]

Take notice that on February 12, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Second Agreement Amending New England Power Pool Agreement, which proposes changes to Schedule 16 of the NEPOOL Open Access Transmission Tariff in connection with compensation for distribution companies that provide black start service to NEPOOL.

NEPOOL respectfully requests that the effective date be April 1, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: March 5, 2002.

12. New England Power Pool

[Docket No. ER02–1004–000]

Take notice that on February 12, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a filing requesting acceptance of proposed changes to Market Rule & Procedure 4 and Appendix 4–M that amend the procedures for submitting Participants' External Transactions for Installed Capability across the New York–NEPOOL interface.

NEPOOL requests the Commission to allow these proposed changes to become effective on May 1, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: March 5, 2002.

13. Michigan Electric Transmission Company

[Docket No. ER02–1005–000]

Take notice that on February 12, 2002, Michigan Electric Transmission Company (METC) tendered for filing with the Federal Energy Regulatory Commission (Commission), as transferee of Consumers Energy Company (Consumers), also known as Consumers Power Company, Service Agreement No. 33 under METC Electric Tariff No. 1, a Facilities Agreement with Wolverine Power Supply Cooperative, Inc. (Wolverine), dated January 31, 1996, as amended June 4, 1996. The facilities covered under the Agreement provide

an interconnection of 138 kV facilities owned by the parties thereunder (Oden Interconnection Facilities). The Agreement (a) describes the Oden Interconnection Facilities and their anticipated affect on the facilities of the respective parties, (b) establishes the ownership interests of the parties in the Oden Interconnect Facilities, and (c) sets forth the respective rights and obligations of the parties with respect thereto.

METC has requested that its aforementioned Service Agreement be allowed to become effective April 1, 2001.

Copies of the filing were served upon Wolverine and the Michigan Public Service Commission.

Comment Date: March 5, 2002.

14. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER02–1006–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 114 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply maintains the effective date of Service Agreement No. 114 of March 16, 2001 for service to Entergy-Koch Trading, LP.

Copies of the filing have been provided to all parties of record.

Comment Date: March 5, 2002.

15. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC

[Docket No. ER02–1007–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 11 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 11 of December 2, 1999 for service to TXU Energy Trading Company LP.

Copies of the filing have been provided to all parties of record.

Comment Date: March 5, 2002.

16. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company; The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1008–000]

Take notice that on February 12, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 373 and 374 to add Dominion Energy Marketing, Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is February 11, 2002.

Copies of the filing have been provided to the Customer.

Comment Date: March 5, 2002.

17. North Atlantic Energy Corporation

[Docket No. ER02–1009–000]

Take notice that on February 12, 2002, North Atlantic Energy Corporation (North Atlantic) filed proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedules Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested waiver of the notice and filing requirements to accept retroactive effective date of January 12, 2001.

North Atlantic states that copies of this filing were served upon North Atlantic's jurisdictional customer and the New Hampshire Public Utilities Commission.

Comment Date: March 5, 2002.

18. GNE, LLC

[Docket No. ER02–1010–000]

Take notice that on February 13, 2002, GNE, LLC (GNE) tendered its long-term Power Purchase and Sale Agreement (EEI–NEM Model) between Maclaren Energy Inc. (Maclaren) and GNE. The Agreement is designated as Service Agreement No. 1 under GNE's FERC Electric Tariff, Original Volume No. 1. Service commenced under the Agreement on February 1, 2002 pursuant to negotiated rates, terms and conditions.

Comment Date: March 6, 2002.

19. Florida Power Corporation

[Docket No. ER02–1011–000]

Take notice that on February 13, 2002, Florida Power Corporation (FPC) filed a Service Agreement with Calpine Energy Services, L.P. under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10.

FPC is requesting an effective date of January 18, 2002, for this Agreement.

A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: March 6, 2002.

20. Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (Collectively the Wildflower Entities)

[Docket No. ER02–1012–000]

Take notice that on February 13, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) rendered for filing an amendment to an agreement pursuant to which the Wildflower Entities will sell capacity, energy and ancillary services at market-based rates according to their FERC Electric Tariff, Original Volume No. 1 to their affiliate Coral Energy Management, LLC.

Comment Date: March 6, 2002.

21. Delmarva Power and Light Company

[Docket No. ER02–1013–000]

Take notice that on February 13, 2002, Delmarva Power and Light Company (Delmarva) filed proposed tariff sheets for the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff) to accommodate the Commonwealth of Virginia's retail access program. The proposed tariff sheets describe the procedures for determining the peak load contributions and hourly load obligations for Delmarva's retail customers located in the Delmarva zone. This information is used in the determination of capacity, transmission, and hourly energy obligations.

Copies of the filing have been served on all the members of the PJM Interconnection, LLC and the Virginia State Corporation Commission.

Comment Date: March 6, 2002.

22. PPL EnergyPlus, LLC

[Docket No. ER02–1014–000]

Take notice that on February 13, 2002, PPL EnergyPlus, LLC (PPL EnergyPlus) filed notice of termination of the Service Agreement between it and UGI Utilities, Inc. designated as Service Agreement

No. 123 under PPL EnergyPlus Rate Schedule FERC No. 1.

PPL EnergyPlus requests that the termination be effective on April 15, 2002.

Notice of the termination has been served upon UGI Utilities, Inc.

Comment Date: March 6, 2002.

23. Illinois Power Company

[Docket No. ER02–1015–000]

Take notice that on February 13, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed with the Commission a Fourth Revised Network Integration Transmission Service Agreement entered into by Illinois Power and Dynegy Power Marketing, Inc., pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of February 2, 2002, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: March 6, 2002.

24. MEP Flora Power, LLC

[Docket No. ER02–1016–000]

Take notice that on February 13, 2002, MEP Flora Power, LLC (MEPFP), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MEPFP included in its filing a proposed code of conduct.

MEPFP requests that the rate schedule become effective April 1, 2002.

Comment Date: March 6, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–4483 Filed 2–25–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 20, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 27, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary.

Telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the reference and information center.

786th Meeting—February 27, 2002, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1,000, Agency Administrative Matters

A–2.
Docket# AD02–7,000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–662, 000, Boston Edison Company

E–2.
Docket# ER02–653, 000, PacifiCorp

E–3.
Docket# ER02–658, 000, PJM Interconnection, L.L.C.

E–4.
Docket# ER02–700, 000, Florida Power & Light Company

E–5.
Omitted

E–6.
Docket# ER02–708, 000, Central Illinois Light Company

E–7.
Docket# ER01–890, 000, Boston Edison Company

E–8.
Omitted

E–9.
Docket# ER02–656, 000, New England Power Pool

E–10.
Omitted

E–11.
Docket# ER01–831, 000, San Diego Gas & Electric Company
Other#s ER01–832, 000, Southern California Edison Company
ER01–839, 000, Pacific Gas and Electric Company
ER01–839, 001, Pacific Gas and Electric Company
ER01–839, 003, Pacific Gas and Electric Company

E–12.
Docket# EL00–95, 051, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s EL00–98, 045, Investigation of Practices of the California Independent System Operator Corporation & California Power Exchange

E–13.
Omitted

E–14.
Docket# ER01–2967, 002, New York Independent System Operator, Inc.
Other#s ER01–2967, 003, New York Independent System Operator, Inc.

E–15.
Docket# ER99–1378, 000, Alliant Energy Corporation

E–16.
Docket# EC02–35, 000, Engage Energy America LLC., Frederickson Power L.P. and Duke Energy Corporation

E–17.
Docket# FA88–62, 000, Wisconsin Electric Power Company
Other#s EL94–16, 000, Wisconsin Electric Power Company

E–18.
Docket# TX96–2, 002, City of College Station, Texas

E–19.
Docket# EL01–19, 001, *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*
Other#s EL02–16, 001, *PSEG Energy Resources & Trade L.L.C.* v. *New York Independent System Operator, Inc.*

E–20.
Docket# ER01–2390, 003, Huntington Beach Development, L.L.C.

E–21.
Omitted

E–22.
Omitted

E–23.
Docket# EL00–95, 052, *San Diego Gas & Electric Company* v. *Sellers of Energy*

and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 046, Investigation of Practices of California Independent System Operator Corporation & California Power Exchange
E–24.
Docket# ER01–3003, 001, Mid-Continent Area Power Pool
E–25.
Docket# EL02–18, 000, NEO, California Power L.L.C.
E–26.
Docket# RT01–98, 004, PJM Interconnection, L.L.C. and Allegheny Power
E–27.
Omitted
E–28.
Docket# EL01–105, 000, *The New Power Company* v. *PJM Interconnection, Inc.*
E–29.
Docket# EL02–19, 000, Illinois Municipal Electric Agency
E–30.
Omitted
E–31.
Docket# OA02–3, 000, Michigan Electric Transmission Company
E–32.
Docket# ER01–2020, 003, Carolina Power & Light Company and Florida Power Corporation
Other#s ER01–1807, 005, Carolina Power & Light Company and Florida Power Corporation
ER01–1807, 006, Carolina Power & Light Company and Florida Power Corporation
ER01–2020, 002, Carolina Power & Light Company and Florida Power Corporation
E–33.
Docket# ER01–2922, 001, New England Power Pool
E–34.
Docket# RM01–12, 000, Electricity Market Design and Structure
Other#s RT01–2, 000, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Public Service Electric & Gas Company and UGI Utilities, Inc.
RT01–10, 000, Allegheny Power
RT01–15, 000, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Puget Sound Energy, Inc. and Sierra Pacific Power Company
ER02–323, 000, Avista Corporation, Montana Power Company, Nevada Power Company, Portland General Electric Company, Sierra Pacific Power Company and TransConnect, LLC
RT01–34, 000, Southwest Power Pool, Inc.
RT01–35, 000, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company and Sierra Power Company
RTO1–67, 000, GridFlorida LLC, Florida Power & Light Company, Florida Power Corporation and Tampa Electric Company
RTO1–74, 000, Carolina Power & Light Company, Duke Energy Corporation, GridSouth Transco, LLC and South Carolina Electric & Gas Company
RTO1–75, 000, Entergy Services, Inc.
RTO1–77, 000, Southern Company Services, Inc.
RT01–85, 000, California Independent System Operator Corporation
RTO1–86, 000, Bangor Hydro-Electric Company, Central Maine Power Company, ISO New England Inc., National Grid USA, Northeast Utilities Service Company, United Illuminating Company and the Vermont Electric Power Company, Inc.
RTO1–87, 000, Midwest Independent System Operator
RTO1–88, 000, Ameren Corporation, American Electric Power Service Corporation, American Transmission Systems, Inc., Appalachian Power Company, Central Illinois Public Service Company, Cleveland Electric Illuminating Company, Columbus Southern Power Company, Commonwealth Edison Company of Indiana, Inc., Commonwealth Edison Company, Consumers Energy Company, Dayton Power and Light Company, Detroit Edison Company, Exelon Corporation, FirstEnergy Corporation, Illinois Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, Toledo Edison Company, Union Electric Company, Virginia Electric & Power Company and Wheeling Power Company
RTO1–94, 000, NSTAR Services Company
RTO1–95, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
RTO1–98, 000, PJM Interconnection L.L.C., Monongahela Power Company, Potomac Edison Company and West Penn Power Company
RTO1–99, 000, Regional Transmission Organizations
RTO1–100, 000, Regional Transmission Organizations
RTO1–101, 000, International Transmission Company
EC01–146, 000, International Transmission Company and DTE Energy Company
ER01–3000, 000, International Transmission Company
RTO2–1, 000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company and WestConnect RTO, LLC
EL02–9, 000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company and WestConnect RTO, LLC
ECO1–156, 000, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, TRANSLink Transmission Company, L.L.C. and Xeel Energy Services, Inc.
ER01–3154, 000, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, TRANSLink Transmission Company, L.L.C. and Xeel Energy Services, Inc.
ELO1–80, 000, National Grid USA
E–35.
Docket# ADO1–3, 000, California Infrastructure Update

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP01–375, 002, Vector Pipeline, L.P.
G–2.
Docket# RP02–147, 000, ANR Pipeline Company
G–3.
Docket# RP02–157, 000, Transwestern Pipeline Company
G–4.
Docket# PR02–1, 000, Acacia Natural Gas Corporation
G–5.
Docket# RP96–312, 061, Tennessee Gas Pipeline Company
Other#s GT01–34, 001, Tennessee Gas Pipeline Company
G–6.
Omitted
G–7.
Docket# RP00–340, 000, Gulf South Pipeline Company, LP
Other#s RP00–340, 001, Gulf South Pipeline Company, LP
RP00–340, 002, Gulf South Pipeline Company, LP
RP01–7, 000, Gulf South Pipeline Company, LP
G–8.
Docket# RP01–183, 000, OkTex Pipeline Company
G–9.
Docket# RP00–463, 000, Williston Basin Interstate Pipeline Company
Other#s RP00–463, 001, Williston Basin Interstate Pipeline Company
RP00–600, 000, Williston Basin Interstate Pipeline Company
G–10.
Docket# RP02–118, 000, High Island Offshore System
G–11.
Docket# RP00–331, 000, Algonquin Gas Transmission Company
Other#s RP00–331, 001, Algonquin Gas Transmission Company
RP01–23, 000, Algonquin Gas Transmission Company
RP01–23, 002, Algonquin Gas Transmission Company
G–12.
Omitted
G–13.

Docket# RP00–468, 000, Texas Eastern Transmission, L.P.
Other#s RP00–468, 001, Texas Eastern Transmission, L.P.
RP01–25, 000, Texas Eastern Transmission, L.P.
RP01–25, 001, Texas Eastern Transmission, L.P.
G–14.
Docket# RP00–484, 000, Wyoming Interstate Company, Ltd.
Other#s RP00–484, 001, Wyoming Interstate Company, Ltd.
RP01–39, 000, Wyoming Interstate Company, Ltd.
RP01–39, 001, Wyoming Interstate Company, Ltd.
G–15.
Docket# RP00–472, 000, USG Pipeline Company
Other#s RP01–31, 000, USG Pipeline Company
G–16.
Docket# RP00–536, 000, Venice Gathering System, L.L.C.
Other#s RP01–104, 000, Venice Gathering System, L.L.C.
G–17.
Docket# RP99–274, 003, Kern River Gas Transmission Company
G–18.
Docket# RP00–336, 002, El Paso Natural Gas Company
Other#s RP00–139, 000, ONEOK Energy Marketing & Trading Company, L.P.
RP01–484, 000, Aera Energy LLC
RP01–486, 000, Apache Nitrogen Products, Inc.
G–19.
Docket# RP00–408, 001, Ozark Gas Transmission, L.L.C.
G–20.
Docket# RP02–13, 001, Portland Natural Gas Transmission System
G–21.
Docket# RP98–430, 001, Transcontinental Gas Pipe Line Corporation
G–22.
Docket# RP98–40, 027, Panhandle Eastern Pipe Line Company
G–23.
Docket# IS00–221, 000, ExxonMobil Pipeline Company
Other#s OR00–2, 000, ExxonMobil Pipeline Company
G–24.
Docket# RP00–241, 007, *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P. and El Paso Merchant Energy Company*
G–25.
Docket# IS02–42, 001, Amberjack Pipeline Company
G–26.
Docket# RP01–236, 002, Transcontinental Gas Pipe Line Corporation
Other#s RP00–481, 002, Transcontinental Gas Pipe Line Corporation
RP00–553, 005, Transcontinental Gas Pipe Line Corporation
G–27.
Docket# GT02–1, 001, ANR Pipeline Company
G–28.
Docket# RP96–312, 067, Tennessee Gas Pipeline Company
G–29.
Docket# RP00–260, 008, Texas Gas Transmission Corporation
Other#s RP00–260, 000, Texas Gas Transmission Corporation
RP00–260, 001, Texas Gas Transmission Corporation
RP00–260, 002, Texas Gas Transmission Corporation
G–30.
Docket# RM96–1, 019, Standards for Business Practices of Interstate Natural Gas Pipelines
G–31.
Docket# MG02–1, 000, Southern LNG Inc.
G–32.
Docket# RP01–245, 007, Transcontinental Gas Pipe Line Corporation
G–33.
Docket# OR02–1, 000, Plantation Pipe Line Company

Energy Projects—Hydro

H–1.
Docket# UL00–3, 002, Homestake Mining Company
Other#s UL00–4, 002, Homestake Mining Company
H–2. Omitted
H–3. Omitted
H–4.
Docket# P–696, 012, PacifiCorp
H–5.
Docket# P–6032, 041, Niagara Mohawk Power Corporation and Fourth Branch Associates
H–6.
Omitted
H–7.
Docket# P–2177, 041, Georgia Power Company

Energy Projects—Certificates

C–1.
Docket# CP02–63, 000, White Rock Pipeline, L.L.C and Tri-State Ethanol Company, L.L.C.
Other#s CP02–63, 001, White Rock Pipeline, L.L.C. and Tri-State Ethanol Company, L.L.C.
C–2.
Docket# CP01–260, 000, Columbia Gas Transmission Corporation
C–3.
Docket# CP01–422, 000, Kern River Gas Transmission Company
C–4.
Docket# CP02–22, 000, Michigan Gas Storage Company
C–5.
Docket# CP02–27, 000, Florida Gas Transmission Company
C–6.
Docket# RP02–29, 001, Young Gas Storage Co., Ltd.
C–7.
Omitted
C–8.
Docket# CP01–376, 001, Intermountain Municipal Gas Agency and Questar Gas Company

Magalie R. Salas,

Secretary.

[FR Doc. 02–4558 Filed 2–21–02; 4:16 pm]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

New Exposure Draft Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of new exposure draft reclassification of stewardship responsibilities and eliminating the current services assessment.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, Reclassification of Stewardship Responsibilities and Eliminating the Current Assessment.

A summary of the proposed Statement follows: On February 19, 2002, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 5, Accounting for Liabilities of the Federal Government; Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards (SFFAS) 17, Accounting for Social Insurance. The amendment proposes that risk assumed information and the CSA be reclassified as required supplementary information (RSI).

Because it is deemed essential to fair presentation, Social Insurance information would be reclassified as an integral part of the basic financial statements. The exposure draft includes the Alternative Views of one Board member. The exposure draft also proposes that the requirement to report the CSA be eliminated after FY 2003, because improved timeliness in issuing audited financial statements should mean that these statements will be available before the President's Budget is published. The President's Budget is the source of the CSA. The exposure draft, entitled Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment, Amending Statement of Federal Financial Accounting Standards (SFFAS) 5, Accounting for Liabilities of the Federal Government, Statement of Federal Financial Accounting Standards (SFFAS) 8, Supplementary Stewardship Reporting, and Statement of Federal Financial Accounting Standards

(SFFAS) 17, Accounting for Social Insurance, will be out for comment until May 19, 2002.

The exposure draft will soon be mailed to FASAB's mailing list of subscribers. Additionally, it is available on FASAB's home page *http://www.fasab.gov/* Copies can be obtained by contacting FASAB at (202) 512–7350, or *bramlettr@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft.

Written comments are requested by May 19, 2002, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 20, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–4535 Filed 2–25–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the Technological Advisory Council (''Council'') under its new charter.

DATES: Wednesday, March 20, 2002 at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW, Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the fourth meeting under the Council's new charter will be to organize the Council's efforts to fulfill its responsibilities under the new charter and consider such questions as the Commission may put before it. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Council's Designated Federal Officer, before the meeting. Jeffery Goldthorp's e-mail address is *jgoldtho@fcc.gov*. His U.S. mail address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–4472 Filed 2–25–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2531]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 20, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by March 13, 2002. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MM Docket No. 00–39).

Number of Petitions Filed: 1.

Subject: Amendment of FM Table of Allotments (MM Docket No. 00–53, RM–9823).

Number of Petitions Filed: 2.

William F. Caton,

Acting Secretary.

