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Federal Register

9–20–02 **Friday**
Vol. 67 No. 183 **Sept. 20, 2002**
Pages 59133–59448

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The President

Proclamation 7594 of September 16, 2002

Citizenship Day and Constitution Week, 2002

By the President of the United States of America

A Proclamation

We the people of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

With these words, written more than 200 years ago, our Forefathers laid the foundations for a great Nation, adopting a Constitution that has since proven to be an enduring and true guide for American government. The Constitution's powerful framework for establishing and preserving liberty, justice, and opportunity has enabled us to prosper as a Nation and thrive as a people through more than two centuries of political change, social transformation, and economic challenge.

The Founders secured the principles expressed in the Declaration of Independence by establishing a government that derives its power from the consent of the American people. The government established by the Constitution formed a remarkably resilient structure, balancing necessary authority with inherent freedoms, national unity with individual rights, and Federal interests with State powers. In setting this foundation, the Founders also recognized the potential for necessary change. They included a constitutional amendment process, which has proven to be a vitally important mechanism for achieving equality and fairness for all our citizens.

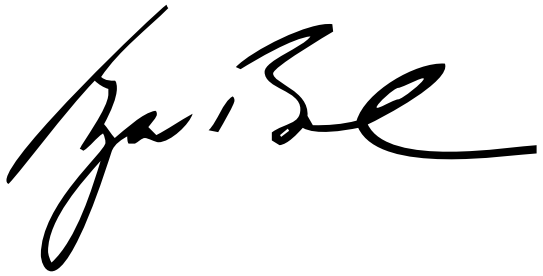
Our Constitution is sustained by Americans who daily defend the principles of democracy and freedom. We understand that with great privileges come great responsibilities. Citizenship not only involves a commitment to our Nation but also to our neighbors and those in need. Over the past year, we have seen many outstanding examples of selfless sacrifice, courageous compassion, and true generosity. We remain committed to building a culture of service and responsibility that inspires citizens to reach out to the needy, take leadership in improving our communities, and participate fully in our democratic process.

Today, the United States stands as a beacon of democracy and tolerance, inviting the nations of the world to pursue justice, provide freedom, and protect liberty for their people. As we face the challenges of a new era, we remain resolved and vigilant in the defense of life and liberty against tyranny and terror. Drawing strength and guidance from our Constitution, we will work to ensure that the blessings of American liberty endure and extend for generations to come.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106, as amended), designated September 17 as ''Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108, as amended), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 17, 2002, as Citizenship Day and September 17 through September 23, 2002, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that celebrate our Constitution and reaffirm our commitment as citizens of our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–24158
Filed 9–19–02; 8:45 am]
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority By the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The ''Service First'' initiative is an agency-wide joint pilot program between the Forest Service and the Bureau of Land Management (BLM) of the U.S. Department of the Interior to promote customer service and efficiency in the management of public lands and National Forest System lands. This final rule delegates authority from the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment to enter into pilot projects with BLM and, where appropriate, to delegate to BLM employees the authority to perform Forest Service duties. This rule also further delegates this authority from the Under Secretary for NaturalResources and Environment to the Chief of the Forest Service.

EFFECTIVE DATE: This rule is effective September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Delaney, Office of Communication, Forest Service, (202) 205–0974.

SUPPLEMENTARY INFORMATION: Section 331 of the fiscal year 1998 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 105–83; November 14, 1997) and Section 330 of the fiscal year 2001 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 106–291; October 11, 2000) authorize the Secretaries of Agriculture and the Interior to make reciprocal delegations of their respective authorities, responsibilities, and duties in support of the ''Service First'' initiative to promote customer service and efficiency in the management of public lands and National Forest System lands.

In the initial implementation of the ''Service First'' initiative, the Secretary of Agriculture delegated authority to establish ''Service First'' pilots and to make reciprocal delegations to Bureau of Land Management (BLM) officials to the Chief of the Forest Service through Secretary's Memorandums, which are part of USDA's internal directive system. Further delegations from the Chief to lower-level Forest Service officials, as necessary to carry out the goals of joint pilot projects, were made through Interim Directive No. 1230–2001–1 to Chapter 1230—Delegations of Authority and Responsibility, of the Forest Service Manual (36 CFR 200.4).

Congress has now authorized establishment of pilot projects across the agency through fiscal year 2005 (Pub. L. 106–291). Accordingly, it is more efficient to provide for a continuing delegation of authority to the Chief through issuance of a rule to Title 7, Code of Federal Regulations, Part 2—Delegations of Authority by the Secretary of Agriculture and General Officers of the Department. Therefore, this final rule amends 7 CFR 2.20 and 2.60 to delegate authority from the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment and to further delegate authority to the Chief of the Forest Service to enter into pilot projects with BLM and to delegate to BLM employees the authority to perform FS duties. Should Congress extend the pilot project authority beyond September 30, 2005, make the Service First authority a continuing authority, or decide not to renew the authority, the Department will revise 7 CFR 2.20 and 2.60 as needed to conform to future legislative action.

This rule relates solely to internal agency management. Therefore, pursuant to 5 U.S.C 553, notice of a proposed rulemaking and opportunity to comment are not required. For this same reason, this rule is also exempt from the provisions of Executive Order No. 12866 on Federal Regulations and Executive Order No. 12988 on Civil Justice Reform. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, this rule may be made effective immediately upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Therefore, for the reasons set forth in the preamble, part 2 of title 7 of the Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read:

Authority: 7 U.S.C. 6912 (a)(1); 5 U.S.C. 301: Reorganization Plan No. 2 of 1953; 3 CFR 1949—1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Amend § 2.20 by adding a new paragraph (a) (2) (xxxix) to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(2) * * *

(xxxix) Enter into pilot projects with the Bureau of Land Management(BLM), U.S. Department of the Interior, in support of the Service First initiative for the purpose of promoting customer service and efficiency in managing National Forest System lands and public lands and delegate to BLM employees those Forest Service authorities necessary to carry out pilot projects (Public Law 106–291).

* * * * *

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

3. Amend § 2.60 by adding a new paragraph (a) (48) to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(48) Enter into pilot projects with the Bureau of Land Management(BLM), U.S. Department of the Interior, in support of the Service First initiative for the

purpose of promoting customer service and efficiency in managing National Forest System lands and public lands and delegate to BLM employees those Forest Service authorities necessary to carry out those pilot projects (Pub. L. 106–291).

* * * * *

Dated: September 10, 2002.

For Subpart C:

Ann M. Veneman,

Secretary of Agriculture.

Dated: August 30, 2002.

For Subpart J:

Mark Rey,

Under Secretary for Natural Resources and Environment.

[FR Doc. 02–23857 Filed 9–19–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–089–1]

Change in Disease Status of Denmark Because of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by removing Denmark from the list of regions considered free of exotic Newcastle disease. We are taking this action because Denmark has confirmed an outbreak of exotic Newcastle disease. This action restricts the importation of poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Denmark. This action is necessary to help prevent the introduction of exotic Newcastle disease into the United States.