[FR Doc. 02–4474 Filed 2–25–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Mr. C. Edward Floyd, Florence, South Carolina; to acquire additional voting shares of Sun Bancshares, Murrells Inlet, South Carolina, and thereby indirectly acquire addition voting shares of SunBank, National Association, Murrells Inlet, South Carolina.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4491 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. South Coastal Holdings MHC, Inc., Rockland, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of South Coastal Bank, Rockland, Massachusetts.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. HomeTown Financial Services, Inc., Longview, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of HomeTown National Bank, Longview, Washington.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4493 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 2002.

A.Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Allegiant Bancorp, Inc., Saint Louis, Missouri; to acquire Community Development Corporation, St. Louis, Missouri, and thereby to engage de novo in community development activities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–4492 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 14, 2002. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the various consumer financial services, and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Mortgage Disclosure Act - Discussion of issues related to recent amendments to Regulation C, which implements the Home Mortgage Disclosure Act.

Equal Credit Opportunity Act - Discussion of issues raised by proposed rules in the review of Regulation B, which implements the Equal Credit Opportunity Act.

Community Reinvestment Act - Discussion of issues identified in connection with the current review of Regulation BB, which implements the Community Reinvestment Act.

Committee Reports - Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470.

Board of Governors of the Federal Reserve System, February 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–4490 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, March 4, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–4641 Filed 2–22–02 2:15 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1098]

Pro Forma Financial Statements for Federal Reserve Priced Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: After considering comments received in response to its requests for comment on a proposal to discontinue the quarterly publication of interim pro forma financial statements for Federal Reserve priced services in March 2001, the Board has determined that the priced-services pro forma financial statements will only be produced annually.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding the priced-services pro forma financial statements contact Gregory L. Evans, Manager (202/452–3945); or Elizabeth Miyagi, Financial Analyst (202/452–2222), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunication Device for the Deaf (TDD) only, please contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Board has published pro forma financial statements for Federal Reserve priced services (pro formas) quarterly and annually since 1984. Essentially, the purpose of the pro formas is to provide information to the public regarding the financial results of Reserve Bank priced services activities and to allow the public to assess Federal Reserve compliance with the Monetary Control Act (MCA).

The MCA requires the Federal Reserve to set fees for priced services to recover total costs over the long run. The Federal Reserve reviews cost recovery over a ten-year period to assess compliance with the MCA requirement. The Board believes that the ten-year historical recovery rate, together with the annual pro formas published in the Board's Annual Report and the additional cost-recovery information included in the annual repricing **Federal Register** notice, provides the relevant information to enable Congress and the public to evaluate the Federal Reserve's performance under MCA. The Board believes the information in the quarterly pro formas is of little value to parties interested in priced-services financial results because it does not provide a relevant long-term cost-recovery assessment. Given the staff resources required to produce, document, and review the pro formas, the Board believes the cost of producing quarterly pro formas exceeds the benefit.

The Board requested public comment on discontinuing quarterly pro formas in March 2001 (66 FR 16945, March 28, 2001). The Board received only two comments on the proposal to discontinue publication of the quarterly pro formas, both disagreeing with the Board's recommendation. The comment letters, one from the National Clearinghouse Association (NCHA) and one from the Electronic Check Clearing House Organization (ECCHO) were essentially identical and indicated that the quarterly pro formas were the only source of current information that could provide early warning of trends and developments for Federal Reserve priced services specifically and for payments more generally. The commenters believed that such information is particularly important in the current environment of rapid changes in the payment system. The commenters also expressed surprise with the proposal to provide less information to the public given a recent GAO report on potential conflicts of interest, which concluded that the System should provide more information to the payments industry about its services and product enhancements.

Although these comments clearly expressed a desire for the continuation of the quarterly pro formas, they were not responsive with regard to identifying which elements of the current pro formas provide the most relevant information. The Board continues to believe that the information provided in the quarterly pro formas is of little value to parties interested in the Federal Reserve's priced-services financial results when compared with the costs to produce them. Quarterly pro formas present data for priced services activities at an aggregate level and do not provide information such as volume trends that the commenters had indicated in their comment letters. The Board recently, however, started providing more useful quarterly payment system information including volume trends on the Board's public website. This information is more relevant to the public and the payment system industry.

Because of the limited interest expressed in retaining the quarterly pro formas, the availability of more relevant information on the Board's website, and the Board's continued belief that quarterly pro formas do not provide sufficient useful information to warrant the preparation costs, the Board is changing the publication frequency of pro formas to annually.

By order of the Board of Governors of the Federal Reserve System, February 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–4489 Filed 2–25–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the National Community Centers of Excellence in Women's Health Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office on Women's Health, HHS.

ACTION: Notice.

Authority: This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–3, and 300u–6(e).

Purpose

To provide recognition and funding to community-based programs that unite promising approaches in women's health through the integration of the following six components: (1) Comprehensive health service delivery; (2) training for lay and professional health providers; (3) community-based research; (4) public education and outreach; (5) leadership development for women as health care consumers and providers; and (6) technical assistance to ensure the replication of promising models and strategies that coordinate and integrate women's health activities at the community level and improve health outcomes for

underserved women. The National Community Centers of Excellence in Women's Health (CCOE) program is not for the development of new programs or to fund direct service but rather to integrate, coordinate, and strengthen linkages between activities/programs that are already underway in the community in order to reduce fragmentation in women's health services and activities.

The proposed CCOE program must address women's health from a women-centered, women-friendly, women-relevant, holistic, multi-disciplinary, cultural and community-based perspective. Information and services provided must be at the educational level and within the language and cultural context that are most appropriate for the individuals for whom the information and services are intended. Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people in their lives. This definition of women's health encompasses both mental and physical health (including oral health) and spans the life course.

The CCOE program will be supported through the cooperative agreement mechanism, to allow a collaborative relationship between CCOEs and the Department of Health and Human Services (DHHS) offices. The DHHS funding offices include the Office on Women's Health (OWH), the Office of Minority and Women's Health in the Bureau of Primary Health Care of the Health Resources and Services Administration, and the Office of Minority Health. These offices will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities. Specifically, the Federal Government will:

1. Participate in at least two annual meetings with the CCOE Center Directors in the Washington, DC area.
2. Participate in the development of a comprehensive national CCOE ''how-to'' manual.
3. Review and approve the CCOE's local evaluations.
4. Participate in a national evaluation of the CCOE programs using guidance/measurements provided by the OWH contractor.
5. Review and concur with project modifications.
6. Review the design of CCOE Web pages.
7. Make site visits to the CCOE facilities.
8. Review all quarterly and final progress reports.
9. Conduct an orientation meeting for the new CCOEs within the first month of funding.

The DHHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010.* Emphasis will be placed on aligning CCOE activities and programs with the *Healthy People 2010:* Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 Web site: *http://www.health.gov/healthypeople.* Another reference is the *Healthy People 2010 Review—1998–99.* One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 [DHHS Publication No. (PHS) 99–1256]. This document may also be downloaded from the NCHS Web site: *http://www.cdc.gov/nchs.*

DATES: To be considered for review, applications must be Received by May 1, 2002. Applications will be considered as meeting the deadline if they are: (1) received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications that do not meet the deadline will be considered late and will be returned to the applicant unread.

ADDRESSES: Applications must be prepared using Form PHS 5161–1 (revised July 2000). This form is available in Adobe Acrobat format at the following Web site: *http://www.cdc.gov/od/pgo/forminfo.htm.* Complete applications should be submitted to: Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Room 1000, 5515 Security Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed in writing to Ms. Barbara James, CCOE Program Director, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *bjames1@osophs.dhhs.gov.* Technical assistance on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone: (301) 594–0758.

SUPPLEMENTARY INFORMATION:

Availability of Funds

The Office on Women's Health anticipates making up to 7 new awards in FY 2002. Awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to up to 7 competing applicants. However, the actual number of awards made will depend upon the amount of funds available for the CCOE program.

Period of Support

The start date for the cooperative agreement will be September 30, 2002. Support may be requested for a total project period not to exceed 5 years. Noncompeting continuation awards of up to $150,000 (total cost) per year will be made subject to satisfactory performance by the grantee and the availability of funds.

Eligible Applicants

The CCOE applicant must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Community health centers funded under Section 330 of the Public Health Service Act are encouraged to apply. All applicants receiving Section 330 funding must identify themselves as recipients of these funds in the Background section of the application and by checking the appropriate response on the OWH Project Profile form. Community entities/organizations, including faith-based organizations, that have alliances, partnerships, networks with, or have other affiliations with an academic health center are also eligible to apply for a CCOE grant as long as the community entity/organization has a leading management role in the activity and maintains control of all funding. Organizations that have previously submitted CCOE applications, but were not funded, are also eligible to reapply for this award. Academic health centers and state, county, and local health

departments are not eligible for this program.

To ensure a wide geographic distribution of the Centers of Excellence in Women's Health model, applications will be accepted from organizations in all of the American States and Territories except those that already have a National Center of Excellence in Women's Health (CoE) program or a National Community Center of Excellence in Women's Health (CCOE) program. Thus, applications will not be accepted from programs in the following states: AZ, CA, IL, IN, LA, MA, MI, MO, MN, NM, NY, OH, PA, PR, VT, WA, and WI. Preference will be given to DHHS regions that do not have a CCOE or a CoE program and to programs proposed to be implemented in medically underserved areas, enterprise communities, and empowerment zones. We encourage the submission of applications from eligible organizations in DHHS Regions IV and VIII.

Program Goals

The goals of the CCOE program are to:

1. Reduce the fragmentation of services and access barriers that women encounter using a framework that coordinates and integrates comprehensive health services with research, training, education, and leadership activities in the community to advance women's health.
2. Create healthier communities with a more integrated and coordinated women's health delivery system targeted to underserved women.
3. Empower underserved women as health care consumers and decision-makers.
4. Increase the women's health knowledge base using community-based research that involves the community in identifying research areas that address the health needs, and respond to, issues of concern to underserved women.
5. Increase the number of health professionals trained to work with underserved communities and increase their leadership and advocacy skills.
6. Increase the number of young women who pursue health careers and also increase the leadership skills and opportunities for women in the community.
7. Spread the successes, through technical assistance, of model women's health program strategies and new innovations to communities across the country that may be interested in replicating the model.
8. Eliminate health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation.

Project Requirements

A CCOE program must: (1) Develop and/or strengthen a framework to bring together a comprehensive array of services for women; (2) develop promising strategies to train a cadre of health care providers capable of addressing issues at the community level that impact underserved women's health needs; (3) develop strategies to prevent and/or reduce illness or injuries that appear controllable through individual knowledge and behavior; (4) conduct community-based research in women's health; (5) enhance public education and outreach activities in women's health with an emphasis on prevention and/or reduction of illness or injuries that appear controllable through increased knowledge that leads to a modification of behavior; (6) promote leadership/career development for women in the health professions and women/girls in the community; (7) demonstrate an ability to foster the transfer of lessons learned to other communities interested in improvements in women's health; (8) evaluate their program; and (9) participate in a national evaluation of the CCOE program. A CCOE program may develop outreach and education materials, training programs, and leadership development activities/materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community. In addition, the CCOE program must contribute to the development of a comprehensive national CCOE ''how-to'' manual by submitting, as part of their annual report, a section on steps taken to implement each component of the CCOE program, a discussion of the effectiveness of the implementation strategy(s) and how measured, and the impact of the program on the targeted community/population. A draft manual will be developed and made available to other organizations interested in establishing a CCOE program. The OWH plans to publish a final ''how-to'' manual near the end of the third cycle of funding for the CCOE program.

At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and, at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidiscliplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Application Requirements

Each applicant for a cooperative agreement funded under this CCOE announcement must, at a minimum:

1. Present a plan to integrate all six components of the CCOE program by the end of the first year of funding, although only four components have to be in place at the time the application is submitted. The challenge of the CCOE model is to stretch the ''medical health care model'' and ''think out of the box'' about ways to improve the health status of underserved women. Applicant are encouraged to be creative in suggesting ways to increase integration among the CCOE components.
2. Develop a CCOE advisory board or ensure that their already established advisory board is included in the decision-making process for CCOE program development, identification of community-based research questions, and formulation of CCOE policies. Applicants should also ensure that the advisory board includes representative(s) from their community partner organizations.
3. Be a sustainable organization with an established network of partners capable of providing coordinated and integrated women's health services in the targeted community. The network of partner organizations must have the capability to coordinate and provide comprehensive, seamless health services for women and empower them with community-based women's health research information that addresses issues of particular concern to the women, teaching/training opportunities in women's health, leadership opportunities for community women in health, and community outreach/education activities in women's health to improve the health status of women in the community. The applicant will need to define the components of comprehensive care, demonstrate that they are culturally, linguistically, and gender appropriate, and show that they have a clear and sustainable framework for providing those services.
4. Have an established clinical care center/facility, an operating public educational/outreach program, and a community identified as the recipient of technical assistance at the time the

application is submitted. A time line and plans for phasing in the remaining CCOE components by the end of Year 1 must be described in detail in the application.

5. Demonstrate the ways in which the organization and the care that are coordinated through its partners are women-focused, women-friendly, women-relevant, and sensitive to the importance of patient/provider communication/relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment.

6. Detail/specify the roles and resources/services that each partner organization brings to the program, the duration and terms of agreement as confirmed by a signed agreement between the applicant organization and each partner, and describe how the partner organizations will operate within the CCOE structure. The partnership agreement(s) must name the individual who will work with the CCOE program, describe their function, and state their qualifications. The documents, specific to each organization (form letters are not acceptable), must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director) and submitted as part of the grant application.

7. Describe in detail plans for the local evaluation of the CCOE program and when and how information obtained from the evaluation will be used to enhance the CCOE program. The applicant must also indicate their willingness to participate in a national evaluation of the CCOE program to be conducted under the leadership of the OWH contractor.

8. Describe in detail the planned community-based research and the research methodology/procedure. Applicants may: (a) Propose original patient-oriented research; (b) enter into a formal agreement with institutions conducting population-based research to facilitate women's entry into clinical trial(s)/patient-oriented research; (c) participate in the national evaluation of the CCOE program (required of all awardees); (d) link with organizations conducting community-based research; and/or (e) propose other original/creative research projects. To satisfy the community-based research component of the CCOE program, all applicants must undertake at least two of the research activities listed above, in addition to the required participation in the national CCOE evaluation. However, if a CCOE proposes to conduct original research and participate in the national evaluation of the CCOE program, these activities will satisfy the community-based research component.

Use of Grant Funds

A majority of the funds from the CCOE award must be used to support staff and efforts aimed at coordinating and integrating the major components of the CCOE program. The Center Director, or the person responsible for the day-to-day management of the CCOE program, must devote at least a 75 percent level of effort to the program. Additionally, 25 percent of the funds must target efforts to foster the transfer of lessons learned/successful strategies from the CCOE program (technical assistance). These may include either process-based lessons (*i.e.,* How to bring multiple community partners together) or outcomes-based lessons (*i.e.,* How to increase diabetes screening and control through improved outreach, education, and treatment). The CCOEs must foster the replication of the entire integrated CCOE model through activities such as showcasing them at meetings and workshops; providing direct technical assistance to other communities; participating in the development of national replication guidelines/materials; and providing technical assistance to health professionals, directly or through their professional organizations, interested in working with underserved women in the community. Applicants must provide a plan for how they will provide technical assistance in the first year. They will be expected to identify at least one community that they will work closely with to help them replicate all the components of the CCOE model, beginning no later than 6 months after receipt of the CCOE award, and provide materials for the development of a manual that describes how to link, coordinate, and partner within the community to form the CCOE infrastructure. The CCOEs must help the technical assistance community implement all components of the CCOE program (the entire integrated CCOE model) except technical assistance.

Funds may be used for personnel, consultants, supplies (including screening, education, and outreach supplies), and grant related travel. Items costing less than $5,000 are considered to be supplies. Funds may not be used for construction, building alterations, equipment, medical treatment, or renovations. All budget requests must be justified fully in terms of the proposed CCOE goals and objectives and include a computational explanation of how costs were determined.

The CCOE Center Directors will meet twice a year in the Washington metropolitan area. The CCOE's budget should include a request for funds to pay for the travel, lodging, and meals for the first Center Directors' meeting of each year. The first meeting is usually held between mid-November and mid-December. The OWH will pay the travel and other expenses associated with the second annual CCOE meeting which is usually held in May. Center Directors are encouraged to bring their Program Manager/Coordinators to these meetings.

In the first year of the award, the new CCOE Center Directors and Program Managers are required to attend an orientation meeting that will be held in the Washington metropolitan area in October 2002. Funds to attend this meeting should also be included as part of the CCOE budget request.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, arrive after the deadline, or are from states that already have a CCOE or a CoE program will be returned without review or comment. Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, community service delivery, community outreach, health education, community-based research, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of services, community-based research, education, training, leadership/career development, and technical assistance to other communities. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit and to the definitions provided.

Organization of Application

Applicants are required to submit an original ink-signed and dated application and 15 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″x11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of 25

double-spaced pages, excluding the appendices. The original and each copy must be stapled and/or otherwise securely bound. The application should be organized in accordance with the format presented in the Program Guidelines. An outline for the minimum information to be included in the ''Project Narrative'' section is presented below. Applications not adhering to these guidelines may not be reviewed.

I. Background
A. Local CCOE purpose(s) and goals
B. Section 330 funding
C. Local CCOE program objectives
1. Tied to program goal(s)
2. Measurable with time frame
3. Elements identified in Factor 5: Objectives
D. CCOE organization charts that include partners and a discussion of the resource being contributed to the CCOE, partners, personnel and their expertise and how their involvement will help achieve the CCOE program goals
II. Implementation Plan (Approach to the establishment of the CCOE program)
A. Components in place and plans with a timetable for phasing in the other CCOE components
B. Partnerships and referral system/follow up
C. Community-based research
D. National CCOE ''how-to'' manual
E. Elements identified in Factor 1: Implementation Plan
III. Management Plan
A. Key project staff
B. To-be-hired staff and their qualifications
C. Staff responsibilities
D. Management experience of the lead agency and partners as related to their role in the CCOE program
E. Advisory board
F. Elements identified in Factor 2: Management Plan
IV. Local CCOE Evaluation Plan
A. Purpose
B. Design/methodology
C. Use of results to enhance programs
D. Elements identified in Factor 3: Evaluation Plan
V. Technical Assistance/Replication Strategy
A. Identification of Technical Assistance community
B. Reason for selection of Technical Assistance community
C. Technical Assistance plans/strategies/time line
D. Plans for sustaining Technical Assistance
E. Elements identified in Factor 4: Technical Assistance
Appendices
A. Memorandums of Agreement/Understanding/Partnership Letters
B. Required Forms (Assurance of Compliance Form, etc.)
C. Other Attachments

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45%

This section must discuss:

1. Appropriateness of the existing community resources and linkages established to deliver coordinated women's services to meet the requirements of the CCOE program.

2. Appropriateness of proposed approach, component integration, and specific activities described to address each element of the National Community Center of Excellence in Women's Health program including: (a) Comprehensive women's health services, (b) outreach and education, (c) training for professional and lay health care workers serving underserved women, (d) community-based research that involves the community in substantive roles/ways, (e) leadership/career development for women providers, and women/girls in the community across the life span, and (f) technical assistance-the ability to train others in lessons learned and replication of successful strategies. Although all components of the CCOE do not have to be in place/operational at the time the application is submitted, the applicant must discuss/describe the resources available to support each component, time lines and plans for phasing in each component, and the relationship of each component to the overall goals and objectives of the CCOE program.

3. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

4. Willingness to participate in the national CCOE evaluation.

5. Willingness to contribute to the development of a comprehensive national CCOE ''how-to'' manual.

Factor 2: Management Plan—15%

Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff or requirements for ''to be hired'' staff, proposed staff level of effort, management experience of the lead agency and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the CCOE program, diversity of the CCOE staff as it relates to and reflects the community and populations served, and integration of the advisory board into the CCOE activities.

Factor 3: Evaluation Plan—10%

A clear statement of program goal(s) and thoroughness, feasibility and appropriateness of the local CCOE evaluation design, data collection plan, analysis of results, and procedures to determine if program goals are met. A clear statement of willingness to be involved actively in the national CCOE evaluation.

Factor 4: Technical Assistance—10%

Plans for the provision of technical assistance and the potential for replication of the CCOE model in similar populations and communities. The plan must include the name of and justification for the community selected and a detailed discussion of how the applicant will sustain interaction with the community. Technical assistance to the selected community must begin no later than 6 months after receipt of the CCOE award.

Factor 5: Objectives—10%

Merit of the objectives outlined by the applicant to address the CCOE program discussed in the program goals section in a way relevant to the targeted community needs and available resources. Objectives must be measurable and attainable within a stated time frame.

Factor 6: Background—10%

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed local community and target population of underserved women; demonstrated support and established linkages in place to operate a fully functional CCOE program; demonstrated access to medically underserved women; and documented past efforts/activities outcome with underserved women.

Award Criteria

Funding decisions will be made by the Office on Women's Health, and will take into consideration the recommendations and ratings of the review panel, program needs, geographic location, stated preferences, and the recommendations of DHHS Regional Women's Health Coordinators (RWHC). A pre-site visit, conducted by DHHS RWHCs will be scheduled prior to the award of a grant with all applicants with scores in the funding range. The purpose of the visit will be to assess the applicants' readiness to implement a CCOE program. The OWH plans to conduct the pre-site visits during the week of July 22, 2002.

Reporting (Other Requirements)

Provision of Smoke-Free Workplace and Nonuse of Tobacco Products by Recipients of PHS Grants

DHHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition,

Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. The due date for State process recommendations is 60 days after the application deadline. The Office on Women's Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

General Reporting Requirements

In addition to those listed above, a successful applicant will submit an annual progress report that includes a summary of the local CCOE evaluation and a discussion of steps taken to implement each component of the CCOE program and the impact of the program on the targeted community/population, an annual Financial Status Report, a final Progress Report, a final Financial Status Report, an Audit Report, and a Technical Assistance Documentation Report in the format established by the Office on Women's Health, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR part 74, subpart J and part 92.

Additionally, a successful applicant will submit quarterly progress reports. An original and two copies of the quarterly progress report must be submitted by January 1, April 1, July 1, and September 15. The last quarterly report will serve as the annual progress report and will describe all project activities for the entire year. The annual progress report must be submitted by September 15 of each year.

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

Clinical Care Center: At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Community-based: The locus of control and decision making powers are located at the community level, representing the service area of the community or a significant segment of the community.

Community-based organization: Public and private, nonprofit organizations that are representative of communities or significant segments of communities.

Community-based research: Community members work with researchers to help determine research issues, shape the research process/objectives, and bring research results back to the community. Community members' participation maximizes the potential for exchange in knowledge and implementation of research findings. The shared goal is to maintain scientific integrity in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes, but is not limited to, programs reimbursed through the Federally Qualified Health Centers mechanism, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services, and physical activity); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, social services referral, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate support that enable better coordination of women's health resources and help underserved women to navigate systems to obtain the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended.

Cultural perspective: Recognizes that culture, language, and country of origin have an important and significant impact on the health perceptions and health behaviors that produce a variety of health outcomes.

Enabling services: Services that help women access health care, such as

transportation, translation, child care, and case management.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. *Healthy People 2010* identifies the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate *Healthy People 2010* into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes mental as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity (6 CCOE components) that touch women's health, including clinical services, research, health training, public health outreach and education, leadership development for women, and technical assistance. The goal of this approach is to unite the strengths of each of these areas, and create a more informed, less fragmented, and efficient system of women's health for underserved women that can be replicated in other populations and communities.

Lifespan: Recognizes that women have different health and psycho-social needs as they encounter transitions across their lives and that the positive and negative effects of health and health behaviors are cumulative across a woman's life.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, dental health, etc.

Social Role: Recognizes that women routinely perform multiple, overlapping social roles that require continuous multi-tasking.

Sustainability: An organization's or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded by the CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: poverty, ethnicity and culture, mental or physical state, housing status, geographic location, language, sexual orientation, age, and lack of health insurance/under-insured.

Women-centered/women-focused: Addressing the needs and concerns of women (women-relevant) in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women, not for women. Women clients are considered active partners in their own health and wellness.

Dated: February 8, 2002.

Wanda K. Jones,

Deputy Assistant Secretary for Health.

[FR Doc. 02–4470 Filed 2–25–02; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: State Fatality Surveillance and Field Investigations of Occupational Injuries: Fatality Assessment and Control Evaluation, RFA CC–02–012

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): State Fatality Surveillance and Field Investigations of Occupational Injuries: Fatality Assessment and Control Evaluation (FACE), RFA CC–02–012.

Times and Dates: 8:30 a.m.-8:30 a.m., March 15, 2002 (Open), 9 a.m.-5 p.m., March 15, 2002 (Closed).

Place: Hotel Washington, 515 15th Street, NW., Washington DC 20004–2099.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA CC–02–012.

FOR MORE INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., Health Science Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, M/S E74, telephone (404) 498–2508.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 20, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–4507 Filed 2–25–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Musculoskeletal Disorders: Prevention and Treatment, RFA OH–02–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Musculoskeletal Disorders: Prevention and Treatment, RFA OH–02–004.

Times and Dates: 8 a.m.–8:30 a.m., March 12, 2002 (Open), 8:40 a.m.–5 p.m., March 12, 2002 (Closed), 8 a.m.–5 p.m., March 13, 2002 (Closed).

Place: Harbor Court Hotel, 550 Light Street, Baltimore MD 21202.

Status: Portions of the meeting will be closed to the public in accordance with

provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA OH–02–004.

CONTACT PERSON FOR MORE INFORMATION: Pervis Major, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, telephone (304) 285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 20, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–4508 Filed 2–25–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the ''Medicare Exclusion Database (MED),'' HHS/CMS/OFM/ No. 09–70–0534. The primary purpose of this system of records is to retrieve information that will be used to aid in the ability of CMS and its contractors (private insurance companies contracted to receive, check and pay bills submitted by providers of services) to ensure that no Medicare payments are made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS' proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 12, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Angela Brice-Smith (410) 786–4340, Office of Financial Management, CMS, and 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

Statutory and Regulatory Basis for System of Records

Under sections 1128 A and B and 1156 of the Social Security Act the Department of Health and Human Services through the Office of the Inspector General (OIG) was given the authority to Exclude certain individuals and entities from participation in the Medicare and other Federal and State health care programs. The Medicare contractors are responsible for ensuring that no payment is made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The exclusion also covers orders and referrals for items or services, as well as ownership or management of entities that provide items or services to Medicare beneficiaries.

CMS has recently surveyed the Medicare contractors regarding their ability to successfully enforce OIG exclusions. A number of problems with the current operational process have been identified, some of which directly relate to the data that CMS receives from the OIG and provides to the contractors. The data problems include a lack of standardized format for the cumulative exclusion database, incomplete data, and lack of a process to update exclusion data. Additionally, CMS currently does not have an efficient mechanism to determine which organizations employ excluded individuals.

In order to assist our contractors in determining that no excluded individual or entity receives Medicare payment, CMS will create and maintain a cumulative exclusion database. CMS will be able to match this database against files of providers billing Medicare to ensure that excluded individuals and entities do not violate the terms of their exclusion. In the long term, the MED will be available to a number of users, including all Medicare contractors, the Provider Enrollment Chain and Ownership System (PECOS) and, potentially, Medicaid State Agencies.

The MED project is divided into three phases. Phase I requires that a database be developed, populated and maintained in a standard format which contains the cumulative exclusion database containing all individuals and entities excluded from the Medicare program. The goals of Phase I are to analyze the OIG Exclusion file, clean up

and standardize the data, load a Medicare Exclusion Database (MED) and produce an extract file from the cleaned and standardized data.

Phase II requires that the data from the (MED) database is matched against data from CMS's Online Survey Certification and Reporting System (OSCAR) file, National Supplier Clearinghouse (NSC) file, Unique Physician Identification Number (UPIN) Registry, and Medicare contractor (fiscal intermediaries and carriers) provider files to determine that no excluded individual or entity is doing business with Medicare or Medicare providers and suppliers. Phase II will produce some basic Medicare Exclusion Database reporting for CMS's internal use.

Phase III will involve an open-ended analysis to identify additional tools CMS might use to determine who employs excluded individuals to ensure that employers of excluded individuals are not receiving payments from the Medicare program.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system of records will contain data elements that identify individuals and entities excluded from participation in the Medicare program:

Individual/Entity Name
Unique Physician Identification Number (UPIN)
Date of Birth
SSN
Address
Sanction Type
Sanction Date
Reinstatement Date
Date of Death
Name History
Date of Birth History
Address History
SSN History
UPIN History
EIN History
UPIN Match
OSCAR Match
NSC Match

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MED information that can be associated with an individual patient as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with MED information and identifiers. Non-identifiable data includes individual records with MED information and masked identifiers or MED information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the MED. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent

b. Unauthorized use of disclosure of the record;

c. Remove or destroy at the earliest time all patient-identifiable information; and

d. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MED without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To the agency of a State Government, or established by State law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare and other Federal and State health care programs.

MED data may potentially be released to the State only on those individuals who are either individuals or entities excluded from participation in the Medicare and other Federal and State health care programs, or employers of excluded individuals or entities, or are legal residents of the State, irrespective of the location of provider or supplier furnishing items or services.

3. To another Federal or State Agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that

implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or State agencies in their administration of a Federal health program may require MED information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The MED data will provide the research and evaluations a broader, longitudinal, national perspective of the status of individuals that are excluded from participation in Medicare. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other State agencies in their administration of a Federal health program may require MED information for the purpose of preventing, deterring, discovering, detecting, investigating, examining, prosecuting, suing with respect to, defending against, correcting, remedying, or otherwise combating such fraud and abuse in such programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The MED system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not

to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of MED data. MED information is submitted to CMS through standard systems. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of MED data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: February 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0534

SYSTEM NAME:

Medicare Exclusion Database (MED).

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain data elements that identify individuals and entities excluded from participation in the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain the individual-level identifying data such as name, addresses, dates of birth and death, Medicare provider identification number, SSN, sanction and reinstatement information, and identifying historical data including name, address, dates of birth, SSN and provider numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 1128 A and B and 1156 of the Social Security Act.

PURPOSE(S):

The primary purpose of this system of records is to retrieve information that will be used to aid in the ability of CMS and its contractors (private insurance companies contracted to receive, check and pay bills submitted by providers of services) to ensure that no Medicare payments are made with respect to any item or service (other than an emergency item or service) furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare. The information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; to another Federal or State agency to contribute to the accuracy of CMS's proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, and for payment related projects; and to disclose individual-specific information for the purpose of combating fraud and abuse in health benefits programs administered by CMS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MED without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To the agency of a State Government, or established by State law, for purposes of ensuring that no payments are made with respect to any item or service furnished by an individual or entity during the period when such individual or entity is excluded from participation in Medicare and other Federal and State health care programs.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

4. To an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, or for understanding and improving payment projects.

5. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic, optical and other electronic media

RETRIEVABILITY:

The records are retrieved by the Medicare provider number or the National Provider Identifier (NPI).

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and

National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

CMS will retain identifiable MED data for a total period of 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

CMS, Director, Office of Financial Management/Program Integrity Group, Division of Program Integrity Operations, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, age, and sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

The OIG Exclusion file, Online Survey Certification and Reporting System (OSCAR) file, National Supplier Clearing House (NSC) file, Unique Physician Identification Number (UPIN) Registry, Medicare contractor provider files and Social Security Administration (SSA) withholding records or other information services to determine who employs excluded individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–4469 Filed 2–25–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review GuidE (SARGe).

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress about the extent of problems facing these children or the effectiveness of assistance provided to these populations, without access to timely and accurate information. Currently, SACWIS systems support State efforts to meet the following Federal reporting requirements: the Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the new Chafee Independence Living Program. Forty-seven States and the District of Columbia have developed or have committed to develop a SACWIS system with Federal financial participation. The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document, have been adequately completed, and conform to applicable regulations and policies.

To initiate a review, States will submit the completed SACWIS Assessment Review GuidE (SARGe) and other documentation at the point that they have completed system development and the system is operational statewide. The additional documents submitted as part of this process should all be readily available to the State as a result of good project management.

The information collected in the SACWIS Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for title IV–E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process in their own system development efforts.

Respondents: State Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SARGe	5	1	200	1000

Estimated Total Annual Burden Hours: 1000.

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: February 20, 2002.

Bob Sargis,

Reports Clearance, Officer.

[FR Doc. 02–4546 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of the Assistant Secretary; Compassion Capital Fund

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Solicitation of public comments.

SUMMARY: ACF is preparing guidelines to award funds in fiscal year 2002, as allowed by the newly funded Compassion Capital Fund. In order to obtain a wide range of views and comments, ACF is soliciting comments from the public and other Federal agencies on the important issues that ACF should consider in developing such guidelines.

DATES: In order to be considered, comments must be received by ACF on or before March 29, 2002.

ADDRESSES: Comments sent by mail should be addressed to: Mr. Bobby Polito, Administration for Children and Families, 6th Floor—West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be sent by email to: *ccf@acf.dhhs.gov,* or faxed to Bobby Polito at 202–401–5770.

FOR FURTHER INFORMATION CONTACT: Mr. Bobby Polito, Administration for Children and Families, 6th Floor—West, 370 L'Enfant Promenade, SW., Washington, DC 20447 or phone: 202–690–6241.

SUPPLEMENTARY INFORMATION: In fiscal year 2002, the Congress funded the establishment of a Compassion Capital Fund. This new program is part of the Administration's Faith-Based Initiative. Funds will be used to support public/private partnerships to help small faith- and community-based organizations replicate or expand model social service programs and conduct evaluations of ''best practices'' among charitable organizations so that successful models can be emulated and expanded by others.

The Administration for Children and Families (ACF) within the Department of Health and Human Services has been given administrative responsibility for implementing this program. ACF is inviting public comment to help make informed deliberations about the parameters for this new program, as well as ways to support and promote rigorous evaluations on the ''best practices'' among charitable organizations.

Request for Comments

ACF is seeking public comment on the following topics and other topics that responders choose to address. Among things we are considering are: (1) Providing technical assistance for faith- and community-based organizations, such as—(A) grant writing and grant management assistance, which may include assistance provided through workshops and other guidance; (B) legal assistance with incorporation and with obtaining tax-exempt status; and (C) information on, and referrals to, other non-governmental organizations that provide expertise in accounting, legal issues, tax issues, program development, and on a variety of other organizational topics; (2) providing information and assistance for faith- and community-based organizations on capacity building; (3) providing for faith- and community-based organizations information on and assistance in identifying and using best practices for delivering assistance to persons, families, and communities in need; (4) providing information on, and assistance in, utilizing regional intermediary organizations to increase and strengthen the capabilities of nonprofit faith- and community-based organizations; (5) assisting faith- and community-based organizations in replicating social programs of demonstrated effectiveness; and (6) encouraging research on the best practices of social service organizations.

Dated: February 20, 2002.

Robert J. Polito,

Special Assistant for Faith-Based Initiatives Office of the Assistant Secretary.

[FR Doc. 02–4544 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KB, the Administration on Children, Youth and Families (ACYF) (67 FR 4453), as last amended January 30, 2002; Chapter KF, the Office of Child Support Enforcement (OCSE) (66 FR 13934), as last amended March 8, 2001; and Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA) (66 FR 52627), as last amended, October 16, 2001. This notice reflects the realignment of the discretionary, formula, entitlement and block grant functions within ACF.

These Chapters are amended as follows:

I. Chapter KB, Administration on Children, Youth and Families

A. Delete KB.10 Organization in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Office of Management Services (KBA1)
Head Start Bureau (KBC)
Program Operations Division (KBC1)
Program Support Division (KBC2)
Program Management Division (KBC3)
Children's Bureau (KBD)
Office of Child Abuse and Neglect (KBD1)
Division of Policy (KBD2)
Division of Program Implementation (KBD3)
Division of Data, Research and Innovation (KBD4)
Division of Child Welfare Capacity Building (KBD5)
Division of State Systems (KBD6)
Family and Youth Services Bureau (KBE)
Child Care Bureau (KBG)
Immediate Office/Administration (KBG1)
Program Operations Division (KBG2)
Policy Division (KBG3)
Technical Assistance Division (KBG4)

Delete KB.20 Functions, Paragraph A, in its entirety and replace with the following:

KB.20 Functions. A. The Office of the Commissioner serves as principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other officials of the Department on the sound development of children, youth, and families. It provides executive direction and management strategy to ACYF components. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office. In addition to the Immediate Office, the Office of the Commissioner contains the Office of Management Services. In support of the Commissioner and Deputy

Commissioner and in consultation with ACYF programs the:

Office of Management Services manages the formulation and execution of the budgets for ACYF programs and for federal administration; serves as the central control point for operational and long range planning; functions as Executive Secretariat for ACYF; including managing correspondence, correspondence systems, and electronic mail requests; reviews and manages clearance for program announcements for ACYF, the Administration for Native Americans (ANA), and the Administration on Developmental Disabilities (ADD); plans for/coordinates the provision of staff development and training; provides support for ACYF's personnel administration, including staffing, employee and labor relations, performance management and employee recognition; manages procurement planning and provides technical assistance regarding procurement; plans for/oversees the discretionary grant paneling process; manages ACYF-controlled space and facilities; performs manpower planning and administration; plans for, acquires, distributes and controls ACYF supplies; provides mail and messenger services; maintains duplicating, fax, and computer computer peripheral equipment; supports and manages automation within ACYF; provides for health and safety; and oversees travel, time and attendance, and other administrative functions for ACYF.

II. Chapter KF, Office of Child Support Enforcement

A. Delete KF.10 Organization in its entirety and replace with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director/Deputy Director/ Commissioner (KFA)
Office of Audit (KFAA)
Office of the Deputy Commissioner (KFB)
Office of Automation and Program Operations (KFB1)
Division of Federal Systems (KFB11)
Division of State and Tribal Systems (KFB12)
Division of Management Services (KFB2)
Division of Consumer Services (KFB3)
Division of Planning, Research, and Evaluation (KFB4)
Division of Policy (KFB5)
Division of Special Staffs (KFB6)
Division of State, Tribal and Local Assistance (KFB7)

B. Delete KF.20 Functions. Paragraph KFA, in its entirety and replace with the following:

KF.20 Functions. KFA. The Office of the Director and Deputy Director/ Commissioner. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/ Commissioner has day-to-day operational responsibility for Child Support Enforcement programs. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the Office of the Deputy Commissioner, the Office of Automation and Program Operations, and the Office of Audit.

The Office is responsible for developing regulations, guidance and standards for States/Tribes to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, State and tribal and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; outreach to the communities of faith and service, as well as access/visitation programs and advocacy interests and approving all instructions, policies and publications issued by OCSE staff. The Office is responsible for Child Support Enforcement financial analysis and strategy development; internal OCSE compliance operations; and the management of large-scale or high profile assistance activities involving multiple OCSE areas of responsibility.

C. Delete KF.20 Functions, Paragraph KFB2 Division of Management Services, in its entirety and replace with the following:

KFB2. The Division of Management Services manages the formulation and execution of the budgets for OCSE operated programs and for federal administration of the CSE program; serves as the central control point for operational and long-range planning of the needs of the OCSE; plans for and coordinates the provision of staff development and training; provides support for OCSE's personnel administration, including staffing, employee and labor relations, performance management, and employee recognition; manages procurement planning and provides technical assistance regarding procurement; manages OCSE-controlled space and facilities; performs manpower planning and administration; plans for, acquires, distributes, and controls OCSE supplies; provides mail and messenger services; maintains duplicating, fax, computer and computer peripheral equipment; supports and manages automation acquisition within OCSE; provides for health and safety; and overseas travel. In addition, the Division reviews and manages clearance of Federal Register Notices and program announcements for OCSE, the Office of Refugee Resettlement, the Office of Community Services, and the Office of Research and Evaluation.