DATES: This rule is effective retroactively to July 16, 2002. We will consider all comments that we receive on or before November 19, 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. 02–089–1, 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. 02–089–1. 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. 02–089–1'' 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: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases. The regulations in § 94.6 govern, among other things, the importation of poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) is considered to exist. END is considered to exist in all regions not listed in § 94.6(a)(2).

END is a contagious and fatal viral disease affecting all species of birds. Previously known as velogenic viscerotropic Newcastle disease, END is considered one of the most infectious diseases of poultry in the world. The disease is so virulent that some birds die without exhibiting any symptoms, and a death rate of nearly 100 percent can occur in unvaccinated flocks. END can also infect and kill vaccinated poultry.

The disease is spread primarily through direct contact between healthy birds and the bodily discharges, including droppings and secretions from the nose, mouth, and eyes of infected birds. END incubation ranges from 2 to 15 days, and infected birds may present a variety of respiratory and digestive symptoms before they die. Egg production may decrease or cease entirely.

Under § 94.6, poultry carcasses, and parts and products of poultry carcasses may be imported into the United States from regions where END exists only if they have been cooked or are consigned directly to an approved establishment in the United States. Eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where END exists may be imported into the United States only if: (1) They are accompanied by a health certificate regarding the flock of origin and meet certain other conditions; (2) they are consigned directly to an approved establishment for breaking and pasteurization; (3) they are imported under permit for scientific, educational, or research purposes; or (4) they are imported under permit and have been cooked or processed and will be handled in a manner that prevents the introduction of END into the United States.

Further, poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds that do not qualify for entry into the United States under one of these conditions may transit the United States via air and sea ports under the conditions set out in § 94.15(d).

On July 16, 2002, Denmark reported a confirmed case of END to the Office International des Epizooties. Therefore, in order to prevent the introduction of END into the United States, we are amending § 94.6(a)(2) by removing Denmark from the list of regions considered to be free of END. This action restricts the importation of poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Denmark. We are making this amendment effective retroactively to July 16, 2002, which is the date that END was confirmed in that region.

Although we are removing Denmark from the list of regions considered free of END, we recognize that Denmark immediately responded to the outbreak of END by imposing restrictions on the movement of poultry and poultry products within its borders and initiating measures to eradicate the disease. At this time, it appears that the outbreak is well-controlled. Considering Denmark's efficient response to the outbreak, we intend to reassess their END status at a future date. During the reassessment, we will consider all comments we receive on this interim

rule, and the future assessment will determine whether it is necessary to continue to restrict the importation of poultry and poultry products from Denmark, whether we can restore Denmark to the list of regions considered free of END, or whether we can restore portions of Denmark as free of END.

Emergency Action

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

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations by removing Denmark from the list of regions considered free of END. We are taking this action because Denmark has confirmed an outbreak of END. This action restricts the importation of poultry carcasses, parts or products of poultry carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Denmark. This action is necessary to help prevent the introduction of END into the United States.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Given that the U.S. does not currently import any poultry or poultry products from Denmark, we anticipate no U.S. entities, large or small, will experience any economic effects as a result of this rule.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to July 16, 2002; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

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

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

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

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

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) is amended by removing the word ''Denmark,''.

Done in Washington, DC, this 16th day of September, 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–23940 Filed 9–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–15–AD; Amendment 39–12881; AD 2002–19–01]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. This AD requires you to perform a test on the flight control system and adjust the control roll stop if jamming occurs during the test. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent the flight control wheels from traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. Such a condition could lead to reduced or loss of control of the airplane.

DATES: This AD becomes effective on October 29, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 29, 2002.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–15–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all Socata Model TBM 700 airplanes. The DGAC reports that, during a ground test of the flight control system on one of the affected airplanes, the pilot control wheel became jammed when performing dual actions (*e.g.*, full up and full left) because the control wheel was turned beyond normal roll control travel limits. This was a result of a misadjustment of the roll control.

What Is the Potential Impact if FAA Took No Action?

If this condition is not corrected, it could result in the flight control wheels traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. This could lead to reduced or loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Socata Model TBM 700 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 12, 2002 (67 FR 46130). The NPRM proposed to require you to inspect the flight control system to determine if jamming occurs and adjust the roll control stop to correct this condition.

What Are the Differences Between This AD, the Service Information, and the DGAC AD?

The DGAC AD requires inspection and, if necessary, adjustment prior to further flight after the effective date of the AD. We require that you inspect and, if necessary, adjust within 100 hours time-in-service (TIS) after the effective date of this AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions required by this AD accomplished without compromising the safety of the airplanes.

Was the Public Invited To Comment?

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

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

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

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 133 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	None	$60	$60 × 133 = $7,980.

We estimate the following costs to accomplish any necessary modification that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180	None	$180.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–19–01 SOCATA—Groupe AEROSPATIALE: Amendment 39–12881; Docket No. 2002–CE–15–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the flight control wheels from traveling beyond normal roll control limits, which could result in the control wheel becoming jammed. Such a condition could lead to reduced or loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Perform a test of the pilot and right-hand (RH) station control wheels to determine if either control wheel becomes jammed.	Within the next 100 hours time-in-service after October 29, 2002 (the effective date of this AD) and thereafter every time the flight control system undergoes maintenance.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, November 2001.
(2) Adjust the roll control stops if jamming occurs on either the pilot control wheel or the RH station control wheel during any test required in paragraph (d)(1) of this AD.	Prior to further flight after jamming is found during any test required by paragraph (d)(1) of this AD.	In accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001.

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

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

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

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

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

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD. No passengers are allowed for this flight.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata TBM Aircraft Mandatory Service Bulletin SB 70–095 27, dated November 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French AD 2001–582(A), dated November 28, 2001.

(i) *When does this amendment become effective?* This amendment becomes effective on October 29, 2002.

Issued in Kansas City, Missouri, on September 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–23513 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–03–AD; Amendment 39–12883; AD 2002–19–03]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming IO–540, LTIO–540 and TIO–540 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes emergency airworthiness directive (AD) 2002–17–53 that was sent previously to all known U.S. owners and operators of Textron Lycoming LTIO–540 and TIO–540 series engines, rated at 300 horsepower (HP) or higher. That action requires, before further flight, replacing certain serial-numbered crankshafts that were hammer forged with crankshafts that were press forged. That AD was prompted by reports of crankshaft failures in LTIO–540 and TIO–540 engines, rated at 300 HP or higher. This amendment expands the suspect population of engines to include engines with crankshafts that were manufactured between March 1997 and the present and all IO–540 engines with crankshafts that were manufactured between March 1997 and the present that have been modified by supplemental type certificate (STC) by installing a turbocharger system. The actions specified by this AD are intended to prevent failure of the crankshaft, which could result in total engine power loss, in-flight engine failure and possible forced landing.

DATES: Effective September 20, 2002.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 20, 2002.

Comments for inclusion in the Rules Docket must be received on or before November 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–

03–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: Rocco Viselli or Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531 or (516) 256–7537; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On August 16, 2002, the FAA issued emergency AD 2002–17–53, applicable to Textron Lycoming LTIO–540 and TIO–540 series engines, rated at 300 HP or higher, to supersede emergency AD 2002–04–51 issued on February 11, 2002. AD 2002–17–53 requires replacing certain crankshafts that were manufactured using a hammer-forged process with crankshafts that were manufactured using a press-forged process. That action was prompted by reports of 17 crankshaft failures in LTIO–540 and TIO–540 engines, rated at 300 HP or higher, which were assembled with certain crankshafts that were manufactured using a hammer-forged process. The FAA is continuing the investigation into the cause of the crankshaft failures, and further regulatory action may follow. This action is prompted by an additional crankshaft failure that was outside the population of crankshafts covered by AD 2002–17–53. This AD requires the same replacement of certain crankshafts before further flight, and includes material testing of certain crankshafts manufactured between March 1997 and the present. This AD also expands the applicability to include all IO–540 engines with crankshafts that were manufactured between March 1997 and the present that have been modified by STC by installing a turbocharger system. This condition, if not corrected, could result in crankshaft failure, which could result in total engine power loss, in-flight engine failure and possible forced landing.

Manufacturer's Service Information

The FAA has reviewed the technical contents of Lycoming Mandatory Service Bulletin (MSB) No. 552, dated August 16, 2002, that provide tables of the affected engine and crankshaft serial numbers (SN's).

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Textron Lycoming LTIO–540 and TIO–540 engines, rated at 300 HP or higher, and on IO–540 engines that have been modified by STC by installing a turbocharger system with certain crankshafts installed, this AD requires removal of certain crankshafts before further flight and material testing of certain other crankshafts.

Immediate Adoption of This AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately on August 16, 2002, to all known U.S. owners and operators of Textron Lycoming LTIO–540 and TIO–540 engines, rated at 300 HP or higher. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–NE–03-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–19–03 Textron Lycoming: Amendment 39–12883. Docket No. 2002–NE–03–AD. Supersedes Emergency AD 2002–17–53.

Applicability

This AD is applicable to all Textron Lycoming LTIO–540 and TIO–540 engines, rated at 300 horsepower (HP) or greater and all IO–540 engines, rated at any HP, that have been modified by supplemental type certificate (STC) listed in Table 1 of this AD, by installing a turbocharger system. These engines are used on, but not limited to Piper Navajo (PA 31, PA 31–350, and PA 31–325), Piper Saratoga (PA 32–301T, PA 32R–301T), Piper Aerostar (PA 60–700P), Piper Malibu Mirage (PA 46–350P), Piper Mojave (PA 31P–350) Appalachian Aircraft Corporation Gavilan (EL–1), and Cessna T–206 airplanes.Table 1 follows:

TABLE 1.—LIST OF STC NUMBERS

SA000214DE	SA00356DE	SA01925AT	SA09650SC
SA469NE	SA2062WE	SA2118NM	SE2122WE
SA2123NM	SA257CE	SA2657WE	SA2082WE
SA305SO	SA3513WE	SA3719SW	SA385WE
SA4942NM	SA529WE	SA530WE	SA539WE
SA5699NM	SA811WE	SA840WE	SA909WE
SA978WE	SE00357DE	SE01949AT	SE1657NM
SE978NM	SE17WE	SE21WE	SE22WE
SE4157NM	SE5869SW	SE40WE	SE60WE
SE6WE	SE7734SW	SE81WE	SA01925AT
SA1648NM	SA4156NM	SA1747CE	SE4941NM
SA2656WE	SA000214DE		

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

Compliance

Compliance with this AD is required as indicated unless already done.

To prevent crankshaft failure, which could result in total engine power loss, in-flight engine failure and possible forced landing, do the following:

LTIO–540 Engines, TIO–540 Engines, Rated at 300 HP or Greater

(a) If your engine SN is listed in Table 1 of Lycoming Mandatory Service Bulletin (MSB) No. 552, dated August 16, 2002, remove the crankshaft before further flight.

(b) If your engine SN is listed in Table 2 of this AD, do the following; Table 2 follows:

Table 2. Engine Serial Numbers for Crankshafts Manufactured from March 2002 to Present

Engine Model	Engine SN	Engine Model	Engine SN
TIO-540-A2B	9149-61A	TIO-540-AE2A	6711-61A
TIO-540-AE2A	10441-61A	TIO-540-AE2A	9808-61A
TIO-540-AE2A	10534-61A	TIO-540-AE2A	9946-61A
TIO-540-AE2A	10536-61A	TIO-540-AH1A	11264-61A
TIO-540-AE2A	10541-61A	TIO-540-AH1A	11301-61A
TIO-540-AE2A	10546-61A	TIO-540-AH1A	11305-61A
TIO-540-AE2A	10626-61A	TIO-540-AJ1A	11298-61A
TIO-540-AE2A	10649-61A	TIO-540-AJ1A	11303-61A
TIO-540-AE2A	10754-61A	TIO-540-AJ1A	11304-61A
TIO-540-AE2A	10757-61A	TIO-540-AJ1A	11315-61A
TIO-540-AE2A	10764-61A	TIO-540-AJ1A	11316-61A
TIO-540-AE2A	11283-61A	TIO-540-AJ1A	11319-61A
TIO-540-AE2A	11307-61A	TIO-540-J2BD	10394-61A
TIO-540-AE2A	4722-61A	TIO-540-J2BD	7712-61A
TIO-540-AE2A	4920-61A	TIO-540-J2BD	7783-61A
TIO-540-U2A	9892-61A		

(1) Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181, within 10 hours time-in-service (TIS) to arrange for a crankshaft material test.

(2) Operation of the engine beyond 10 hours TIS after the effective date of this AD or while the material is being tested is not permitted.

(3) If your crankshaft fails the material testing, remove the crankshaft before further flight.

(4) If your crankshaft passes the material testing, the crankshaft may be returned to service.