D. Delete KF.20 Functions, Paragraph KFAB Office of Grants Management, in its entirety.

E. Delete KF.20 Functions, Paragraph KFAC Office of Mandatory Grants, in its entirety.

III. Chapter KP, Office of the Deputy Assistant Secretary for Administration

A. Delete KP.10 Organization in its entirety and replace with the following:

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Deputy Assistant Secretary for Administration (KPA)
Office of Information Services (KPB)
Office of Financial Services (KPC)
Office of Organizational Development Services (KPD)
Office of Customer Service and Administration (KPE)
Office of Grants Management (KPG)
Equal Employment Opportunity and Civil Rights Staff (KPH)
Office of Administrative Services and Facilities Management (KPL)

B. Amend KP.20 Functions to add the following new paragraph:

G. The Office of Grants Management is headed by a Director who reports to the Deputy Assistant Secretary for Administration and provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment

systems; and provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. The Office serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management.

Dated: February 19, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–4545 Filed 2–25–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0398]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 28, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Format and Content Requirements for Over-the-Counter (OTC) Drug Product Labeling (OMB Control No. 0910–0340)

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA amended its regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products. The rule requires OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. The rule is intended to enable consumers to better read and understand OTC drug product labeling and to apply this information to the safe and effective use of OTC drug products. FDA concludes that the labeling statements required under this rule are not subject to review by OMB because they are ''originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and therefore do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501 *et seq.*).

Section 201.66 (21 CFR 201.66) of the labeling requirements requires all OTC drug manufacturers to format labeling as set forth in paragraphs (c) and (d) of that section. FDA has learned from the industry that OTC drug product manufacturers routinely redesign the labeling of their products as part of their usual and customary business practice. The rule provides varied timeframes for implementing the labeling requirements. Therefore, the majority of respondents will be able to format OTC drug product labeling in accordance with § 201.66 as part of their routine redesign practice, creating no additional paperwork or economic burden.

In discussing the collection of information under the PRA in the final rule (64 FR 13254 at 13274 to 13276), the agency stated that of the 39,310 stockkeeping units (SKUs) (individual products, packages, and sizes) currently marketed under a final monograph, approximately 32 percent, or 12,573 products, may necessitate labeling changes sooner than provided under their usual and customary practice of label design. FDA estimated that of the 400 respondents who produce OTC drug products, including the 12,573 products described above, each may be required to respond approximately 31.4 times to this rule outside of their usual and customary practice. Each response was estimated to take, on the average of, 4 hours, for a total of 50,292 hours per year. The burden was expected to be a one-time burden.

The agency stated that although the usual and customary practice of label redesign would minimize the burden for the remaining 68 percent of SKUs currently marketed, or 26,737 products, additional time may be necessary for each company to make the format changes under this rule. FDA estimated that of the 400 respondents, who produce OTC drug products, each may be required to respond approximately 66.8 times to bring the 26,737 products into compliance with this rule. FDA estimated that for this group, each response will take an average of 2.5 hours for a total of 66,842 hours. The burden was expected to be a one-time burden.

Finally, the agency estimated that approximately 61 respondents hold new drug applications (NDAs) and abbreviated new drug applications (ANDAs) (41 NDA holders and 20 ANDA holders) for which supplements and amendments will be required. FDA expected that 522 submissions (350 to NDAs and 172 to ANDAs) will be required for labeling changes under 21 CFR 201.66(c) and (d), which averages to 8.5 submissions per respondent. The agency estimated that each submission will take an average of 2 hours to prepare for a total of 1,040 hours annually. The burden was also expected to be a one-time burden.

Since the final rule was issued on March 17, 1999, the agency has extended the April 16, 2001, compliance date by 1 year to April 16, 2002 (with a corresponding extension of the April 16, 2002, compliance date for products with annual sales of less than $25,000 to April 16, 2003) (65 FR 38191, June 20, 2000). During this time, the agency has published only one major final rule (which has had its effective date extended from May 21, 2001, to December 31, 2002) (65 FR 36319, June 8, 2000) and several minor amendments to existing final rules. These monograph amendments have an effective date of May 16, 2002, so that the relabeling required by the amendments may be coordinated with the relabeling required by the OTC drug product labeling final rule. For these reasons, the agency believes that the numbers of affected products in the different categories discussed in the collection of information in the final rule are little changed. Accordingly, the agency is listing the same number of respondents, annual frequency per response, and total annual responses in this notice.

The agency believes the hours per response and total hours may be less than the numbers stated in the final rule

for several reasons. First, respondents have made a number of inquiries already since the final rule was issued in 1999. The agency's experience with these inquires made to the agency is that inquiries have been less than 2.5 or 4 hours per response, generally averaging 0.25 to 0.5 hours per inquiry. Second, the agency issued a draft guidance for industry entitled ''Labeling Over-the-Counter Human Drug Products; Updating Labeling in ANDA's'' (66 FR 11174, February 22, 2001), which included a number of labeling examples to assist holders of ANDAs for OTC drug products and manufacturers of reference listed drugs for the ANDAs to implement the new OTC drug product labeling regulation. This guidance should have reduced some of the hours per response and total hours for some NDA and ANDA holders. However, the agency is not currently able to estimate how much the time has been reduced. Accordingly, the agency is listing the same hours per response and total hours in this notice as appeared in the final rule.

In the **Federal Register** of September 27, 2001 (66 FR 49388), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.66	400	31.43	12,573	4	50,292
201.66	400	66.8	26,737	2.5	66,842
201.66(c) and (d)	61	8.5	522	2	1,044
201.66(e)	25	4	100	24	2,400
Total					120,578

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–4511 Filed 2–25–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301 443–1129).

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (OMB No. 0915–0233)—Revision

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (sections 740 and 739 of the Public Health Service (PHS) Act, respectively) provide opportunities for under-represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR) is used to track program participants throughout the health professions pipeline into the health care workforce. This request includes minor revisions to the previously approved data collection instrument that will address a number of data collection, data entry, as well as analytical problems encountered by the respondents.

The DATOR, to be completed annually by HCOP and COE grantees, includes basic data on student participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument is not expected to add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. The reporting burden includes the total time, effort, and financial resources expended to maintain, retain and provide the information including: (1) Reviewing instructions; (2) downloading and utilizing technology for the purposes of collecting, validating, and processing the data; and (3) transmitting electronically, or otherwise disclosing the information. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
DATOR	150	1	1	150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 19, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–4461 Filed 2–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the annual report for the following Health Resources and Services Administration's Federal advisory committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at The Library of Congress, Newspaper and Current Periodical Reading Room, James Madison Memorial Building, Room 133, Independence Avenue, SE., between 1st and 2nd Streets, Washington, DC.

Copies may be obtained from: Christopher DeGraw, M.D., M.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Parklawn Building, Room 18A–55, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2340.

Dated: February 20, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–4462 Filed 2–25–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–6333–PF; GP2–0098]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Salem Oregon BLM Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Salem BLM Resource Advisory Committee include: development of rules of conduct, develop criteria for and select 2002 projects, public forum, identification of opportunities for future field trips.

DATES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 9 a.m. to 3 p.m., on March 28, and April 12, 2002.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Rd. SE, Salem, Oregon 97306. (503–375–5657).

Dated: February 5, 2002.

Denis Williamson,

District Manager.

[FR Doc. 02–4543 Filed 2–25–02; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–922 (Final)]

Automotive Replacement Glass Windshields From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: On September 19, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigation (**Federal Register** 66 FR 53630, October 23, 2001). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by the U.S. Department of Commerce, which was on February 12, 2002 (**Federal Register** 66 FR 6482, February 12, 2002). The Commission, therefore, is revising its schedule.

The Commission's new schedule for the investigation is as follows: the Commission will make its final release of information on March 13, 2002; and final party comments are due on March 15, 2002.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 20, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4496 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–925 (Final)]

Greenhouse Tomatoes From Canada; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of Eurofresh LLC; Village Farms, LLC; Sunblest Management LLC; Sunblest Farms LLC; and Hydroage (collectively ''Petitioners''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for February 21, 2002, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Office of General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3095, e-mail mdiehl@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioners have justified the need for a closed session. Petitioners seek a closed session to allow testimony concerning the reliability of pricing data on the record and the concerning financial data of the Petitioners. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held *in camera.* In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by Petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a confidential presentation by Petitioners and a rebuttal presentation by respondents. Questions from the Commission relating to the BPI will follow each of the *in camera* presentations. During the *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: On behalf of the General Counsel, the Deputy General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in his opinion, a portion of the Commission's hearing in Greenhouse Tomatoes from Canada, Inv. No. 731–TA–925 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: February 19, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4459 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–439]

U.S.-Singapore Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 19, 2002.

SUMMARY: Following receipt of a request on February 11, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–439, *U.S.-Singapore Free Trade Agreement: Advice Concerning the Probable Economic Effect*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from John Davitt, Project Leader (202–205–3407 or *jdavitt@usitc.gov*) or Chris Johnson, Deputy Project Leader (202–205–3488 or *cjohnson@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Peg O'Laughlin of the Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by USTR, the Commission will provide advice as to the probable economic effects of providing duty-free treatment for imports of products of Singapore on industries in the United States producing like or directly competitive articles, and on consumers. The analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The advice will be based on the 2002 Harmonized Tariff System nomenclature and trade data for the year 2000. The USTR requested the Commission to provide the advice in a confidential report, by June 11, 2002, if possible. In his letter to the Commission, the USTR stated that ''* * *, the United States and the Republic of Singapore are engaged in negotiations to reach a comprehensive bilateral free trade agreement (FTA). Among other things, the agreement will eliminate tariffs on substantially all trade in goods between the United States and Singapore.'' He noted that a previous U.S. International Trade Commission report, *U.S.-Singapore Free Trade Agreement: Potential Trade and Economic Effects*, Inv. No. 332–422 (January 2001) had served as a useful tool in helping formulate U.S. negotiating positions and in conducting an environmental review of the proposed agreement and that the additional advice he is now requesting will assist them in carrying out tariff negotiations with Singapore.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 25, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary,

United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 16, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 18, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 9, 2002. In the event that, as of the close of business on April 16, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 16, 2002, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted by interested parties in its report to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 9, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

List of Subjects

Singapore, tariffs, and imports.

By order of the Commission.

Issued: February 20, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–4497 Filed 2–25–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Alien Labor Certification Activity Report

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the State Alien Labor Certification Activity Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 29, 2002.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9037, State Alien Labor Certification Activity Report, should be directed to Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210 ((202) 693–3010 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

Alien labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) require State Employment Security Agencies (SESAs) to initially process applications for permanent and temporary labor certifications filed by U.S. employers on behalf of alien workers seeking to be employed in the U.S. SESAs are also responsible for issuing prevailing wage determinations, reviewing employer-provided wage surveys or other source data, conducting housing inspections of facilities offered to migrant and seasonal workers, and conducting and monitoring recruitment activities seeking qualified U.S. workers for the jobs employers are attempting to fill with foreign workers. The SESAs perform these functions under a reimbursable grant that is awarded annually. The information pertaining to these functions is collected on the Form ETA 9037 and will be used by Departmental staff to manage alien labor certification programs in the SESAs. The Department will be able to monitor the number of applications that the State has received, processed, and forwarded to ETA Regional offices, and the number of prevailing wage determinations issued to employers under the permanent and temporary labor certification programs, as well as the H–1B program for nonimmigrant professionals in specialty occupations. The information on workload will be used for formulating budget estimates for both state and Federal workloads, and for monitoring a State's performance against the Grant Statement of Work and Work Plan. Without such information, the budget workload figures will be estimates and the allocation of funding to the SESAs will not reflect the true workload in a State.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, e.g., permitting electronic submissions of responses.

III. Current Actions

In order for the Department to meet its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to the State Alien Labor Certification Activity Report.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Agency Number: Form ETA 9037.

Recordkeeping: Semi-Annually.

Affected Public: State governments.

Total Responses: 108.

Average Time per Response: 2 hours.

Total Burden Cost (Capital/Startup): 0.

Total Burden Cost (Operating/Maintaining): $50 per response.

Comment Language: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington DC, this 19th day of February, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–4521 Filed 2–25–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10949]

Kimball International, Inc. Retirement Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

On January 9, 2002 (67 FR 1242), the Department published in the **Federal Register** an exemption (the Exemption) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986, which would allow the sale by the Plan of stock of SVB&T Corporation.

The Department notes that in the second column, in the first paragraph of the Exemption on page 1246 of the **Federal Register** the operative language should read as follows: ''The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of SVB&T Corporation (Springs Valley) to Springs Valley, the parent company of the Plan trustee, Springs Valley Bank & Trust, and a party in interest with respect to the Plan, provided that the following conditions are met.''

The Department hereby amends the Exemption to incorporate such change.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

Signed at Washington, DC, this 20th day of February, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–4500 Filed 2–25–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 145th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 8, 2002, from 9:00 a.m. to 11:45 a.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be a tribute to Chairman Michael Hammond featuring cellist Norman Fischer of the Concord Quartet from Rice University. This will be followed by Congressional and budget updates. Other topics will include: Application Review for Access, Arts Learning, Heritage/Preservation, Challenge America, Partnership Agreements, Leadership Initiatives and Policy Research & Analysis; review of Guidelines for Arts Learning, Arts on Radio & Television, American Jazz Masters Fellowships, Folk Arts Infrastructure Initiative, National Heritage Fellowships, Partnership Agreements, and Resources for Change: Technology; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: February 20, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines, Panel & Council Operations.

[FR Doc. 02–4473 Filed 2–25–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval Continue an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the

submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by April 29, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703–292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Approval Number: 3145–0035.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to continue an information collection for three years.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

Use of the Information: The Foundation has the following honorary award programs:

• *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980. The Committee agreed that such a form standardized the nomination format, benefiting the nominator, making the Committee's review process more efficient and permitted better staff work in a shorter period of time. Form NSF–1122 will be used to further standardize the nomination procedures, thus continuing to allow for more effective committee review, and permitting better staff work in a shorter period of time.

The Committee has established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering, or social and behavioral sciences is to be the principal criterion.

2. Achievements of an unusually significant nature in relation to the potential effects of such achievements on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.

4. Recognition by peers within the scientific community.

5. Contributions to innovation and industry.

6. Influence on education through publications, students.

7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

Nominations remain active for a period of four years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Nomination forms should be typewritten, single-spaced using a font no smaller than 12 characters per inch. Renominations may be submitted via an updated nomination form.

• *Alan T. Waterman Award.* Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Pub. L. 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendations to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the Ph.D. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innnovation, and significant impact on the field.

• *Vannevar Bush Award.* The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The annual award recognizes an individual who, through public service activities in science and technology, has made an outstanding ''contribution toward the welfare of mankind and the Nation.''

The NSB ad hoc Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished him/herself through public service activities in science and technology.

2. Pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Leadership and creativity has inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Leadership and creativity has helped mold the history of advancements in the Nation's science, technology, and education.

Nomination submissions are in letter format, accompanied by a curriculum vitae (without publication), a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science, and two reference letters. Nominations remain active for three years, including the year of nomination.

• *NSB Public Service Award*. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations who have increased the public understanding of science or engineering. This award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientists and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nomination Procedures

1. Prepare a summary of the nominee's activities as they relate to the selection criteria. Include the nominator's name, address and telephone number, and the name, address, and telephone number of the nominee, as well as the nominee's vita, if appropriate (no more than three pages).

2. The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

3. Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the selection committee.

4. Nominations should be mailed or faxed to the NSB Public Service Award Advisory Committee. Electronic mail does not protect confidentiality and should not be used for this purpose.

Estimate of Burden: These are annual programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 1,242 hours, broken down by 450 hours for the President's National Medal of Science (10 hours per 45 respondents); 600 hours for the Alan T. Waterman Award (10 hours per 60 respondents); 72 hours for the Vannevar Bush Award (6 hours per 12 respondents); and 120 hours for the Public Service Award (6 hours per 20 respondents).

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 21, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–4542 Filed 2–25–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, March 5, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7444—Railroad Accident Brief and Safety Recommendation Letters—Derailment of Amtrak Train No. 5–17 on Burlington Northern and Santa Fe Railway Track near Nodaway, Iowa, March 17, 2001.

7445—Railroad Accident Report—Derailment of CSX Transportation Coal Train V986–26 at Bloomington, Maryland, January 30, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 22, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–4656 Filed 2–22–02; 2:15 pm]

BILLING CODE 7533–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2 PM, Thursday, February 28, 2002.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

AGENDA:

I. Call to Order
II. Introductions
III. Approval of Minutes—12/17/2001
IV. Audit Committee Report—1/22/2002
  A. Financial Statements
  B. OMB A–133 Report
V. Budget Committee Report—1/31/2002
VI. Resolution Appreciation
VII. Treasurer's Report
VIII. Executive Directors Management Report
  A. NHSA
  B. Campaign on Homeownership Presentation
IX. Adjournment

Jeffrey T. Bryson,
General Counsel/Secretary.

[FR Doc. 02–4556 Filed 2–21–02; 4:11 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit No. 1; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC/the licensee) is the holder of Facility Operating License No. DPR–66 which authorizes operation of Beaver Valley Power Station, Unit No. 1 (BVPS–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Beaver County, Pennsylvania.

2.0 Discussion

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.60(a), requires that ''all light-water nuclear power reactors . . . must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to this part.'' appendix G to 10 CFR part 50 requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Code. In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references made to the ASME Code denote the 1995 Edition of the ASME Code, including the 1996 Addenda.

In order to support a proposed amendment to the BVPS–1 Technical Specification (TS) P–T limit curves, FENOC requested in its application dated June 29, 2001, that the staff exempt BVPS–1 from application of specific requirements of 10 CFR Part 50, Section 50.60(a), and 10 CFR Part 50, Appendix G, and substitute use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials for use in determining the P–T limits. The proposed exemption is consistent with, and is needed to support, the BVPS–1 TS amendment request that was contained in the same application. The proposed BVPS–1 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) to 22 effective full power years (EFPYs).

The proposed TS amendment to revise the P–T limits for BVPS–1 relies in part on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Code Section XI, Appendix A, Figure A–2200–1, as the basis fracture toughness curve for defining the BVPS–1 P–T limits in lieu of using the lower bound K_{IA} fracture toughness curve of ASME Code Section XI, Appendix G, Figure G–2210–1. The other margins involved with the ASME Code, Section XI, Appendix G, process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect public health and safety from potential RPV failure. In addition, P–T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low-temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Code, Section XI, and the minimum required pressure for the reactor coolant pump (RCP) seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system (OPPS) actuation. This OPPS actuation could be caused by pressure surges associated with normal plant evolutions such as starting RCS pumps or switching operating charging pumps while the RCS is in a water-solid condition.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G procedure, continued operation of BVPS–1 with these P–T curves without the relief provided by ASME Code Case N–640 may unnecessarily restrict the P–T operating window, especially at low-temperature conditions. The operating window becomes more restrictive with continued reactor vessel service. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(iii), regarding undue hardship, and requested the exemption to use the provisions of ASME Code Case N–640 in the development of BVPS–1 RPV P–T limit curves.