(c) If your engine SN is listed in Table 3 of this AD, do the following; Table 3 follows:

Table 3. Engine Serial Numbers for Crankshafts Manufactured from March 1997 to March 1999

Engine Model	Engine SN	Engine Model	Engine SN	Engine Model	Engine SN
LTIO-540-F2BD	399-68A	TIO-540-AE2A	10278-61A	TIO-540-AJ1A	10347-61A
LTIO-540-F2BD	1179-68A	TIO-540-AE2A	10303-61A	TIO-540-AJ1A	10348-61A
LTIO-540-F2BD	1632-68A	TIO-540-AE2A	10306-61A	TIO-540-AJ1A	10349-61A
LTIO-540-F2BD	1734-68A	TIO-540-AE2A	10318-61A	TIO-540-AJ1A	10370-61A
LTIO-540-F2BD	2811-68A	TIO-540-AE2A	10319-61A	TIO-540-AJ1A	10380-61A
LTIO-540-F2BD	2812-68A	TIO-540-AE2A	10331-61A	TIO-540-AJ1A	10383-61A
LTIO-540-J2B	244-68A	TIO-540-AE2A	10342-61A	TIO-540-AJ1A	10396-61A
LTIO-540-J2B	344-68A	TIO-540-AE2A	10345-61A	TIO-540-AJ1A	10402-61A
LTIO-540-J2B	797-68A	TIO-540-AE2A	10350-61A	TIO-540-AJ1A	10403-61A
LTIO-540-J2B	834-68A	TIO-540-AE2A	10360-61A	TIO-540-AJ1A	10410-61A
LTIO-540-J2B	870-68A	TIO-540-AE2A	10368-61A	TIO-540-AJ1A	10414-61A
LTIO-540-J2B	874-68A	TIO-540-AE2A	10374-61A	TIO-540-AJ1A	10418-61A
LTIO-540-J2B	911-68A	TIO-540-AE2A	10392-61a	TIO-540-AJ1A	10422-61A
LTIO-540-J2B	921-68A	TIO-540-AE2A	10407-61A	TIO-540-AJ1A	10439-61A
LTIO-540-J2B	930-68A	TIO-540-AE2A	10415-61A	TIO-540-AJ1A	10447-61A
LTIO-540-J2B	1053-68A	TIO-540-AE2A	10420-61A	TIO-540-AJ1A	10498-61A
LTIO-540-J2B	1070-68A	TIO-540-AE2A	10465-61A	TIO-540-AJ1A	10584-61A
LTIO-540-J2B	1100-68a	TIO-540-AE2A	10475-61A	TIO-540-AJ1A	10639-61A
LTIO-540-J2B	1103-68A	TIO-540-AE2A	10511-61A	TIO-540-AJ1A	10694-61A
LTIO-540-J2B	1169-68A	TIO-540-AE2A	10517-61A	TIO-540-AJ1A	11186-61A
LTIO-540-J2B	1184-68A	TIO-540-AE2A	10532-61A	TIO-540-AJ1A	11269-61A
LTIO-540-J2B	1287-68A	TIO-540-AE2A	10538-61A	TIO-540-F2BD	3171-61A
LTIO-540-J2B	1298-68A	TIO-540-AE2A	10539-61A	TIO-540-F2BD	5123-61A
LTIO-540-J2B	1466-68A	TIO-540-AE2A	10597-61A	TIO-540-F2BD	5719-61A
LTIO-540-J2B	1489-68A	TIO-540-AE2A	10782-61A	TIO-540-F2BD	6100-61A
LTIO-540-J2B	1520-68A	TIO-540-AE2A	10791-61A	TIO-540-F2BD	8286-61A
LTIO-540-J2B	1749-68A	TIO-540-AE2A	11056-61A	TIO-540-F2BD	10480-61A
LTIO-540-J2B	1780-68A	TIO-540-AE2A	11105-61A	TIO-540-J2B	476-61A
LTIO-540-J2B	1844-68A	TIO-540-AH1A	1005-61A	TIO-540-J2B	2567-61A
LTIO-540-J2B	1971-68A	TIO-540-AH1A	1369-61A	TIO-540-J2B	2812-61A
LTIO-540-J2B	2123-68A	TIO-540-AH1A	9879-61A	TIO-540-J2B	3284-61A

LTIO-540-J2B	2362-68A	TIO-540-AH1A	9896-61A	TIO-540-J2B	3500-61A
LTIO-540-J2B	2504-68A	TIO-540-AH1A	9925-61A	TIO-540-J2B	3562-61A
LTIO-540-J2B	2637-68A	TIO-540-AH1A	9933-61A	TIO-540-J2B	3575-61A
LTIO-540-J2B	2817-68A	TIO-540-AH1A	9935-61A	TIO-540-J2B	3628-61A
LTIO-540-J2B	2876-68A	TIO-540-AH1A	9936-61A	TIO-540-J2B	3730-61A
LTIO-540-J2B	2975-68A	TIO-540-AH1A	9949-61A	TIO-540-J2B	3921-61A
LTIO-540-J2B	2976-68A	TIO-540-AH1A	9950-61A	TIO-540-J2B	4009-61A
LTIO-540-J2B	2977-68A	TIO-540-AH1A	9955-61A	TIO-540-J2B	4218-61A
LTIO-540-J2B	2979-68A	TIO-540-AH1A	9957-61A	TIO-540-J2B	4567-61A
LTIO-540-J2B	2980-68A	TIO-540-AH1A	9959-61A	TIO-540-J2B	4727-61A
LTIO-540-J2BD	162-68A	TIO-540-AH1A	9961-61A	TIO-540-J2B	4782-61A
LTIO-540-J2BD	293-68A	TIO-540-AH1A	9974-61A	TIO-540-J2B	5053-61A
LTIO-540-J2BD	334-68A	TIO-540-AH1A	9975-61A	TIO-540-J2B	5242-61A
LTIO-540-J2BD	418-68A	TIO-540-AH1A	9977-61A	TIO-540-J2B	5547-61A
LTIO-540-J2BD	445-68A	TIO-540-AH1A	9978-61A	TIO-540-J2B	5899-61A
LTIO-540-J2BD	545-68A	TIO-540-AH1A	9981-61A	TIO-540-J2B	5934-61A
LTIO-540-J2BD	549-68A	TIO-540-AH1A	9983-61A	TIO-540-J2B	6186-61A
LTIO-540-J2BD	569-68A	TIO-540-AH1A	9986-61A	TIO-540-J2B	6290-61A
LTIO-540-J2BD	607-68A	TIO-540-AH1A	9991-61A	TIO-540-J2B	6300-61A
LTIO-540-J2BD	614-68A	TIO-540-AH1A	9992-61A	TIO-540-J2B	6303-61A
LTIO-540-J2BD	623-68A	TIO-540-AH1A	9995-61A	TIO-540-J2B	6402-61A
LTIO-540-J2BD	632-68A	TIO-540-AH1A	9996-61A	TIO-540-J2B	6506-61A
LTIO-540-J2BD	737-68A	TIO-540-AH1A	10003-61A	TIO-540-J2B	6788-61A
LTIO-540-J2BD	840-68A	TIO-540-AH1A	10007-61A	TIO-540-J2B	6845-61A
LTIO-540-J2BD	857-68A	TIO-540-AH1A	10013-61A	TIO-540-J2B	6892-61A
LTIO-540-J2BD	858-68A	TIO-540-AH1A	10017-61A	TIO-540-J2B	7223-61A
LTIO-540-J2BD	934-68A	TIO-540-AH1A	10025-61A	TIO-540-J2B	7313-61A
LTIO-540-J2BD	1052-68A	TIO-540-AH1A	10026-61A	TIO-540-J2B	8060-61A
LTIO-540-J2BD	1084-68A	TIO-540-AH1A	10030-61A	TIO-540-J2B	8114-61A
LTIO-540-J2BD	1088-68A	TIO-540-AH1A	10031-61A	TIO-540-J2B	8349-61A
LTIO-540-J2BD	1152-68A	TIO-540-AH1A	10032-61A	TIO-540-J2B	8629-61A
LTIO-540-J2BD	1210-68A	TIO-540-AH1A	10045-61A	TIO-540-J2B	8953-61A
LTIO-540-J2BD	1270-68A	TIO-540-AH1A	10046-61A	TIO-540-J2B	8992-61A
LTIO-540-J2BD	1311-68A	TIO-540-AH1A	10047-61A	TIO-540-J2B	9050-61A
LTIO-540-J2BD	1418-68A	TIO-540-AH1A	10054-61A	TIO-540-J2B	9200-61A

LTIO-540-J2BD	1484-68A	TIO-540-AH1A	10055-61A	TIO-540-J2B	9277-61A
LTIO-540-J2BD	1552-68A	TIO-540-AH1A	10066-61A	TIO-540-J2B	9942-61A
LTIO-540-J2BD	1600-68A	TIO-540-AH1A	10073-61A	TIO-540-J2B	9943-61A
LTIO-540-J2BD	1709-68A	TIO-540-AH1A	10074-61A	TIO-540-J2B	9944-61A
LTIO-540-J2BD	1752-68A	TIO-540-AH1A	10077-61A	TIO-540-J2B	9945-61A
LTIO-540-J2BD	1816-68A	TIO-540-AH1A	10087-61A	TIO-540-J2B	9958-61A
LTIO-540-J2BD	1841-68A	TIO-540-AH1A	10088-61A	TIO-540-J2B	9960-61A
LTIO-540-J2BD	1853-68A	TIO-540-AH1A	10096-61A	TIO-540-J2B	9967-61A
LTIO-540-J2BD	1924-68A	TIO-540-AH1A	10097-61A	TIO-540-J2B	9970-61A
LTIO-540-J2BD	1933-68A	TIO-540-AH1A	10122-61A	TIO-540-J2B	9972-61A
LTIO-540-J2BD	1951-68A	TIO-540-AH1A	10124-61A	TIO-540-J2B	10038-61A
LTIO-540-J2BD	1955-68A	TIO-540-AH1A	10130-61A	TIO-540-J2B	10039-61A
LTIO-540-J2BD	2011-68A	TIO-540-AH1A	10137-61A	TIO-540-J2B	10148-61A
LTIO-540-J2BD	2030-68A	TIO-540-AH1A	10139-61A	TIO-540-J2B	10149-61A
LTIO-540-J2BD	2046-68A	TIO-540-AH1A	10150-61A	TIO-540-J2B	10161-61A
LTIO-540-J2BD	2047-68A	TIO-540-AH1A	10156-61A	TIO-540-J2B	10162-61A
LTIO-540-J2BD	2101-68A	TIO-540-AH1A	10157-61A	TIO-540-J2B	10185-61A
LTIO-540-J2BD	2240-68A	TIO-540-AH1A	10165-61A	TIO-540-J2B	10186-61A
LTIO-540-J2BD	2246-68A	TIO-540-AH1A	10167-61A	TIO-540-J2B	10210-61A
LTIO-540-J2BD	2262-68A	TIO-540-AH1A	10176-61A	TIO-540-J2B	10211-61A
LTIO-540-J2BD	2290-68A	TIO-540-AH1A	10177-61A	TIO-540-J2B	10283-61A
LTIO-540-J2BD	2305-68A	TIO-540-AH1A	10183-61A	TIO-540-J2B	10285-61A
LTIO-540-J2BD	2319-68A	TIO-540-AH1A	10187-61A	TIO-540-J2B	10363-61A
LTIO-540-J2BD	2386-68A	TIO-540-AH1A	10195-61A	TIO-540-J2B	10430-61A
LTIO-540-J2BD	2437-68A	TIO-540-AH1A	10200-61A	TIO-540-J2BD	676-61A
LTIO-540-J2BD	2465-68A	TIO-540-AH1A	10218-61A	TIO-540-J2BD	2080-61A
LTIO-540-J2BD	2471-68A	TIO-540-AH1A	10221-61A	TIO-540-J2BD	2489-61A
LTIO-540-J2BD	2559-68A	TIO-540-AH1A	10223-61A	TIO-540-J2BD	2660-61A
LTIO-540-J2BD	2577-68A	TIO-540-AH1A	10229-61A	TIO-540-J2BD	2941-61A
LTIO-540-J2BD	2594-68A	TIO-540-AH1A	10239-61A	TIO-540-J2BD	3898-61A
LTIO-540-J2BD	2630-68A	TIO-540-AH1A	10247-61A	TIO-540-J2BD	4066-61A
LTIO-540-J2BD	2647-68A	TIO-540-AH1A	10250-61A	TIO-540-J2BD	4133-61A
LTIO-540-J2BD	2684-68A	TIO-540-AH1A	10258-61A	TIO-540-J2BD	4146-61A
LTIO-540-J2BD	2690-68A	TIO-540-AH1A	10259-61A	TIO-540-J2BD	4221-61A
LTIO-540-J2BD	2860-68A	TIO-540-AH1A	10271-61A	TIO-540-J2BD	4664-61A