The Nuclear Regulatory Commission (NRC) staff has reviewed the exemption request submitted by FENOC and has concluded that an exemption should be granted to permit the licensee to use the provisions of ASME Code Case N–640 for the purpose of developing BVPS–1 RPV P–T limit curves. However, the

NRC staff does not agree with the special circumstances cited by FENOC in its June 29, 2001, application regarding the basis for granting the exemption. The NRC staff did not conclude that the circumstances cited above constitute ''undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated,'' pursuant to 10 CFR 50.12(a)(2)(iii). Rather, the NRC staff concluded that the application of the technical provisions of ASME Code Case N–640 provided sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations, Appendix G to 10 CFR Part 50, will continue to be met and that the specific conditions required by the regulations (i.e., use of all provisions in Appendix G to Section XI of the ASME Code) were not necessary. Therefore, the NRC staff grants the requested exemption to FENOC based on the special circumstances of 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME Code, Section XI, Appendix G procedure, was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G requirements, by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

3.0 Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The NRC staff accepts the licensee's determination that an exemption would be required to approve the use of ASME Code Case N–640. The NRC staff concluded that the use of ASME Code Case N–640 would meet the underlying intent of Appendix G to 10 CFR part 50.

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50, Appendix G to Section XI of the ASME Code, and RG 1.99, Revision 2, the staff concluded that application of ASME Code Case N–640 as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

Therefore, the staff concludes that granting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of ASME Code Case N–640 may be used to revise the P–T limits for the BVPS–1 RCS.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants First Energy Nuclear Operating Company an exemption from the requirements of 10 CFR 50.60(a), and 10 CFR part 50, Appendix G, for the development of P–T limit curves for the BVPS–1 reactor coolant system.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 7405).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of February 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–4518 Filed 2–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendments would be a full conversion from the Current Technical Specifications (CTS) to a set of Improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications (STS) for Westinghouse Plants,'' Revision 1, dated April 1995. The STS have been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and have been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TS) for nuclear power plants. As part of the proposed amendments, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS and, using NUREG–1431 as a basis, proposed ITS for North Anna Power Station, Units 1 and 2. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953). The rule change became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated specifications changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, complex rearranging of requirements, and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering, and rewording processes reflect the attributes of NUREG–1431

and do not involve technical changes to the existing TS. The proposed changes include: (a) Identifying plant-specific wording for system names, etc.; (b) changing the wording of specification titles in the CTS to conform to the STS; (c) splitting up requirements that are currently grouped, or combining requirements that are currently in separate specifications; (d) deleting specifications whose applicability has expired; and (e) changing the wording that is consistent with the CTS but that more clearly or explicitly states existing requirements. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated specifications changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TS. Relocated changes are those CTS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents. The licensee's application of the screening criteria to North Anna Power Station, Units 1 and 2, is described in the December 11, 2000, application. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the Updated Final Safety Analysis Report (UFSAR), the ITS Bases, the Technical Requirements Manual that is incorporated by reference in the UFSAR, the Core Operating Limits Report, the Offsite Dose Calculation Manual, the Inservice Testing Program, the Inservice Inspection Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the plant. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses.

Less restrictive changes are those where CTS requirements are relaxed, relocated, eliminated, or where new plant operational flexibility has been provided. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new staff positions that have evolved from the technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITS. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the CTS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also (1) changes proposed that are different from the requirements in both the CTS and the STS, and (2) changes that are in addition to those changes that are needed to meet the overall purpose of the conversion. These changes are referred to as beyond-scope changes and would:

1. Change the Allowable Value for engineered safety feature actuation system (ESFAS) interlock P–12 from ≤ 545 degrees F and ≥ 541 degrees F to ≤ 545 degrees F and > 542 degrees F. (ITS 3.3.2)

2. Remove the trip setpoints and change the Allowable Values for the ESFAS Instrumentation. (ITS 3.3.2)

3. Add a note to Action C to indicate that the accumulator isolation is only applicable when accumulator pressure is greater than the power-operated relief valve (PORV) setting, add REQUIRED ACTION C.2 to state ''Remove power from affected accumulator isolation valve operators,'' and add a note in the Limiting Condition for Operation (LCO) section that states ''Accumulator isolation with power removed from the isolation valve operators is only required when accumulator pressure is greater than the PORV lift setting.'' (ITS 3.4.12)

4. Revise required Actions A.2, B.2, C.2, and D.2 to allow verification by administrative controls to ensure the Main Feedwater Isolation Valves, Main Feedwater Regulating Valves, Main Feedwater Pump Discharge Valves, and Main Feedwater Regulating Bypass Valves are closed. (ITS 3.7.3)

5. Remove Component Cooling Water System from ITS LCO 3.7.7. (ITS 3.7.7)

6. Remove the North Anna Reservoir from the Ultimate Heat Sink requirements of ITS. The CTS defines the Ultimate Heat Sink as both the Service Water Reservoir and North Anna Reservoir. (ITS 3.7.9)

7. Revise the surveillance requirement (SR) frequency from ''18 months'' to ''18 months on a staggered test basis'' for the Main Control Room (MCR)/Emergency Switchgear Room (ESGR) Air Conditioning System. (ITS 3.7.11.1)

8. Add a note to allow the emergency core cooling system (ECCS) pump room boundary openings, which were not open by design, to be opened intermittently under administrative control. (ITS 3.7.12)

9. Add an SR to actuate each ECCS pump room exhaust air cleanup system train by aligning the safeguards area exhaust flow and auxiliary building central exhaust flow through the auxiliary building high-efficiency particulate air filter and charcoal adsorber assembly. Change current SRs to verify each safeguards area exhaust flow is diverted and each auxiliary building filter bank is actuated on an actual or simulated actuation signal. (ITS 3.7.12.2 and 3.7.12.4)

10. Add ACTION B to allow two or more required MCR/ESGR bottled air system trains to be inoperable for up to 24 hours. (ITS 3.7.13)

11. Delete testing requirements for the fuel building filtration system. (ITS 3.7.15)

12. Delete the requirements to obtain NRC approval prior to plant operations whenever a steam generator is found to be in Category C–3. (ITS Table 5.5.8–2)

13. Implement plant-specific equations for the overtemperature and overpower delta T equations presently used for the CTS. (ITS 3.3.1)

14. Change SR 3.3.1.2 and the CTS by only requiring an adjustment of the power range channel if the indicated

power of the nuclear instrumentation channel is more than 2% lower than the calculated power of the calorimetric. (ITS 3.3.1)

15. Revise the allowable values of the setpoint for the P–7 low power reactor trips block interlock to a value that differs from the CTS. (ITS 3.3.1, Table 3.3.1–1)

16. Revise the ITS to require entry into ACTION if less than 100% of MCR/ESGR air conditioning system is available. (ITS 3.7.11)

17. Add a function to Table 3.3.2–1 for automatic swichover to containment sump to occur when the refueling water storage tank level is at low—low level. (ITS 3.3.2)

18. Revise the CTS values for reactor trip system instrumentation interlocks by not requiring these specific interlocks to state the reset values for the allowable values. (ITS 3.3.1)

19. Review Technical Report EE–0116, Revision 1 ''Allowable Values for Surry and North Anna Improved Technical Specifications (ITS) Tables 3.3.1–1 and 3.3.2–1.''

Before issuance of the license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 28, 2002, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Route 156, Waterford, CT 06385, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 11, 2000, as supplemented by letters dated May 30, June 18, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, and January 31, 2002, which are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet

at the NRC Web site, http://www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of February 2002.

For the Nuclear Regulatory Commission.

Stephen R. Monarque,

Project Manager, Section I, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–4520 Filed 2–25–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 25, March 4, 11, 18, 25, April 1, 2002.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

NOTE: MATTERS TO BE CONSIDERED:

Week of February 25, 2002

Friday, March 1, 2002

9:30 a.m.
Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 4, 2002—Tentative

Monday, March 4, 2002

2:00 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting)
(Contact: Claudia Seelig, 301–415–7243)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)
This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)
This meeting will be webcast live at the Web address—*www. nrc.gov*

Week of March 25, 2002—Tentative

There are no meetings scheduled for the Week of March 25, 2002.

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 21, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–4575 Filed 2–22–02; 10:18 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under the PBGC's regulation on Annual Financial and Actuarial Information Reporting, 29 CFR part 4010 (OMB control number 1212–0049; expires March 31, 2002). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by March 28, 2002.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) may be obtained without charge by writing to or visiting the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4040). The regulation on Annual Financial and Actuarial Information Reporting can be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a controlled group to submit identifying, financial, and actuarial information to the PBGC in certain circumstances. Reporting is required (1) if the aggregate unfunded vested benefits of all defined benefit pension plans maintained by the controlled group exceed $50 million, (2) if the controlled group maintains any plan with missed contributions aggregating more than $1 million (unless paid within a ten-day grace period), or (3) if the controlled group maintains any plan with funding waivers in excess of $1 million and any portion is still outstanding (taking into account certain credit balances in the funding standard account). The PBGC's regulation on Annual Financial and Actuarial Information Reporting (29

CFR part 4010) implements section 4010.

The regulation requires the controlled group to file certain identifying information, certain financial information, each plan's actuarial valuation report, certain participant information, and a determination of the amount of each plan's benefit liabilities. The information submitted under the regulation allows the PBGC (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities.

The collection of information under the regulation has been approved by OMB under control number 1212–0049, expiring March 31, 2002. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 70 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 7.9 hours and $10,000 per controlled group, for a total burden of 552 hours and $700,000.

Issued in Washington, D.C., this 20th day of February, 2002.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–4502 Filed 2–25–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45456; File No. SR–Phlx–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program to Implement its Existing Fee Schedule for Electronic Communication Networks

February 19, 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 28, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx proposes to extend its one-year pilot program for an additional one-year period, in order to continue to impose a $2,500 monthly fee for Electronic Communications Networks (''ECNs'') that are member organizations and send order flow to the Exchange's equity trading floor.[3] The Exchange believes that the original pilot program was due to expire on January 31, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

[4] *See* Exchange Act Release No. 44155 (April 5, 2001), 66 FR 19274 (April 13, 2001).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's current ECN pilot program until January 31, 2003, thereby continuing to impose a $2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor.[5] According to the Exchange, the continuation of the $2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.[6]

The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the program. The $2,500 fee would continue to apply to trades where the ECN was not acting as a Phlx specialist or floor broker.[7]

Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it would be subject to various floor-related fees respecting its floor operation.[8] In addition, an ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.[9] Even if the ECN was acting as a floor broker or specialist with

[5] The $2,500 monthly fee will apply regardless of the ECN's average daily Phlx equity volume.

[6] In order to recoup costs due from the Exchange to the Commission pursuant to Section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects. This fee is currently $15 per $1,000,000 of the aggregate dollar amount of the sale of securities.

[7] An ECN would continue to incur specialist or floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

[8] These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

[9] The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges.

An ECN that only operates as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee and Annual Fee.

Because the $2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction value charge (that would otherwise apply to an ECN's equity trades) ranges from $.015 to $.14 per $1,000 of transaction value, with a $50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly $2,500 fee is generally more favorable than the equity transaction value charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that $2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity, and improve the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and section 6(b)(4) of the Act,[11] 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. The Exchange notes the unique character of ECNs, and believes that the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

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) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] 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 Phlx.

All submissions should refer to File No. SR–Phlx–2002–08 and should be submitted by March 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–4475 Filed 2–25–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3396]

State of California

San Diego County and the contiguous counties of Imperial, Orange and Riverside in the State of California constitute a disaster area as a result of damages caused by a severe wildfire that occurred February 10 through February 14, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 22, 2002 and for economic injury until the close of business on November 19, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.500
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.500

The number assigned to this disaster for physical damage is 339605 and for economic damage is 905700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 19, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–4504 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3395]

State of New York

Erie County and the contiguous counties of Cattaraugus, Chautauqua, Genesee, Niagara and Wyoming in the State of New York constitute a disaster area as a result of a record-breaking lake effect snowstorm that occurred from December 24 through December 29, 2001. Applications for loans for physical damage may be filed until the close of business on April 16, 2002 and for economic injury until the close of business on November 15, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.500
Homeowners Without Credit Available Elsewhere	3.250
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	6.375
For Economic Injury	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 339511 and for economic injury the number is 905600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–4505 Filed 2–25–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Supplemental Public Comment on Scope of Environmental Review of United States-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for supplemental comments.

SUMMARY: Pursuant to Executive Order 13141, 64 FR 63,169 (Nov. 18, 1999), and implementing guidelines, 65 FR 79442 (Dec. 19, 2000), this notice requests supplemental comments on the scope of the environmental review of the proposed United States-Singapore Free Trade Agreement (FTA) currently under negotiation. In November 2000, the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), previously initiated an environmental review of the proposed U.S.-Singapore FTA and requested public comments on the environmental implications of the negotiations and the scope of the review. 65 FR 71197 (Nov. 29, 2000). At that time, the parties anticipated that the negotiating schedule would be very compressed. Because the schedule has since been extended, the TPSC wishes to provide the public with an opportunity to provide any additional information or analysis concerning relevant environmental issues that should be addressed in the review. It is not necessary to repeat comments submitted in response to the November 29 notice; those comments are being considered and are available for public inspection in USTR's reading room (*see* below).

DATES: Public comments should be received no later than March 29, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Alice Mattice or Darci Vetter, Environment and Natural Resources Section, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: In November 2000, Singapore's Prime Minister Goh and President Clinton announced that the governments of the United States and Singapore would enter into negotiations on a bilateral free trade agreement (FTA). Negotiations were launched in December 2000. In early 2001, the Bush Administration reaffirmed the United States' commitment to the negotiations. The parties have made good progress, and expect that negotiations will intensify in the coming months.

As described in the previous notice, see 65 FR 71197, the United States and Singapore are seeking to eliminate duties and commercial barriers to bilateral trade in U.S. and Singaporean-origin goods. The agreement is also expected to include provisions on trade in services, investment, trade-related aspects of intellectual property rights, competition, government procurement, electronic commerce, trade-related environmental and labor matters, and other issues.

The TPSC has taken comments received in response to the previous notice into account in developing U.S. negotiating positions and in determining the scope of the environmental review. However, in light of the revised negotiating schedule, the TPSC believes that provision of an opportunity for the public to provide supplemental comments would be useful in the review process. The TPSC anticipates that a draft review should be available for public comment in the spring of 2002.

Executive Order 13141 and implementing guidelines formalize the U.S. policy of conducting environmental reviews for certain major trade agreements. Reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. The Order requires environmental reviews of certain types of agreements, including bilateral free trade agreements such as the Singapore FTA. See 64 FR 63169. Reviews address potential environmental impacts that may be associated with projected economic changes associated with the proposed agreement, and potential implications for U.S. environmental laws and regulations. The focus of the reviews is on impacts on the United States, although global and transboundary impacts will be considered, where appropriate and prudent.

Written Comments

To ensure prompt consideration of responses, the TPSC strongly encourages interested persons to submit comments by electronic mail to the following e-mail address: *FR0014@ustr.gov.* Documents may also

be submitted by fax to (202) 395–5141, attention: Gloria Blue.

Comments submitted by electronic mail and comments submitted by fax will be available for public inspection in the USTR Reading Room, in Room 3 of the annex of the Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–4522 Filed 2–25–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects on the topic of research test procedures for measurement of vehicle rollover propensity.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations on research test procedures for measurement of vehicle rollover propensity on Thursday, March 14, 2002, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. Questions may be submitted in advance regarding the Agency's research and development projects, and they are not limited to the topic under discussion at the March 14, 2002, meeting. They must be submitted in writing by Tuesday, March 5, 2002, to the address given below. If sufficient time is available, questions received after the March 5 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by March 5 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Best Western Gateway International Hotel, 9191 Wickham, Romulus, Michigan, telephone number (734) 728–2800. Questions for the March 14, 2002, meeting relating to the Agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: *rgibbons@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. This is the thirty-first meeting in that series, and it will be held on Thursday, March 14, 2002, at the Best Western Gateway International Hotel, 9191 Wickham, Romulus, Michigan.

Before the meeting, NHTSA will publish a notice with an agenda listing the scheduled presentations and presenting organizations. The agenda can also be obtained by calling or faxing the request to the telephone numbers listed in this notice, through the E-mail address listed in this notice, or from NHTSA's Web site at URL *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.*

Additionally, if any interested parties would like to make a presentation regarding technical issues concerning NHTSA's rollover research program, information concerning the proposed topic and speaker should be submitted in writing by 5:00 p.m. on March 5, 2002, to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

Separately, questions regarding research projects that have been submitted in writing not later than 5:00 p.m. on March 5, 2002, will be answered. Copies of materials handed out at the meeting and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The handouts and answers to the questions will also be available on NHTSA's Web site at *http://www-nrd.nhtsa.dot.gov/departments/nrd-01/presentations/NRDmtgs.html.*

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, Braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5:00 p.m. by March 5, 2002.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site URL *http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.* If you do not have access to the Web site, you may call for information at the contact listed below and leave your telephone or telefax number. You will be called only if the meeting is postponed or canceled.

Issued: February 20, 2002.

H. Keith Brewer,

Acting Associate Administrator for Research and Development.

[FR Doc. 02–4476 Filed 2–25–02; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Tuesday,
February 26, 2002

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7148–9]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add the Libby Asbestos site, located in Libby, Montana, and the Omaha Lead site, located in Omaha, Nebraska, to the General Superfund Section of the NPL.

DATES: Comments regarding this proposed listing must be submitted (postmarked) on or before April 29, 2002.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW., Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425© of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 13, 2001 (66 FR 47583).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During

the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of February 13, 2002, the Agency has deleted 257 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of February 13, 2002, EPA has deleted 27 portions of 25 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

As of February 13, 2002, there are a total of 809 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

The Libby Asbestos site is being listed based on its designation as a State top priority. The documents that form the basis for Montana's decision are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 8 office. The Omaha Lead site is being listed based on its HRS score. The documents that form the basis for EPA's evaluation and HRS scoring of the site are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 7 office.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 8 docket is: David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

The contact information for the Region 7 docket is: Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters and Regional Dockets?

For the Libby Asbestos site, the Headquarters and Region 8 dockets contain the documents that formed the basis for Montana's decision to designate the site as its top priority. For the Omaha Lead site, the Headquarters docket contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; and a list of documents referenced in the Documentation Record. The Region 7 docket for the Omaha Lead site contains all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 7 docket.

D. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

E. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the sites are listed on the NPL.

F. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision

solely to accommodate consideration of late comments.

G. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

H. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add the Libby Asbestos site, located in Libby, Montana, to the General Superfund Section of the NPL; based on its designation as a State top priority pursuant to CERCLA section 105(a)(8)(B) and section 300.425 (c)(2) of the NCP. EPA is also proposing to add the Omaha Lead site, located in Omaha, Nebraska, to the General Superfund Section of the NPL; based on its HRS score of 28.50 or above.

B. Status of NPL

With this proposal of two new sites, there are now 74 sites proposed and awaiting final agency action, 67 in the General Superfund Section and 7 in the Federal Facilities Section. There are 1,222 final sites on the NPL; 1,063 in the General Superfund Section and 159 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of February 13, 2002. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that 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 by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare

and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities

B. How Has EPA Complied With the Regulatory Flexibility Act (RFA)?

This proposed rule, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the sites are listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is 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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to This Proposed Rule?

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 the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

B. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

XIV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is this Rule Subject to Executive Order 13211?

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

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: February 15, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–4403 Filed 2–25–02; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7148–9]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add the Libby Asbestos site, located in Libby, Montana, and the Omaha Lead site, located in Omaha, Nebraska, to the General Superfund Section of the NPL.

DATES: Comments regarding this proposed listing must be submitted (postmarked) on or before April 29, 2002.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW., Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425© of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 13, 2001 (66 FR 47583).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During

the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of February 13, 2002, the Agency has deleted 257 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of February 13, 2002, EPA has deleted 27 portions of 25 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

As of February 13, 2002, there are a total of 809 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

The Libby Asbestos site is being listed based on its designation as a State top priority. The documents that form the basis for Montana's decision are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 8 office. The Omaha Lead site is being listed based on its HRS score. The documents that form the basis for EPA's evaluation and HRS scoring of the site are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 7 office.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 8 docket is: David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

The contact information for the Region 7 docket is: Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters and Regional Dockets?