LTIO-540-J2BD	2879-68A	TIO-540-AH1A	10272-61A	TIO-540-J2BD	4695-61A
LTIO-540-J2BD	2884-68A	TIO-540-AH1A	10279-61A	TIO-540-J2BD	4973-61A
LTIO-540-J2BD	2887-68A	TIO-540-AH1A	10284-61A	TIO-540-J2BD	5111-61A
LTIO-540-J2BD	2966-68A	TIO-540-AH1A	10298-61A	TIO-540-J2BD	5153-61A
LTIO-540-J2BD	2971-68A	TIO-540-AH1A	10299-61A	TIO-540-J2BD	5340-61A
LTIO-540-J2BD	2978-68A	TIO-540-AH1A	10304-61A	TIO-540-J2BD	5561-61A
LTIO-540-J2BD	2981-68A	TIO-540-AH1A	10312-61A	TIO-540-J2BD	5867-61A
LTIO-540-J2BD	2982-68A	TIO-540-AH1A	10317-61A	TIO-540-J2BD	6122-61A
LTIO-540-J2BD	2983-68A	TIO-540-AH1A	10330-61A	TIO-540-J2BD	6334-61A
LTIO-540-J2BD	2984-68A	TIO-540-AH1A	10344-61A	TIO-540-J2BD	6388-61A
LTIO-540-J2BD	2985-68A	TIO-540-AH1A	10353-61A	TIO-540-J2BD	6531-61A
TIO-540-A2B	791-61A	TIO-540-AH1A	10359-61A	TIO-540-J2BD	6540-61A
TIO-540-A2B	1119-61	TIO-540-AH1A	10375-61A	TIO-540-J2BD	6866-61A
TIO-540-A2B	2159-61	TIO-540-AH1A	10424-61A	TIO-540-J2BD	6942-61A
TIO-540-A2B	8594-61A	TIO-540-AH1A	10461-61A	TIO-540-J2BD	6973-61A
TIO-540-A2B	8610-61A	TIO-540-AH1A	10468-61A	TIO-540-J2BD	7024-61A
TIO-540-A2C	1215-61	TIO-540-AH1A	10482-61A	TIO-540-J2BD	7043-61A
TIO-540-A2C	1760-61A	TIO-540-AH1A	10507-61A	TIO-540-J2BD	7058-61A
TIO-540-A2C	2729-61A	TIO-540-AH1A	10531-61A	TIO-540-J2BD	7064-61A
TIO-540-A2C	3048-61A	TIO-540-AH1A	10554-61A	TIO-540-J2BD	7212-61A
TIO-540-A2C	3123-61A	TIO-540-AH1A	10602-61A	TIO-540-J2BD	7417-61A
TIO-540-A2C	3181-61A	TIO-540-AH1A	10609-61A	TIO-540-J2BD	7425-61A
TIO-540-A2C	3271-61A	TIO-540-AJ1A	104-61A	TIO-540-J2BD	7559-61A
TIO-540-A2C	3353-61A	TIO-540-AJ1A	9161-61A	TIO-540-J2BD	7677-61A
TIO-540-A2C	3392-61A	TIO-540-AJ1A	10020-61A	TIO-540-J2BD	7707-61A
TIO-540-A2C	3763-61A	TIO-540-AJ1A	10021-61A	TIO-540-J2BD	7857-61A
TIO-540-A2C	4327-61A	TIO-540-AJ1A	10022-61A	TIO-540-J2BD	7869-61A
TIO-540-A2C	4430-61A	TIO-540-AJ1A	10023-61A	TIO-540-J2BD	7980-61A
TIO-540-A2C	4557-61A	TIO-540-AJ1A	10036-61A	TIO-540-J2BD	8057-61A
TIO-540-A2C	4575-61A	TIO-540-AJ1A	10037-61A	TIO-540-J2BD	8165-61A
TIO-540-A2C	4685-61A	TIO-540-AJ1A	10040-61A	TIO-540-J2BD	8205-61A
TIO-540-A2C	4875-61A	TIO-540-AJ1A	10041-61A	TIO-540-J2BD	8223-61A
TIO-540-A2C	5315-61A	TIO-540-AJ1A	10049-61A	TIO-540-J2BD	8338-61A
TIO-540-A2C	5904-61A	TIO-540-AJ1A	10060-61A	TIO-540-J2BD	8400-61A
TIO-540-A2C	6897-61A	TIO-540-AJ1A	10061-61A	TIO-540-J2BD	8517-61A

TIO-540-A2C	6914-61A	TIO-540-AJ1A	10063-61A	TIO-540-J2BD	8518-61A
TIO-540-A2C	7307-61A	TIO-540-AJ1A	10085-61A	TIO-540-J2BD	8557-61A
TIO-540-A2C	8363-61A	TIO-540-AJ1A	10086-61A	TIO-540-J2BD	8680-61A
TIO-540-A2C	8571-61A	TIO-540-AJ1A	10090-61A	TIO-540-J2BD	9057-61A
TIO-540-A2C	8826-61A	TIO-540-AJ1A	10093-61A	TIO-540-J2BD	9078-61A
TIO-540-A2C	8982-61A	TIO-540-AJ1A	10099-61A	TIO-540-J2BD	9158-61A
TIO-540-A2C	9199-61A	TIO-540-AJ1A	10104-61A	TIO-540-J2BD	9175-61A
TIO-540-A2C	9927-61A	TIO-540-AJ1A	10105-61A	TIO-540-J2BD	9272-61A
TIO-540-A2C	10103-61A	TIO-540-AJ1A	10106-61A	TIO-540-J2BD	9430-61A
TIO-540-A2C	11086-61A	TIO-540-AJ1A	10107-61A	TIO-540-J2BD	9488-61A
TIO-540-AE2A	508-61A	TIO-540-AJ1A	10108-61A	TIO-540-J2BD	9772-61A
TIO-540-AE2A	882-61A	TIO-540-AJ1A	10109-61A	TIO-540-J2BD	9836-61A
TIO-540-AE2A	954-61A	TIO-540-AJ1A	10110-61A	TIO-540-J2BD	9870-61A
TIO-540-AE2A	1129-61A	TIO-540-AJ1A	10111-61A	TIO-540-J2BD	9877-61A
TIO-540-AE2A	1741-61A	TIO-540-AJ1A	10113-61A	TIO-540-J2BD	9973-61A
TIO-540-AE2A	3550-61A	TIO-540-AJ1A	10117-61A	TIO-540-J2BD	10009-61A
TIO-540-AE2A	4117-61A	TIO-540-AJ1A	10118-61A	TIO-540-J2BD	10015-61A
TIO-540-AE2A	4379-61A	TIO-540-AJ1A	10120-61A	TIO-540-J2BD	10024-61A
TIO-540-AE2A	4822-61A	TIO-540-AJ1A	10121-61A	TIO-540-J2BD	10044-61A
TIO-540-AE2A	6168-61A	TIO-540-AJ1A	10126-61A	TIO-540-J2BD	10068-61A
TIO-540-AE2A	6225-61A	TIO-540-AJ1A	10127-61A	TIO-540-J2BD	10082-61A
TIO-540-AE2A	6553-61A	TIO-540-AJ1A	10128-61A	TIO-540-J2BD	10083-61A
TIO-540-AE2A	6584-61A	TIO-540-AJ1A	10134-61A	TIO-540-J2BD	10094-61A
TIO-540-AE2A	6614-61A	TIO-540-AJ1A	10135-61A	TIO-540-J2BD	10095-61A
TIO-540-AE2A	7316-61A	TIO-540-AJ1A	10140-61A	TIO-540-J2BD	10152-61A
TIO-540-AE2A	7891-61A	TIO-540-AJ1A	10141-61A	TIO-540-J2BD	10194-61A
TIO-540-AE2A	8038-61A	TIO-540-AJ1A	10153-61A	TIO-540-J2BD	10216-61A
TIO-540-AE2A	8105-61A	TIO-540-AJ1A	10155-61A	TIO-540-J2BD	10276-61A
TIO-540-AE2A	8360-61A	TIO-540-AJ1A	10160-61A	TIO-540-J2BD	10612-61A
TIO-540-AE2A	9165-61A	TIO-540-AJ1A	10169-61A	TIO-540-J2BD	10763-61A
TIO-540-AE2A	9315-61A	TIO-540-AJ1A	10170-61A	TIO-540-J2BD	11106-61A
TIO-540-AE2A	9674-61A	TIO-540-AJ1A	10171-61A	TIO-540-S1AD	4754-61A
TIO-540-AE2A	9700-61A	TIO-540-AJ1A	10172-61A	TIO-540-S1AD	6218-61A
TIO-540-AE2A	9748-61A	TIO-540-AJ1A	10178-61A	TIO-540-S1AD	6907-61A
TIO-540-AE2A	9767-61A	TIO-540-AJ1A	10179-61A	TIO-540-S1AD	7147-61A