For the Libby Asbestos site, the Headquarters and Region 8 dockets contain the documents that formed the basis for Montana's decision to designate the site as its top priority. For the Omaha Lead site, the Headquarters docket contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; and a list of documents referenced in the Documentation Record. The Region 7 docket for the Omaha Lead site contains all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 7 docket.

D. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

E. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the sites are listed on the NPL.

F. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision

solely to accommodate consideration of late comments.

G. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

H. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add the Libby Asbestos site, located in Libby, Montana, to the General Superfund Section of the NPL; based on its designation as a State top priority pursuant to CERCLA section 105(a)(8)(B) and section 300.425 (c)(2) of the NCP. EPA is also proposing to add the Omaha Lead site, located in Omaha, Nebraska, to the General Superfund Section of the NPL; based on its HRS score of 28.50 or above.

B. Status of NPL

With this proposal of two new sites, there are now 74 sites proposed and awaiting final agency action, 67 in the General Superfund Section and 7 in the Federal Facilities Section. There are 1,222 final sites on the NPL; 1,063 in the General Superfund Section and 159 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of February 13, 2002. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that 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 by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare

and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities

B. How Has EPA Complied With the Regulatory Flexibility Act (RFA)?

This proposed rule, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the sites are listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is 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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to This Proposed Rule?

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 the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

B. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

XIV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

B. Is this Rule Subject to Executive Order 13211?

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

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: February 15, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–4403 Filed 2–25–02; 8:45 am]

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February 26, 2002

Part III

Federal Emergency Management Agency

44 CFR Parts 201 and 206

Hazard Mitigation Planning and Hazard Mitigation Grant Program; Interim Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 201 and 206

RIN 3067–AD22

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act.

DATES: *Effective Date:* February 26, 2002.

Comment Date: We will accept written comments through April 29, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Lawless, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–3027, (facsimile) 202–646–3104, or (email) *margaret.lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Throughout the preamble and the rule the terms ''we'', ''our'' and ''us'' refer to FEMA.

Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 the Disaster Mitigation Act of 2000, (DMA 2000) P.L. 106–390, provides new and revitalized approaches to mitigation planning. This section: (1) Continues the requirement for a Standard State Mitigation plan as a condition of disaster assistance; (2) provides for States to receive an increased percentage of HMGP funds (from 15 to 20 percent of the total estimated eligible Federal assistance) if, at the time of the declaration of a major disaster, they have in effect a FEMA-approved Enhanced State Mitigation Plan that meets the factors listed in this rule; (3) establishes a new requirement for local mitigation plans; and (4) authorizes up to 7 percent of the HMGP funds available to a State to be used for development of State, tribal, and local mitigation plans. We will give Indian tribal governments the opportunity to fulfill the requirements of § 322 either as a grantee or a subgrantee. An Indian tribal government may choose to apply for HMGP funding directly to us and would then serve as a grantee, meeting the State level responsibilities, or it may apply through the State, meeting the local government or subgrantee responsibilities.

Section 322, in concert with other sections of the Act, provides a significant opportunity to reduce the Nation's disaster losses through mitigation planning. In addition, implementation of planned, pre-identified, cost-effective mitigation measures will streamline the disaster recovery process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. The language in the Act, taken as a whole, emphasizes the importance of strong State and local planning processes and comprehensive program management at the State level. The new planning criteria also support State administration of the HMGP, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management.

The planning process also provides a link between State and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. We also recognize that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as to expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

Section 409 of the Stafford Act, 42 U.S.C. 5176, which required mitigation plans and the use of minimum codes and standards, was repealed by the DMA 2000. These issues are now addressed in two separate sections of the law: mitigation planning is in section 322 of the Act, and minimum codes and standards are in section 323 of the Act. We previously implemented section 409 through 44 CFR Part 206, Subpart M. Since current law now distinguishes the planning from the codes and standards in separate sections, we will address them in different sections of the CFR. We address the new planning regulations in Part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remain in Part 206, Federal Disaster Assistance, Subpart M. The regulations implementing the Hazard Mitigation Grant Program are in Part 206, Subpart N. This rule also contains changes to Subpart N, to reflect the new planning criteria identified in section 322 of the Act.

The administration is considering changes to FEMA's mitigation programs in the President's Budget for FY 2003. However, States and localities still would be required to have plans in effect, which meet the minimum requirements under this rule, as a condition of receiving mitigation assistance after November 1, 2003.

Implementation Strategy. States must have an approved hazard mitigation plan in order to receive Stafford Act assistance, excluding assistance provided pursuant to emergency provisions. These regulations provide criteria for the new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive HMGP funding based on 15 percent of the total estimated eligible Stafford Act disaster assistance, and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. Enhanced State Mitigation Plans must demonstrate that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding. All State Mitigations Plans must be reviewed, revised, and re-approved by FEMA every three years. An important requirement of the legislation is that we must approve a completed enhanced plan *before* a disaster declaration, in order for the State to be eligible for the increased funding.

We will no longer require States to revise their mitigation plan after every disaster declaration, as under former

section 409 of the Act, 42 U.S.C. 5176. We recommend, however, that States consider revising their plan if a disaster or other circumstances significantly affect its mitigation priorities. States with existing mitigation plans, approved under former section 409, will continue to be eligible for the 15 percent HMGP funding until November 1, 2003, when all State mitigation plans must meet the requirements of these regulations. If State plans are not revised and approved to meet the Standard State Mitigation Plan requirements by that time, they will be ineligible for Stafford Act assistance, excluding emergency assistance.

Indian tribal governments may choose to apply directly to us for HMGP funding, and would therefore be responsible for having an approved State level mitigation plan, and would act as the grantee. If an Indian tribal government chooses to apply for HMGP grants through the State, they would be responsible for having an approved local level mitigation plan, and would serve as a subgrantee accountable to the State as grantee.

This rule also establishes local planning criteria so that these jurisdictions can actively begin the hazard mitigation planning process. This requirement is to encourage the development of comprehensive mitigation plans before disaster events. Section 322 requires local governments to have an approved local mitigation plan to be eligible to receive an HMGP project grant; however, this requirement will not fully take effect until November 1, 2003. FEMA Regional Directors may grant an exception to this requirement in extenuating circumstances. Until November 1, 2003, local governments will be able to receive HMGP project grant funds and may prepare a mitigation plan concurrently with implementation of their project grant. We anticipate that the Predisaster Mitigation program authorized by section 203 of the Act, 42 U.S.C. 5133, will also support this local mitigation planning by making funds available for the development of comprehensive local mitigation plans. Managing States that we approve under new criteria established under section 404 of the Act, 42 U.S.C. 5170c(c), as amended by section 204 of DMA 2000 will have approval authority for local mitigation plans. This provision does not apply to States that we approved under the Managing State program in effect before enactment of DMA 2000.

Our goal is for State and local governments to develop comprehensive and integrated plans that are coordinated through appropriate State, local, and regional agencies, as well as non-governmental interest groups. To the extent feasible and practicable, we would also like to consolidate the planning requirements for different FEMA mitigation programs. This will ensure that one local plan will meet the minimum requirements for all of the different FEMA mitigation programs, such as the Flood Mitigation Assistance Program (authorized by sections 553 and 554 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4104c and 42 U.S.C. 4104d), the Community Rating System (authorized by section 541 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4022), the Pre-Disaster Mitigation Program (authorized by section 203 of the Stafford Act), the Hazard Mitigation Grant Program (authorized by section 404 of the Stafford Act), and the mitigation activities that are based upon the provisions of section 323 and subsections 406(b) and (e) of the Stafford Act. The mitigation plans may also serve to integrate documents and plans produced under other emergency management programs. State level plans should identify overall goals and priorities, incorporating the more specific local risk assessments, when available, and including projects identified through the local planning process.

Under section 322(d), up to 7 percent of the available HMGP funds may now be used for planning, and we encourage States to use these funds for local plan development. In a memorandum to FEMA Regional Directors dated December 21, 2000, we announced that this provision of section 322 was effective for disasters declared on or after October 30, 2000, the date on which the Disaster Mitigation Act of 2000 became law. Regional Directors are encouraging States to make these funds immediately available to local and Indian tribal governments, although the funds can be used for plan development and review at the State level as well.

As discussed earlier in this Supplementary Information, subsection 323(a) of the Stafford Act, 42 U.S.C. 5166(a), requires as a precondition to receiving disaster assistance under the Act that State and local governments, as well as eligible private nonprofit entities, must agree to carry out repair and reconstruction activities ''in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards.'' In addition, that subsection authorizes the President (FEMA, by virtue of Executive Order 12148, as amended) to ''require safe land use and construction practices, after adequate consultation with appropriate State and local officials'' in the course of the use of Federal disaster assistance by eligible applicants to repair and restore disaster-damaged facilities.

At the same time that we implement the planning mandates of section 322 of the Stafford Act, we are also implementing the Minimum Standards for Public and Private Structures provision of section 323 of the Act. This rule appears at Subpart M of Part 206 of Title 44 of the Code of Federal Regulations. As mentioned earlier, the section 322 planning regulations are in Part 201, while Part 206, Subpart M includes only the minimum codes and standards regulations mandated in § 323. The rule to implement § 323 of the Act reinforces the link between pre-disaster planning, building and construction standards, and post-disaster reconstruction efforts.

We encourage comments on this interim final rule, and we will make every effort to involve all interested parties prior to the development of the Final Rule.

Justification for Interim Final Rule

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. Section 322 of the Stafford Act allows States to receive increased post-disaster grant funding for projects designed to reduce future disaster losses. States will only be eligible for these increased funds if they have a FEMA-approved Enhanced State Mitigation Plan.

This interim final rule provides the criteria for development and approval of these plans, as well as criteria for local mitigation plans required by this legislation. In order for State and local governments to be positioned to receive these mitigation funds as soon as possible, these regulations must be in effect. The public benefit of this rule will be to assist States and communities assess their risks and identify activities to strengthen the larger community and the built environment in order to become less susceptible to disasters. Planning serves as the vital foundation to saving lives and protecting properties, having integrated plans in place can serve to both streamline recovery efforts and lessen potential future damages. Therefore, we believe it is contrary to the public interest to delay

the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying criteria for mitigation plans in order to reduce risks nationwide, establish criteria for minimum codes and standards in post-disaster reconstruction, and to allow States to adjust their mitigation plans to receive the increase in mitigation funding.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after the comment period would not further the public interest. Prior to this rulemaking, FEMA hosted a meeting where interested parties provided comments and suggestions on how we could implement these planning requirements. Participants in this meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We took comments and suggestions provided at this meeting into account in developing this interim final rule. Therefore, we find that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them in preparing the final rule. For these reasons, we believe we have good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to implement section 322 of the Stafford Act which addresses mitigation planning at the State, tribal, and local levels, identifies new local planning requirements, allows Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. The rule identifies local mitigation planning requirements before approval of project grants, and requires our approval of an Enhanced State Mitigation plan as a condition for increased mitigation funding. The rule also implements section 323 of the Stafford Act, which requires that repairs or construction funded by disaster loans or grants must comply with applicable standards and safe land use and construction practices. As such the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is a significant regulatory action and is not an economically significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Section 322 focuses specifically on mitigation planning to: Identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and tribal areas; support development of local mitigation plans; provide for technical assistance to local and tribal governments for mitigation planning; and identify and prioritize mitigation actions that the State will support, as resources become available. Section 323 requires compliance with applicable codes and standards in repair and construction, and use of safe land use and construction standards. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and concurrent with the publication of this interim final rule, we have submitted a request for review and approval of a new collection of information, which is contained in this interim final rule. Under the Paperwork Reduction Act of 1995, a person may not be penalized for failing to comply with an information collection that does not display a currently valid Office of Management and Budget (OMB) control number. The request was submitted to OMB for approval under the emergency processing procedures in OMB regulation 5 CFR 1320.1. OMB has approved this collection of information for use through August 31, 2002, under OMB Number 3067–0297.

We expect to follow this emergency request with a request for OMB approval to continue the use of the collection of information for a term of three years. The request will be processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, we invite the general public to comment on the collection of information. This notice and request for comments complies with the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans under Section 322 of the Disaster Mitigation Act of 2000.

Abstract: Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistant Act, as amended by Section 104 of the Disaster Mitigation Act of 2000, provides new and revitalized approaches to mitigation planning. To obtain Federal assistance, new planning provisions require that each state, local, and tribal government prepare a hazard mitigation plan to include sections that describe the planning process, an assessment of the risks, a mitigation strategy, and identification of the plan maintenance and updating process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Under Section 322 there is a two-tiered State mitigation plan process. State mitigation plans must be reviewed, revised, and submitted to us every 3 years.

(1) A *Standard State Mitigation Plan* must be approved by us in order for States to be eligible to receive Hazard Mitigation Grant Program (HGMP) funding based on 15 percent of the total estimated eligible Federal disaster assistance. This plan demonstrates the State's goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

(2) An *Enhanced State Mitigation Plan* must be approved by us for a State to be eligible to receive HMGP funds based on 20 percent of the total estimated eligible Federal disaster assistance. This plan must be approved by us within the 3 years prior to the current major disaster declaration. It must demonstrate that a State has developed a comprehensive mitigation program, is effectively using available mitigation funding, and is capable of managing the increased funding.

To be eligible to receive HMGP project grants, *local governments* must develop Local Mitigation Plans that include a risk assessment and mitigation strategy to reduce potential losses and target resources. Plans must be reviewed, revised, and submitted to us for approval every 5 years.

To receive HMGP project grants, *tribal governments* may apply as a grantee or subgrantee, and will be required to meet the planning requirements of a State or local government.

Estimated Total Annual Burden:

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
Update state or tribal mitigation plans (standard state mitigation plans)	18	320	5,760
State review of local plans	500 local plans	8	4,000
States develop Enhanced State Mitigation Plans	7	100	700
Local or tribal governments develop mitigation plans	500 local plans	300	150,000
Total burden			160,460

Comments: We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other technological collection techniques may further reduce the respondents' burden. FEMA will accept comments through April 29, 2002.

Addressee: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Anderson at (202) 646–2625 (voice), (202) 646–3347 (facsimile), or by e-mail at *muriel.anderson@fema.gov.*

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

However, we have consulted with State and local officials. In order to assist us in the development of this rule, we hosted a meeting to allow interested parties an opportunity to provide their perspectives on the legislation and options for implementation of § 322. Stakeholders who attended the meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We received valuable input from all parties at the meeting, which we took into account in the development of this rule. Additionally, we actively encourage and solicit comments on this interim final rule from interested parties, and we will

consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We have reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. Under the Hazard Mitigation Grant Program (HMGP), Indian tribal governments will have the option to apply for grants directly to us and to serve as ''grantee'', carrying out ''State'' roles. If they choose this option, tribal governments may submit either a State-level Standard Mitigation Plan for the 15 percent HMGP funding or a State-level Enhanced Mitigation Plan for 20 percent HMGP funding. In either case, Indian tribal governments would be able to spend up to 7 percent of those funds on planning. Before developing this rule, we met with representatives from State and local governments and the Bureau of Indian Affairs, to discuss the new planning opportunities and requirements of § 322 of the Stafford Act. We received valuable input from all parties, which helped us to develop this interim final rule.

In reviewing the interim final rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 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. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is a not ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day mitigation planning activities required by section 322 and compliance under section 323 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act, and OMB has assigned Control No. 3067–0297. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 201 and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

Accordingly, Amend 44 CFR, Subchapter D—Disaster Assistance, as follows:

1. Add Part 201 to read as follows:

PART 201—MITIGATION PLANNING

Sec.
201.1 Purpose.
201.2 Definitions.
201.3 Responsibilities.
201.4 Standard State Mitigation Plans.
201.5 Enhanced State Mitigation Plans.
201.6 Local Mitigation Plans.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

§ 201.1 Purpose.

(a) The purpose of this part is to provide information on the polices and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) The purpose of mitigation planning is for State, local, and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

§ 201.2 Definitions.

Grantee means the government to which a grant is awarded, which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State. An Indian tribal government acting as grantee will assume the responsibilities of a ''state'', as described in this part, for the purposes of administering the grant.

Hazard mitigation means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

Hazard Mitigation Grant Program means the program authorized under section 404 of the Stafford Act, 42 U.S.C 5170c and implemented at 44 CFR Part 206, Subpart N, which authorizes funding for certain mitigation measures identified through the evaluation of natural hazards conducted under section 322 of the Stafford Act 42 U.S.C 5165.

Indian tribal government means any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

Managing State means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to tribal governments to administer and manage the HMGP as a Managing State.

Regional Director is a director of a regional office of FEMA, or his/her designated representative.

Small and impoverished communities means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of residents not exceeding 80 percent of national, per capita income, based on

best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

The Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5121–5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Hazard Mitigation Officer is the official representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local governments in mitigation planning and implementation of mitigation programs and activities required under the Stafford Act.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

§ 201.3 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) *FEMA.* The key responsibilities of the Regional Director are to:

(1) Oversee all FEMA related pre- and post-disaster hazard mitigation programs and activities;

(2) Provide technical assistance and training to State, local, and Indian tribal governments regarding the mitigation planning process;

(3) Review and approve all Standard and Enhanced State Mitigation Plans;

(4) Review and approve all local mitigation plans, unless that authority has been delegated to the State in accordance with § 201.6(d);

(5) Conduct reviews, at least once every three years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) *State.* The key responsibilities of the State are to coordinate all State and local activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving Stafford Act assistance (except emergency assistance).

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every three years from the date of the approval of the previous plan.

(3) At a minimum, review and, if necessary, update the Standard State Mitigation Plan by November 1, 2003 and every three years from the date of the approval of the previous plan in order to continue program eligibility.

(4) Make available the use of up to the 7 percent of HMGP funding for planning in accordance with § 206.434.

(5) Provide technical assistance and training to local governments to assist them in applying for HMGP planning grants, and in developing local mitigation plans.

(6) For Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c), review and approve local mitigation plans in accordance with § 201.6(d).

(d) *Local governments.* The key responsibilities of local governments are to:

(1) Prepare and adopt a jurisdiction-wide natural hazard mitigation plan as a condition of receiving project grant funds under the HMGP, in accordance with § 201.6.

(2) At a minimum, review and, if necessary, update the local mitigation plan every five years from date of plan approval to continue program eligibility.

(e) *Indian tribal governments.* Indian tribal governments will be given the option of applying directly to us for Hazard Mitigation Grant Program funding, or they may choose to apply through the State. If they apply directly to us, they will assume the responsibilities of the State, or grantee, and if they apply through the State, they will assume the responsibilities of the local government, or subgrantee.

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* By November 1, 2003, States must have an approved Standard State Mitigation plan meeting the requirements of this section, in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2003 will continue to be made available. In any case, emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan.

(b) *Planning process.* An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other State agencies, appropriate Federal agencies, interested groups, and be integrated to the extent possible with other ongoing State planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* To be effective the plan must include the following elements:

(1) Description of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how other agencies participated.

(2) *Risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment shall include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned critical or operated facilities located in the

identified hazard areas shall also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State shall estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State's blueprint for reducing the losses identified in the risk assessment. This section shall include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: an evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss properties, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants shall be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

(5) A *Plan Maintenance Process* that includes:

(i) An established method and schedule for monitoring, evaluating, and updating the plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A system for reviewing progress on achieving goals as well as activities and projects identified in the Mitigation Strategy.

(6) A *Plan Adoption Process.* The plan must be formally adopted by the State prior to submittal to us for final review and approval.

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c). The State will amend its plan whenever necessary to reflect changes in State or Federal laws and statutes as required in 44 CFR 13.11(d).

(d) *Review and updates.* Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible. We also encourage a State to review its plan in the post-disaster timeframe to reflect changing priorities, but it is not required.

§ 201.5 Enhanced State Mitigation Plans.

(a) A State with a FEMA approved Enhanced State Mitigation Plan at the time of a disaster declaration is eligible to receive increased funds under the HMGP, based on twenty percent of the total estimated eligible Stafford Act disaster assistance. The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within three years prior to the disaster declaration.

(b) Enhanced State Mitigation Plans must include all elements of the Standard State Mitigation Plan identified in § 201.4, as well as document the following:

(1) Demonstration that the plan is integrated to the extent practicable with other State and/or regional planning initiatives (comprehensive, growth management, economic development, capital improvement, land development, and/or emergency management plans) and FEMA mitigation programs and initiatives that provide guidance to State and regional agencies.

(2) Documentation of the State's project implementation capability, identifying and demonstrating the ability to implement the plan, including:

(i) Established eligibility criteria for multi-hazard mitigation measures.

(ii) A system to determine the cost effectiveness of mitigation measures, consistent with OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, and to rank the measures according to the State's eligibility criteria.

(iii) Demonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following:

(A) Meeting HMGP and other mitigation grant application timeframes and submitting complete, technically feasible, and eligible project applications with appropriate supporting documentation;

(B) Preparing and submitting accurate environmental reviews and benefit-cost analyses;

(C) Submitting complete and accurate quarterly progress and financial reports on time; and

(D) Completing HMGP and other mitigation grant projects within established performance periods, including financial reconciliation.

(iv) A system and strategy by which the State will conduct an assessment of the completed mitigation actions and include a record of the effectiveness (actual cost avoidance) of each mitigation action.

(3) Demonstration that the State effectively uses existing mitigation programs to achieve its mitigation goals.

(4) Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following:

(i) A commitment to support local mitigation planning by providing workshops and training, State planning grants, or coordinated capability development of local officials, including Emergency Management and Floodplain Management certifications.

(ii) A statewide program of hazard mitigation through the development of legislative initiatives, mitigation councils, formation of public/private

partnerships, and/or other executive actions that promote hazard mitigation.

(iii) The State provides a portion of the non-Federal match for HMGP and/or other mitigation projects.

(iv) To the extent allowed by State law, the State requires or encourages local governments to use a current version of a nationally applicable model building code or standard that addresses natural hazards as a basis for design and construction of State sponsored mitigation projects.

(v) A comprehensive, multi-year plan to mitigate the risks posed to existing buildings that have been identified as necessary for post-disaster response and recovery operations.

(vi) A comprehensive description of how the State integrates mitigation into its post-disaster recovery operations.

(c) *Review and updates.* (1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the three years prior to the current major disaster declaration.

§ 201.6 Local Mitigation Plans.

The local mitigation plan is the representation of the jurisdiction's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards. Local plans will also serve as the basis for the State to provide technical assistance and to prioritize project funding.

(a) *Plan requirement.* (1) For disasters declared after November 1, 2003, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of the project grant.

(2) Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(3) Multi-jurisdictional plans (e.g. watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process shall include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(i)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) *A mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(2)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

(d) *Plan review.* (1) Plans must be submitted to the State Hazard Mitigation Officer for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval.

(2) The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(3) Plans must be reviewed, revised if appropriate, and resubmitted for approval within five years in order to continue to be eligible for HMGP project grant funding.

(4) Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c) will be delegated approval authority for local mitigation plans, and the review will be based on the criteria in this part. Managing States will review the plans within 45 days of receipt of the plans, whenever possible, and provide a copy of the approved plans to the Regional Office.

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

2. The authority citation for part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2a. Revise Part 206, Subpart M to read as follows:

Subpart M—Minimum Standards

Sec.
206.400 General.
206.401 Local standards.
206.402 Compliance.

§ 206.400 General.

(a) As a condition of the receipt of any disaster assistance under the Stafford Act, the applicant shall carry out any repair or construction to be financed with the disaster assistance in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards.

(b) Applicable codes, specifications, and standards shall include any disaster resistant building code that meets the minimum requirements of the National Flood Insurance Program (NFIP) as well as being substantially equivalent to the recommended provisions of the National Earthquake Hazards Reduction Program (NEHRP). In addition, the applicant shall comply with any requirements necessary in regards to Executive Order 11988, Floodplain Management, Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and any other applicable Executive orders.

(c) In situations where there are no locally applicable standards of safety, decency and sanitation, or where there are no applicable local codes, specifications and standards governing repair or construction activities, or where the Regional Director determines that otherwise applicable codes, specifications, and standards are inadequate, then the Regional Director may, after consultation with appropriate State and local officials, require the use of nationally applicable codes, specifications, and standards, as well as safe land use and construction practices in the course of repair or construction activities.

(d) The mitigation planning process that is mandated by section 322 of the Stafford Act and 44 CFR part 201 can assist State and local governments in determining where codes, specifications, and standards are inadequate, and may need to be upgraded.

§ 206.401 Local standards.

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications and standards meet the criteria that are listed at 44 CFR 206.226(b).

§ 206.402 Compliance.

A recipient of disaster assistance under the Stafford Act must document for the Regional Director its compliance with this subpart following the completion of any repair or construction activities.

Subpart N—Hazard Mitigation Grant Program

3. Revise § 206.431 to read as follows:

§ 206.431 Definitions.

Activity means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

Applicant means a State agency, local government, Indian tribal government, or eligible private nonprofit organization, submitting an application to the grantee for assistance under the HMGP.

Enhanced State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Grant application means the request to FEMA for HMGP funding, as outlined in § 206.436, by a State or tribal government that will act as grantee.

Grant award means total of Federal and non-Federal contributions to complete the approved scope of work.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a ''state'', under this subpart, for the purposes of administering the grant.

Indian tribal government means any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local Mitigation Plan is the hazard mitigation plan required of a local or Indian tribal government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.

Standard State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in § 201.4.

State Administrative Plan for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.

Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

Subgrant application means the request to the grantee for HMGP funding by the eligible subgrantee, as outlined in § 206.436.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government as outlined in § 206.433.

Indian tribal governments acting as a subgrantee are accountable to the State grantee.

4. Revise § 206.432(b) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 15 or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Fifteen (15) percent.* Effective November 1, 2003, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, approved State Mitigation Plans will be accepted.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect prior to the disaster declaration, which meets the requirements outlined in 44 CFR 201.5 shall be eligible for assistance under the HMGP not to exceed 20 percent of the total estimated Federal assistance described in this paragraph.

(3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Director's estimate of all eligible costs, actual grants, and appropriate mission assignments.

* * * * *

5. Section 206.434 is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively; adding a new paragraph (b); revising redesignated paragraphs (c) introductory text and (c)(1); and revising redesignated paragraph (d) to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) *Plan requirement.* (1) For all disasters declared on or after November 1, 2003, local and tribal government applicants for subgrants, must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of subgrants.

(2) Regional Directors may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR part 201;

* * * * *

(d) *Eligible activities.* (1) *Planning.* Up to 7% of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

(2) *Types of projects.* Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:

(i) Structural hazard control or protection projects;

(ii) Construction activities that will result in protection from hazards;

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

(vi) Development of comprehensive mitigation programs with implementation as an essential component;

(vii) Development or improvement of warning systems.

* * * * *

6. Revise § 206.435(a) to read as follows:

§ 206.435 Project identificaiton and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.

* * * * *

7. Revise § 206.436 to read as follows:

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for HMGP funding. Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part 206. Subgrantees are accountable to the grantee.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Director. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and an narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure shall include the following:

(1) Name of the subgrantee, if any;

(2) State or local contact for the measure;

(3) Location of the project;

(4) Description of the measure;

(5) Cost estimate for the measure;

(6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(c);

(7) Work schedule;

(8) Justification for selection;

(9) Alternatives considered;

(10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations.

(d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Director within 12 months of the date of disaster declaration.

(e) *Extensions.* The State may request the Regional Director to extend the application time limit by 30 to 90 day

increments, not to exceed a total of 180 days. The grantee must include a justification in its request.

(f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Director for approval. FEMA has final approval authority for funding of all projects.

(g) *Indian tribal grantees.* Indian tribal governments may submit a SF 424 directly to the Regional Director.

Subpart H—Public Assistance Eligibility

* * * * *

8. Revise § 206.220 to read as follows:

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

9. Section 206.226 is amended by redesignating paragraphs

(b) through (j) as paragraphs (c) through (k), respectively; adding a new paragraph (b); and revising redesignated paragraph (g)(5) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2003, the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

(g) * * *

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

* * * * *

Dated: February 19, 2002.

Michael D. Brown,

General Counsel.

[FR Doc. 02–4321 Filed 2–25–02; 8:45 am]

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Federal Register

Tuesday,
February 26, 2002

Part III

Federal Emergency Management Agency

44 CFR Parts 201 and 206

Hazard Mitigation Planning and Hazard Mitigation Grant Program; Interim Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 201 and 206

RIN 3067–AD22

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act.

DATES: *Effective Date:* February 26, 2002.

Comment Date: We will accept written comments through April 29, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Lawless, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–3027, (facsimile) 202–646–3104, or (email) *margaret.lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Throughout the preamble and the rule the terms ''we'', ''our'' and ''us'' refer to FEMA.

Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 the Disaster Mitigation Act of 2000, (DMA 2000) P.L. 106–390, provides new and revitalized approaches to mitigation planning. This section: (1) Continues the requirement for a Standard State Mitigation plan as a condition of disaster assistance; (2) provides for States to receive an increased percentage of HMGP funds (from 15 to 20 percent of the total estimated eligible Federal assistance) if, at the time of the declaration of a major disaster, they have in effect a FEMA-approved Enhanced State Mitigation Plan that meets the factors listed in this rule; (3) establishes a new requirement for local mitigation plans; and (4) authorizes up to 7 percent of the HMGP funds available to a State to be used for development of State, tribal, and local mitigation plans. We will give Indian tribal governments the opportunity to fulfill the requirements of § 322 either as a grantee or a subgrantee. An Indian tribal government may choose to apply for HMGP funding directly to us and would then serve as a grantee, meeting the State level responsibilities, or it may apply through the State, meeting the local government or subgrantee responsibilities.

Section 322, in concert with other sections of the Act, provides a significant opportunity to reduce the Nation's disaster losses through mitigation planning. In addition, implementation of planned, pre-identified, cost-effective mitigation measures will streamline the disaster recovery process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. The language in the Act, taken as a whole, emphasizes the importance of strong State and local planning processes and comprehensive program management at the State level. The new planning criteria also support State administration of the HMGP, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management.

The planning process also provides a link between State and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. We also recognize that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as to expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

Section 409 of the Stafford Act, 42 U.S.C. 5176, which required mitigation plans and the use of minimum codes and standards, was repealed by the DMA 2000. These issues are now addressed in two separate sections of the law: mitigation planning is in section 322 of the Act, and minimum codes and standards are in section 323 of the Act. We previously implemented section 409 through 44 CFR Part 206, Subpart M. Since current law now distinguishes the planning from the codes and standards in separate sections, we will address them in different sections of the CFR. We address the new planning regulations in Part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remain in Part 206, Federal Disaster Assistance, Subpart M. The regulations implementing the Hazard Mitigation Grant Program are in Part 206, Subpart N. This rule also contains changes to Subpart N, to reflect the new planning criteria identified in section 322 of the Act.

The administration is considering changes to FEMA's mitigation programs in the President's Budget for FY 2003. However, States and localities still would be required to have plans in effect, which meet the minimum requirements under this rule, as a condition of receiving mitigation assistance after November 1, 2003.

Implementation Strategy. States must have an approved hazard mitigation plan in order to receive Stafford Act assistance, excluding assistance provided pursuant to emergency provisions. These regulations provide criteria for the new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive HMGP funding based on 15 percent of the total estimated eligible Stafford Act disaster assistance, and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. Enhanced State Mitigation Plans must demonstrate that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding. All State Mitigations Plans must be reviewed, revised, and re-approved by FEMA every three years. An important requirement of the legislation is that we must approve a completed enhanced plan *before* a disaster declaration, in order for the State to be eligible for the increased funding.

We will no longer require States to revise their mitigation plan after every disaster declaration, as under former

section 409 of the Act, 42 U.S.C. 5176. We recommend, however, that States consider revising their plan if a disaster or other circumstances significantly affect its mitigation priorities. States with existing mitigation plans, approved under former section 409, will continue to be eligible for the 15 percent HMGP funding until November 1, 2003, when all State mitigation plans must meet the requirements of these regulations. If State plans are not revised and approved to meet the Standard State Mitigation Plan requirements by that time, they will be ineligible for Stafford Act assistance, excluding emergency assistance.

Indian tribal governments may choose to apply directly to us for HMGP funding, and would therefore be responsible for having an approved State level mitigation plan, and would act as the grantee. If an Indian tribal government chooses to apply for HMGP grants through the State, they would be responsible for having an approved local level mitigation plan, and would serve as a subgrantee accountable to the State as grantee.

This rule also establishes local planning criteria so that these jurisdictions can actively begin the hazard mitigation planning process. This requirement is to encourage the development of comprehensive mitigation plans before disaster events. Section 322 requires local governments to have an approved local mitigation plan to be eligible to receive an HMGP project grant; however, this requirement will not fully take effect until November 1, 2003. FEMA Regional Directors may grant an exception to this requirement in extenuating circumstances. Until November 1, 2003, local governments will be able to receive HMGP project grant funds and may prepare a mitigation plan concurrently with implementation of their project grant. We anticipate that the Predisaster Mitigation program authorized by section 203 of the Act, 42 U.S.C. 5133, will also support this local mitigation planning by making funds available for the development of comprehensive local mitigation plans. Managing States that we approve under new criteria established under section 404 of the Act, 42 U.S.C. 5170c(c), as amended by section 204 of DMA 2000 will have approval authority for local mitigation plans. This provision does not apply to States that we approved under the Managing State program in effect before enactment of DMA 2000.

Our goal is for State and local governments to develop comprehensive and integrated plans that are coordinated through appropriate State, local, and regional agencies, as well as non-governmental interest groups. To the extent feasible and practicable, we would also like to consolidate the planning requirements for different FEMA mitigation programs. This will ensure that one local plan will meet the minimum requirements for all of the different FEMA mitigation programs, such as the Flood Mitigation Assistance Program (authorized by sections 553 and 554 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4104c and 42 U.S.C. 4104d), the Community Rating System (authorized by section 541 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4022), the Pre-Disaster Mitigation Program (authorized by section 203 of the Stafford Act), the Hazard Mitigation Grant Program (authorized by section 404 of the Stafford Act), and the mitigation activities that are based upon the provisions of section 323 and subsections 406(b) and (e) of the Stafford Act. The mitigation plans may also serve to integrate documents and plans produced under other emergency management programs. State level plans should identify overall goals and priorities, incorporating the more specific local risk assessments, when available, and including projects identified through the local planning process.

Under section 322(d), up to 7 percent of the available HMGP funds may now be used for planning, and we encourage States to use these funds for local plan development. In a memorandum to FEMA Regional Directors dated December 21, 2000, we announced that this provision of section 322 was effective for disasters declared on or after October 30, 2000, the date on which the Disaster Mitigation Act of 2000 became law. Regional Directors are encouraging States to make these funds immediately available to local and Indian tribal governments, although the funds can be used for plan development and review at the State level as well.

As discussed earlier in this Supplementary Information, subsection 323(a) of the Stafford Act, 42 U.S.C. 5166(a), requires as a precondition to receiving disaster assistance under the Act that State and local governments, as well as eligible private nonprofit entities, must agree to carry out repair and reconstruction activities ''in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards.'' In addition, that subsection authorizes the President (FEMA, by virtue of Executive Order 12148, as amended) to ''require safe land use and construction practices, after adequate consultation with appropriate State and local officials'' in the course of the use of Federal disaster assistance by eligible applicants to repair and restore disaster-damaged facilities.

At the same time that we implement the planning mandates of section 322 of the Stafford Act, we are also implementing the Minimum Standards for Public and Private Structures provision of section 323 of the Act. This rule appears at Subpart M of Part 206 of Title 44 of the Code of Federal Regulations. As mentioned earlier, the section 322 planning regulations are in Part 201, while Part 206, Subpart M includes only the minimum codes and standards regulations mandated in § 323. The rule to implement § 323 of the Act reinforces the link between pre-disaster planning, building and construction standards, and post-disaster reconstruction efforts.

We encourage comments on this interim final rule, and we will make every effort to involve all interested parties prior to the development of the Final Rule.

Justification for Interim Final Rule

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. Section 322 of the Stafford Act allows States to receive increased post-disaster grant funding for projects designed to reduce future disaster losses. States will only be eligible for these increased funds if they have a FEMA-approved Enhanced State Mitigation Plan.

This interim final rule provides the criteria for development and approval of these plans, as well as criteria for local mitigation plans required by this legislation. In order for State and local governments to be positioned to receive these mitigation funds as soon as possible, these regulations must be in effect. The public benefit of this rule will be to assist States and communities assess their risks and identify activities to strengthen the larger community and the built environment in order to become less susceptible to disasters. Planning serves as the vital foundation to saving lives and protecting properties, having integrated plans in place can serve to both streamline recovery efforts and lessen potential future damages. Therefore, we believe it is contrary to the public interest to delay

the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying criteria for mitigation plans in order to reduce risks nationwide, establish criteria for minimum codes and standards in post-disaster reconstruction, and to allow States to adjust their mitigation plans to receive the increase in mitigation funding.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after the comment period would not further the public interest. Prior to this rulemaking, FEMA hosted a meeting where interested parties provided comments and suggestions on how we could implement these planning requirements. Participants in this meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We took comments and suggestions provided at this meeting into account in developing this interim final rule. Therefore, we find that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them in preparing the final rule. For these reasons, we believe we have good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to implement section 322 of the Stafford Act which addresses mitigation planning at the State, tribal, and local levels, identifies new local planning requirements, allows Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. The rule identifies local mitigation planning requirements before approval of project grants, and requires our approval of an Enhanced State Mitigation plan as a condition for increased mitigation funding. The rule also implements section 323 of the Stafford Act, which requires that repairs or construction funded by disaster loans or grants must comply with applicable standards and safe land use and construction practices. As such the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is a significant regulatory action and is not an economically significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Section 322 focuses specifically on mitigation planning to: Identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and tribal areas; support development of local mitigation plans; provide for technical assistance to local and tribal governments for mitigation planning; and identify and prioritize mitigation actions that the State will support, as resources become available. Section 323 requires compliance with applicable codes and standards in repair and construction, and use of safe land use and construction standards. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and concurrent with the publication of this interim final rule, we have submitted a request for review and approval of a new collection of information, which is contained in this interim final rule. Under the Paperwork Reduction Act of 1995, a person may not be penalized for failing to comply with an information collection that does not display a currently valid Office of Management and Budget (OMB) control number. The request was submitted to OMB for approval under the emergency processing procedures in OMB regulation 5 CFR 1320.1. OMB has approved this collection of information for use through August 31, 2002, under OMB Number 3067–0297.

We expect to follow this emergency request with a request for OMB approval to continue the use of the collection of information for a term of three years. The request will be processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, we invite the general public to comment on the collection of information. This notice and request for comments complies with the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans under Section 322 of the Disaster Mitigation Act of 2000.

Abstract: Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistant Act, as amended by Section 104 of the Disaster Mitigation Act of 2000, provides new and revitalized approaches to mitigation planning. To obtain Federal assistance, new planning provisions require that each state, local, and tribal government prepare a hazard mitigation plan to include sections that describe the planning process, an assessment of the risks, a mitigation strategy, and identification of the plan maintenance and updating process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Under Section 322 there is a two-tiered State mitigation plan process. State mitigation plans must be reviewed, revised, and submitted to us every 3 years.