TIO-540-AE2A	9842-61A	TIO-540-AJ1A	10180-61A	TIO-540-S1AD	7474-61A
TIO-540-AE2A	9844-61A	TIO-540-AJ1A	10181-61A	TIO-540-S1AD	7555-61A
TIO-540-AE2A	9846-61A	TIO-540-AJ1A	10184-61A	TIO-540-S1AD	8396-61A
TIO-540-AE2A	9848-61A	TIO-540-AJ1A	10190-61A	TIO-540-S1AD	8851-61A
TIO-540-AE2A	9850-61A	TIO-540-AJ1A	10197-61A	TIO-540-S1AD	9411-61A
TIO-540-AE2A	9852-61A	TIO-540-AJ1A	10199-61A	TIO-540-S1AD	9874-61A
TIO-540-AE2A	9854-61A	TIO-540-AJ1A	10201-61A	TIO-540-U2A	921-61A
TIO-540-AE2A	9861-61A	TIO-540-AJ1A	10202-61A	TIO-540-U2A	2052-61A
TIO-540-AE2A	9862-61A	TIO-540-AJ1A	10203-61A	TIO-540-U2A	2837-61A
TIO-540-AE2A	9866-61A	TIO-540-AJ1A	10209-61A	TIO-540-U2A	3740-61A
TIO-540-AE2A	9906-61A	TIO-540-AJ1A	10213-61A	TIO-540-U2A	4160-61A
TIO-540-AE2A	9918-61A	TIO-540-AJ1A	10220-61A	TIO-540-U2A	4998-61A
TIO-540-AE2A	9919-61A	TIO-540-AJ1A	10222-61A	TIO-540-U2A	5219-61A
TIO-540-AE2A	9930-61A	TIO-540-AJ1A	10224-61A	TIO-540-U2A	5339-61A
TIO-540-AE2A	9931-61A	TIO-540-AJ1A	10226-61A	TIO-540-U2A	5493-61A
TIO-540-AE2A	9953-61A	TIO-540-AJ1A	10227-61A	TIO-540-U2A	6200-61A
TIO-540-AE2A	9962-61A	TIO-540-AJ1A	10231-61A	TIO-540-U2A	6667-61A
TIO-540-AE2A	9963-61A	TIO-540-AJ1A	10232-61A	TIO-540-U2A	6748-61A
TIO-540-AE2A	9964-61A	TIO-540-AJ1A	10233-61A	TIO-540-U2A	6990-61A
TIO-540-AE2A	9968-61A	TIO-540-AJ1A	10234-61A	TIO-540-U2A	7383-61A
TIO-540-AE2A	9985-61A	TIO-540-AJ1A	10235-61A	TIO-540-U2A	7410-61A
TIO-540-AE2A	9987-61A	TIO-540-AJ1A	10236-61A	TIO-540-U2A	7473-61A
TIO-540-AE2A	9994-61A	TIO-540-AJ1A	10237-61A	TIO-540-U2A	7495-61A
TIO-540-AE2A	9997-61A	TIO-540-AJ1A	10245-61A	TIO-540-U2A	7717-61A
TIO-540-AE2A	9998-61A	TIO-540-AJ1A	10246-61A	TIO-540-U2A	7806-61A
TIO-540-AE2A	10016-61A	TIO-540-AJ1A	10249-61A	TIO-540-U2A	9093-61A
TIO-540-AE2A	10028-61A	TIO-540-AJ1A	10253-61A	TIO-540-U2A	9456-61A
TIO-540-AE2A	10033-61A	TIO-540-AJ1A	10257-61A	TIO-540-U2A	9857-61A
TIO-540-AE2A	10034-61A	TIO-540-AJ1A	10261-61A	TIO-540-U2A	9873-61A
TIO-540-AE2A	10052-61A	TIO-540-AJ1A	10263-61A	TIO-540-U2A	9920-61A
TIO-540-AE2A	10053-61A	TIO-540-AJ1A	10264-61A	TIO-540-U2A	9934-61A
TIO-540-AE2A	10056-61A	TIO-540-AJ1A	10267-61A	TIO-540-U2A	10019-61A
TIO-540-AE2A	10057-61A	TIO-540-AJ1A	10268-61A	TIO-540-U2A	10035-61A
TIO-540-AE2A	10058-61A	TIO-540-AJ1A	10273-61A	TIO-540-U2A	10050-61A
TIO-540-AE2A	10075-61A	TIO-540-AJ1A	10277-61A	TIO-540-U2A	10051-61A