(1) A *Standard State Mitigation Plan* must be approved by us in order for States to be eligible to receive Hazard Mitigation Grant Program (HGMP) funding based on 15 percent of the total estimated eligible Federal disaster assistance. This plan demonstrates the State's goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

(2) An *Enhanced State Mitigation Plan* must be approved by us for a State to be eligible to receive HMGP funds based on 20 percent of the total estimated eligible Federal disaster assistance. This plan must be approved by us within the 3 years prior to the current major disaster declaration. It must demonstrate that a State has developed a comprehensive mitigation program, is effectively using available mitigation funding, and is capable of managing the increased funding.

To be eligible to receive HMGP project grants, *local governments* must develop Local Mitigation Plans that include a risk assessment and mitigation strategy to reduce potential losses and target resources. Plans must be reviewed, revised, and submitted to us for approval every 5 years.

To receive HMGP project grants, *tribal governments* may apply as a grantee or subgrantee, and will be required to meet the planning requirements of a State or local government.

Estimated Total Annual Burden:

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
Update state or tribal mitigation plans (standard state mitigation plans)	18	320	5,760
State review of local plans	500 local plans	8	4,000
States develop Enhanced State Mitigation Plans	7	100	700
Local or tribal governments develop mitigation plans	500 local plans	300	150,000
Total burden			160,460

Comments: We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other technological collection techniques may further reduce the respondents' burden. FEMA will accept comments through April 29, 2002.

Addressee: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Anderson at (202) 646–2625 (voice), (202) 646–3347 (facsimile), or by e-mail at *muriel.anderson@fema.gov.*

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

However, we have consulted with State and local officials. In order to assist us in the development of this rule, we hosted a meeting to allow interested parties an opportunity to provide their perspectives on the legislation and options for implementation of § 322. Stakeholders who attended the meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We received valuable input from all parties at the meeting, which we took into account in the development of this rule. Additionally, we actively encourage and solicit comments on this interim final rule from interested parties, and we will

consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We have reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. Under the Hazard Mitigation Grant Program (HMGP), Indian tribal governments will have the option to apply for grants directly to us and to serve as ''grantee'', carrying out ''State'' roles. If they choose this option, tribal governments may submit either a State-level Standard Mitigation Plan for the 15 percent HMGP funding or a State-level Enhanced Mitigation Plan for 20 percent HMGP funding. In either case, Indian tribal governments would be able to spend up to 7 percent of those funds on planning. Before developing this rule, we met with representatives from State and local governments and the Bureau of Indian Affairs, to discuss the new planning opportunities and requirements of § 322 of the Stafford Act. We received valuable input from all parties, which helped us to develop this interim final rule.

In reviewing the interim final rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 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. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is a not ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day mitigation planning activities required by section 322 and compliance under section 323 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act, and OMB has assigned Control No. 3067–0297. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 201 and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

Accordingly, Amend 44 CFR, Subchapter D—Disaster Assistance, as follows:

1. Add Part 201 to read as follows:

PART 201—MITIGATION PLANNING

Sec.
201.1 Purpose.
201.2 Definitions.
201.3 Responsibilities.
201.4 Standard State Mitigation Plans.
201.5 Enhanced State Mitigation Plans.
201.6 Local Mitigation Plans.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

§ 201.1 Purpose.

(a) The purpose of this part is to provide information on the polices and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) The purpose of mitigation planning is for State, local, and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

§ 201.2 Definitions.

Grantee means the government to which a grant is awarded, which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State. An Indian tribal government acting as grantee will assume the responsibilities of a ''state'', as described in this part, for the purposes of administering the grant.

Hazard mitigation means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

Hazard Mitigation Grant Program means the program authorized under section 404 of the Stafford Act, 42 U.S.C 5170c and implemented at 44 CFR Part 206, Subpart N, which authorizes funding for certain mitigation measures identified through the evaluation of natural hazards conducted under section 322 of the Stafford Act 42 U.S.C 5165.

Indian tribal government means any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

Managing State means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to tribal governments to administer and manage the HMGP as a Managing State.

Regional Director is a director of a regional office of FEMA, or his/her designated representative.

Small and impoverished communities means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of residents not exceeding 80 percent of national, per capita income, based on

best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

The Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5121–5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Hazard Mitigation Officer is the official representative of State government who is the primary point of contact with FEMA, other Federal agencies, and local governments in mitigation planning and implementation of mitigation programs and activities required under the Stafford Act.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

§ 201.3 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) *FEMA.* The key responsibilities of the Regional Director are to:

(1) Oversee all FEMA related pre- and post-disaster hazard mitigation programs and activities;

(2) Provide technical assistance and training to State, local, and Indian tribal governments regarding the mitigation planning process;

(3) Review and approve all Standard and Enhanced State Mitigation Plans;

(4) Review and approve all local mitigation plans, unless that authority has been delegated to the State in accordance with § 201.6(d);

(5) Conduct reviews, at least once every three years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) *State.* The key responsibilities of the State are to coordinate all State and local activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving Stafford Act assistance (except emergency assistance).

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every three years from the date of the approval of the previous plan.

(3) At a minimum, review and, if necessary, update the Standard State Mitigation Plan by November 1, 2003 and every three years from the date of the approval of the previous plan in order to continue program eligibility.

(4) Make available the use of up to the 7 percent of HMGP funding for planning in accordance with § 206.434.

(5) Provide technical assistance and training to local governments to assist them in applying for HMGP planning grants, and in developing local mitigation plans.

(6) For Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c), review and approve local mitigation plans in accordance with § 201.6(d).

(d) *Local governments.* The key responsibilities of local governments are to:

(1) Prepare and adopt a jurisdiction-wide natural hazard mitigation plan as a condition of receiving project grant funds under the HMGP, in accordance with § 201.6.

(2) At a minimum, review and, if necessary, update the local mitigation plan every five years from date of plan approval to continue program eligibility.

(e) *Indian tribal governments.* Indian tribal governments will be given the option of applying directly to us for Hazard Mitigation Grant Program funding, or they may choose to apply through the State. If they apply directly to us, they will assume the responsibilities of the State, or grantee, and if they apply through the State, they will assume the responsibilities of the local government, or subgrantee.

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* By November 1, 2003, States must have an approved Standard State Mitigation plan meeting the requirements of this section, in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2003 will continue to be made available. In any case, emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan.

(b) *Planning process.* An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other State agencies, appropriate Federal agencies, interested groups, and be integrated to the extent possible with other ongoing State planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* To be effective the plan must include the following elements:

(1) Description of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how other agencies participated.

(2) *Risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment shall include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned critical or operated facilities located in the

identified hazard areas shall also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State shall estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State's blueprint for reducing the losses identified in the risk assessment. This section shall include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: an evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss properties, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants shall be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

(5) A *Plan Maintenance Process* that includes:

(i) An established method and schedule for monitoring, evaluating, and updating the plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A system for reviewing progress on achieving goals as well as activities and projects identified in the Mitigation Strategy.

(6) A *Plan Adoption Process.* The plan must be formally adopted by the State prior to submittal to us for final review and approval.

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c). The State will amend its plan whenever necessary to reflect changes in State or Federal laws and statutes as required in 44 CFR 13.11(d).

(d) *Review and updates.* Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible. We also encourage a State to review its plan in the post-disaster timeframe to reflect changing priorities, but it is not required.

§ 201.5 Enhanced State Mitigation Plans.

(a) A State with a FEMA approved Enhanced State Mitigation Plan at the time of a disaster declaration is eligible to receive increased funds under the HMGP, based on twenty percent of the total estimated eligible Stafford Act disaster assistance. The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within three years prior to the disaster declaration.

(b) Enhanced State Mitigation Plans must include all elements of the Standard State Mitigation Plan identified in § 201.4, as well as document the following:

(1) Demonstration that the plan is integrated to the extent practicable with other State and/or regional planning initiatives (comprehensive, growth management, economic development, capital improvement, land development, and/or emergency management plans) and FEMA mitigation programs and initiatives that provide guidance to State and regional agencies.

(2) Documentation of the State's project implementation capability, identifying and demonstrating the ability to implement the plan, including:

(i) Established eligibility criteria for multi-hazard mitigation measures.

(ii) A system to determine the cost effectiveness of mitigation measures, consistent with OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, and to rank the measures according to the State's eligibility criteria.

(iii) Demonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following:

(A) Meeting HMGP and other mitigation grant application timeframes and submitting complete, technically feasible, and eligible project applications with appropriate supporting documentation;

(B) Preparing and submitting accurate environmental reviews and benefit-cost analyses;

(C) Submitting complete and accurate quarterly progress and financial reports on time; and

(D) Completing HMGP and other mitigation grant projects within established performance periods, including financial reconciliation.

(iv) A system and strategy by which the State will conduct an assessment of the completed mitigation actions and include a record of the effectiveness (actual cost avoidance) of each mitigation action.

(3) Demonstration that the State effectively uses existing mitigation programs to achieve its mitigation goals.

(4) Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following:

(i) A commitment to support local mitigation planning by providing workshops and training, State planning grants, or coordinated capability development of local officials, including Emergency Management and Floodplain Management certifications.

(ii) A statewide program of hazard mitigation through the development of legislative initiatives, mitigation councils, formation of public/private

partnerships, and/or other executive actions that promote hazard mitigation.

(iii) The State provides a portion of the non-Federal match for HMGP and/or other mitigation projects.

(iv) To the extent allowed by State law, the State requires or encourages local governments to use a current version of a nationally applicable model building code or standard that addresses natural hazards as a basis for design and construction of State sponsored mitigation projects.

(v) A comprehensive, multi-year plan to mitigate the risks posed to existing buildings that have been identified as necessary for post-disaster response and recovery operations.

(vi) A comprehensive description of how the State integrates mitigation into its post-disaster recovery operations.

(c) *Review and updates.* (1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the three years prior to the current major disaster declaration.

§ 201.6 Local Mitigation Plans.

The local mitigation plan is the representation of the jurisdiction's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards. Local plans will also serve as the basis for the State to provide technical assistance and to prioritize project funding.

(a) *Plan requirement.* (1) For disasters declared after November 1, 2003, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of the project grant.

(2) Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(3) Multi-jurisdictional plans (e.g. watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process shall include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(i)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) *A mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(2)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

(d) *Plan review.* (1) Plans must be submitted to the State Hazard Mitigation Officer for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval.

(2) The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(3) Plans must be reviewed, revised if appropriate, and resubmitted for approval within five years in order to continue to be eligible for HMGP project grant funding.

(4) Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c) will be delegated approval authority for local mitigation plans, and the review will be based on the criteria in this part. Managing States will review the plans within 45 days of receipt of the plans, whenever possible, and provide a copy of the approved plans to the Regional Office.

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

2. The authority citation for part 206 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2a. Revise Part 206, Subpart M to read as follows:

Subpart M—Minimum Standards

Sec.
206.400 General.
206.401 Local standards.
206.402 Compliance.

§ 206.400 General.

(a) As a condition of the receipt of any disaster assistance under the Stafford Act, the applicant shall carry out any repair or construction to be financed with the disaster assistance in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards.

(b) Applicable codes, specifications, and standards shall include any disaster resistant building code that meets the minimum requirements of the National Flood Insurance Program (NFIP) as well as being substantially equivalent to the recommended provisions of the National Earthquake Hazards Reduction Program (NEHRP). In addition, the applicant shall comply with any requirements necessary in regards to Executive Order 11988, Floodplain Management, Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and any other applicable Executive orders.

(c) In situations where there are no locally applicable standards of safety, decency and sanitation, or where there are no applicable local codes, specifications and standards governing repair or construction activities, or where the Regional Director determines that otherwise applicable codes, specifications, and standards are inadequate, then the Regional Director may, after consultation with appropriate State and local officials, require the use of nationally applicable codes, specifications, and standards, as well as safe land use and construction practices in the course of repair or construction activities.

(d) The mitigation planning process that is mandated by section 322 of the Stafford Act and 44 CFR part 201 can assist State and local governments in determining where codes, specifications, and standards are inadequate, and may need to be upgraded.

§ 206.401 Local standards.

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications and standards meet the criteria that are listed at 44 CFR 206.226(b).

§ 206.402 Compliance.

A recipient of disaster assistance under the Stafford Act must document for the Regional Director its compliance with this subpart following the completion of any repair or construction activities.

Subpart N—Hazard Mitigation Grant Program

3. Revise § 206.431 to read as follows:

§ 206.431 Definitions.

Activity means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

Applicant means a State agency, local government, Indian tribal government, or eligible private nonprofit organization, submitting an application to the grantee for assistance under the HMGP.

Enhanced State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Grant application means the request to FEMA for HMGP funding, as outlined in § 206.436, by a State or tribal government that will act as grantee.

Grant award means total of Federal and non-Federal contributions to complete the approved scope of work.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a ''state'', under this subpart, for the purposes of administering the grant.

Indian tribal government means any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local Mitigation Plan is the hazard mitigation plan required of a local or Indian tribal government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.

Standard State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in § 201.4.

State Administrative Plan for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.

Subgrant means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

Subgrant application means the request to the grantee for HMGP funding by the eligible subgrantee, as outlined in § 206.436.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government as outlined in § 206.433.

Indian tribal governments acting as a subgrantee are accountable to the State grantee.

4. Revise § 206.432(b) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 15 or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Fifteen (15) percent.* Effective November 1, 2003, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, approved State Mitigation Plans will be accepted.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect prior to the disaster declaration, which meets the requirements outlined in 44 CFR 201.5 shall be eligible for assistance under the HMGP not to exceed 20 percent of the total estimated Federal assistance described in this paragraph.

(3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Director's estimate of all eligible costs, actual grants, and appropriate mission assignments.

* * * * *

5. Section 206.434 is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively; adding a new paragraph (b); revising redesignated paragraphs (c) introductory text and (c)(1); and revising redesignated paragraph (d) to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) *Plan requirement.* (1) For all disasters declared on or after November 1, 2003, local and tribal government applicants for subgrants, must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of subgrants.

(2) Regional Directors may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(c) *Minimum project criteria.* To be eligible for the Hazard Mitigation Grant Program, a project must:

(1) Be in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR part 201;

* * * * *

(d) *Eligible activities.* (1) *Planning.* Up to 7% of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

(2) *Types of projects.* Projects may be of any nature that will result in protection to public or private property. Eligible projects include, but are not limited to:

(i) Structural hazard control or protection projects;

(ii) Construction activities that will result in protection from hazards;

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

(vi) Development of comprehensive mitigation programs with implementation as an essential component;

(vii) Development or improvement of warning systems.

* * * * *

6. Revise § 206.435(a) to read as follows:

§ 206.435 Project identificaiton and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.

* * * * *

7. Revise § 206.436 to read as follows:

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for HMGP funding. Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part 206. Subgrantees are accountable to the grantee.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

(c) *Hazard mitigation application.* Upon identification of mitigation measures, the State (Governor's Authorized Representative) will submit its Hazard Mitigation Grant Program application to the FEMA Regional Director. The application will identify one or more mitigation measures for which funding is requested. The application must include a Standard Form (SF) 424, Application for Federal Assistance, SF 424D, Assurances for Construction Programs, if appropriate, and an narrative statement. The narrative statement will contain any pertinent project management information not included in the State's administrative plan for Hazard Mitigation. The narrative statement will also serve to identify the specific mitigation measures for which funding is requested. Information required for each mitigation measure shall include the following:

(1) Name of the subgrantee, if any;

(2) State or local contact for the measure;

(3) Location of the project;

(4) Description of the measure;

(5) Cost estimate for the measure;

(6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(c);

(7) Work schedule;

(8) Justification for selection;

(9) Alternatives considered;

(10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations.

(d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Director within 12 months of the date of disaster declaration.

(e) *Extensions.* The State may request the Regional Director to extend the application time limit by 30 to 90 day

increments, not to exceed a total of 180 days. The grantee must include a justification in its request.

(f) *FEMA approval.* The application and supplement(s) will be submitted to the FEMA Regional Director for approval. FEMA has final approval authority for funding of all projects.

(g) *Indian tribal grantees.* Indian tribal governments may submit a SF 424 directly to the Regional Director.

Subpart H—Public Assistance Eligibility

* * * * *

8. Revise § 206.220 to read as follows:

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

9. Section 206.226 is amended by redesignating paragraphs

(b) through (j) as paragraphs (c) through (k), respectively; adding a new paragraph (b); and revising redesignated paragraph (g)(5) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2003, the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

(g) * * *

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

* * * * *

Dated: February 19, 2002.

Michael D. Brown,

General Counsel.

[FR Doc. 02–4321 Filed 2–25–02; 8:45 am]

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Federal Register

Tuesday,
February 26, 2002

Part IV

The President

Proclamation 7524—Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Actions That Threaten Zimbabwe's Democratic Institutions and Transition to a Multi-Party Democracy

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Presidential Documents

Title 3—

The President

Proclamation 7524 of February 22, 2002

Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Actions That Threaten Zimbabwe's Democratic Institutions and Transition to a Multi-Party Democracy

By the President of the United States of America

A Proclamation

In light of the political and humanitarian crisis in Zimbabwe and the continued failure of President Robert Mugabe, Zimbabwean government officials, and others to support the rule of law, and given the importance to the United States of fostering democratic institutions in Zimbabwe, I have determined that it is in the interest of the United States to take all available measures to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrants, of senior members of the government of Robert Mugabe and others detailed below who formulate, implement, or benefit from policies that undermine or injure Zimbabwe's democratic institutions or impede the transition to a multi-party democracy.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including section 212(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1182(f), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 and 3 of this proclamation, be detrimental to the interests of the United States.

I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Senior members of the government of Robert Mugabe and other Zimbabwe nationals who formulate, implement, or benefit from policies that undermine or injure Zimbabwe's democratic institutions or impede the transition to a multi-party democracy;

(b) Persons who through their business dealings with Zimbabwe government officials derive significant financial benefit from policies that undermine or injure Zimbabwe's democratic institutions or impede the transition to a multi-party democracy; and

(c) The spouses of persons described in paragraphs (a) and (b), above.

Sec. 2. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interest of the United States.

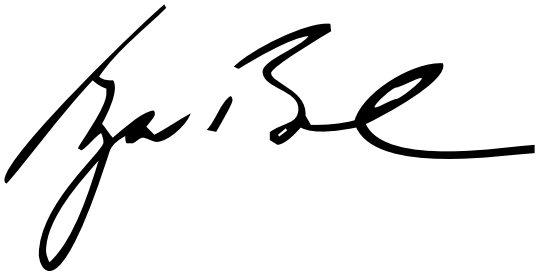
Sec. 3. Persons covered by sections 1 and 2 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may establish.

Sec. 6. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such termination shall become effective upon publication in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of February, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Federal Register

Tuesday,
February 26, 2002

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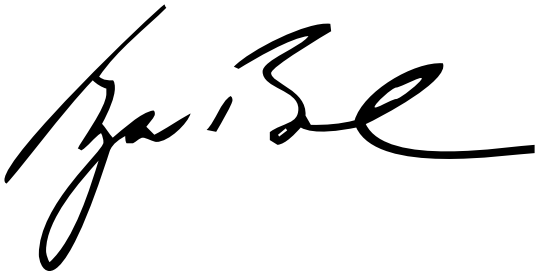

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 82/P.L. 107–143

Recognizing the 91st birthday of Ronald Reagan. (Feb. 14, 2002; 116 Stat. 17)

S. 737/P.L. 107–144

To designate the facility of the United States Postal Service located at 811 South Main Street in Yerington, Nevada, as the ''Joseph E. Dini, Jr. Post Office''. (Feb. 14, 2002; 116 Stat. 18)

S. 970/P.L. 107–145

To designate the facility of the United States Postal Service located at 39 Tremont Street, Paris Hill, Maine, as the ''Horatio King Post Office Building''. (Feb. 14, 2002; 116 Stat. 19)

S. 1026/P.L. 107–146

To designate the United States Post Office located at 60 Third Avenue in Long Branch, New Jersey, as the ''Pat King Post Office Building''. (Feb. 14, 2002; 116 Stat. 20)

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