TIO-540-AE2A	10079-61A	TIO-540-AJ1A	10280-61A	TIO-540-U2A	10146-61A
TIO-540-AE2A	10080-61A	TIO-540-AJ1A	10281-61A	TIO-540-U2A	10147-61A
TIO-540-AE2A	10084-61A	TIO-540-AJ1A	10282-61A	TIO-540-U2A	10251-61A
TIO-540-AE2A	10123-61A	TIO-540-AJ1A	10286-61A	TIO-540-U2A	10252-61A
TIO-540-AE2A	10125-61A	TIO-540-AJ1A	10289-61A	TIO-540-U2A	10295-61A
TIO-540-AE2A	10143-61A	TIO-540-AJ1A	10293-61A	TIO-540-U2A	10307-61A
TIO-540-AE2A	10144-61A	TIO-540-AJ1A	10294-61A	TIO-540-U2A	10308-61A
TIO-540-AE2A	10145-61A	TIO-540-AJ1A	10296-61A	TIO-540-W2A	9928-61A
TIO-540-AE2A	10151-61A	TIO-540-AJ1A	10297-61A	TIO-540-W2A	9929-61A
TIO-540-AE2A	10154-61A	TIO-540-AJ1A	10302-61A	TIO-540-W2A	9937-61A
TIO-540-AE2A	10158-61A	TIO-540-AJ1A	10310-61A	TIO-540-W2A	9938-61A
TIO-540-AE2A	10163-61A	TIO-540-AJ1A	10311-61A	TIO-540-W2A	10006-61A
TIO-540-AE2A	10166-61A	TIO-540-AJ1A	10313-61A	TIO-540-W2A	10042-61A
TIO-540-AE2A	10191-61A	TIO-540-AJ1A	10314-61A	TIO-540-W2A	10043-61A
TIO-540-AE2A	10192-61A	TIO-540-AJ1A	10315-61A	TIO-540-W2A	10204-61A
TIO-540-AE2A	10193-61A	TIO-540-AJ1A	10316-61A	TIO-540-W2A	10207-61A
TIO-540-AE2A	10198-61A	TIO-540-AJ1A	10320-61A	TIO-540-X120	9882-61A
TIO-540-AE2A	10205-61A	TIO-540-AJ1A	10321-61A	TIO-540-X120	9887-61A
TIO-540-AE2A	10206-61A	TIO-540-AJ1A	10322-61A	TIO-540-X120	9891-61A
TIO-540-AE2A	10208-61A	TIO-540-AJ1A	10325-61A	TIO-540-X120	9893-61A
TIO-540-AE2A	10228-61A	TIO-540-AJ1A	10326-61A	TIO-540-X120	9894-61A
TIO-540-AE2A	10238-61A	TIO-540-AJ1A	10327-61A	TIO-540-X120	9904-61A
TIO-540-AE2A	10248-61A	TIO-540-AJ1A	10328-61A	TIO-540-X120	9905-61A
TIO-540-AE2A	10254-61A	TIO-540-AJ1A	10329-61A	TIO-540-X120	9908-61A
TIO-540-AE2A	10255-61A	TIO-540-AJ1A	10332-61A	TIO-540-X120	9909-61A
TIO-540-AE2A	10256-61A	TIO-540-AJ1A	10333-61A	TIO-540-X120	9922-61A
TIO-540-AE2A	10260-61A	TIO-540-AJ1A	10334-61A	TIO-540-X120	9923-61A
TIO-540-AE2A	10262-61A	TIO-540-AJ1A	10335-61A	TIO-540-X120	9924-61A
TIO-540-AE2A	10265-61A	TIO-540-AJ1A	10339-61A	TIO-540-X143	101115-61
TIO-540-AE2A	10269-61A	TIO-540-AJ1A	10340-61A		
TIO-540-AE2A	10270-61A	TIO-540-AJ1A	10346-61A		

(1) Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181 within 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs earlier, to arrange for a crankshaft material test.

(2) Operation of the engine beyond 50 hours TIS or 6 months after the effective date of this AD, whichever occurs earlier, or while the material is being tested is not permitted.

(3) If your crankshaft fails the material testing, remove the crankshaft before further flight.

(4) If your crankshaft passes the material testing, the crankshaft may be returned to service.

IO–540 Engines Modified by STC by Installing a Turbocharger System and All Engines That Have Been Overhauled

(d) If your engine was manufactured, overhauled or had the crankshaft replaced after March 1, 1997, and your engine SN is not covered in paragraphs (a), (b), or (c) of this AD, do the following:

(1) Determine the SN of your crankshaft.

(2) If your crankshaft SN is listed in Table 2 of Lycoming MSB 552, dated August 16, 2002, remove the crankshaft before further flight.

(3) If your crankshaft SN is listed in Table 4 of this AD, do the following; Table 4 follows:

Table 4 SN's of Crankshafts Manufactured From March 2002 to Present

V537925679	V537924595	V537925619	V537925665
V537925690	V537925649	V537925609	V537925668
V537925681	V537925695	V537925617	V537925674
V537925689	V537925702	V537925595	V537925651
V537925656	V537925841	V537925627	V537925697
V537924599	V537925644	V537925626	V537925672
V537925864	V537924597	V537925635	V537925712
V537925877	V537925653	V537925613	V537925868
V537925678	V537925639	V537925629	V537924598
V537925711	V537925634	V537925601	V537925675
V537925870	V537925638	V537925625	V537925851
V537925842	V537925606	V537925598	V537925623
V537925838	V537925593	V537924596	

(i) Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181, within 10 hours time-in-service (TIS) to arrange for a crankshaft material test.

(ii) Operation of the engine beyond 10 hours TIS after the effective date of this AD or while the material is being tested is not permitted.

(iii) If your crankshaft fails the material testing, remove the crankshaft before further flight.

(iv) If your crankshaft passes the material testing, the crankshaft may be returned to service.

(4) If your crankshaft SN is listed in Table 5 of this AD, do the following; Table 5 follows:

Table 5. Crankshafts Manufactured From March 1997 through March 1999 By SN

0037	V53790300	V537910159	V53795379	V537910654	V53799491
0039A	V53790309	V537910160	V537910555	V537910655	V53799492
0048A	V53790311	V537910161	V537910557	V537910658	V537911246
I17424	V53790312	V537910162	V537910558	V537910659	V537911247
I17425	V53790314	V537910163	V537910559	V53791066	V537911248
I17426	V53790322	V537910165	V537910562	V537910660	V537911249
I17429	V53790324	V537910167	V537910565	V537910661	V537911251
I17438	V53790327	V537910168	V537910567	V537910661	V537911252
I17440	V53790339	V537910169	V537910570	V537910662	V537911253
I17441	V53790407	V537910222	V537910571	V537910663	V537911255
I17442	V53790542	V537910246	V537910572	V537910667	V537911257
I17444	V537910002	V537910248	V537910573	V537910668	V537911260
I17488	V537910003	V537910250	V537910574	V53791067	V537911261
I17491	V537910004	V537910251	V537910576	V537910672	V537911263
I17493	V537910005	V537910252	V537910577	V537910673	V537911267
I17494	V537910006	V537910253	V537910580	V537910675	V537911269
I17497	V537910007	V537910254	V537910581	V537910677	V537911270
I17498	V537910008	V537910260	V537910582	V537910679	V537911271
I17668	V537910009	V537910266	V537910583	V53791068	V537911272
I17669	V537910010	V537910267	V537910584	V537910680	V537911273
I17672	V537910011	V537910280	V537910585	V537910836	V537911274
I17675	V537910013	V537910291	V537910586	V537911201	V537911275
I17679	V537910014	V53791043	V537910588	V537911203	V537911277
I17681	V537910017	V537910472	V537910590	V537911204	V537911278
I17682	V537910018	V537910486	V537910591	V537911205	V537911280
I17683	V537910021	V537910487	V537910597	V537911206	V537911281
I17685	V537910022	V537910488	V537910598	V537911209	V537911284
I17686	V537910023	V537910490	V537910599	V537911210	V537911285
I17690	V537910024	V537910492	V537910600	V537911211	V537911286
I17692	V537910025	V537910493	V537910602	V537911213	V537911287
I17693	V537910026	V537910494	V537910603	V537911214	V537911289
I17695	V537910027	V537910495	V537910604	V537911216	V537911292

I17696	V537910028	V537910496	V537910605	V537911217	V537911293
I17698	V537910029	V537910501	V537910612	V537911221	V537911295
I17700	V537910030	V537910502	V537910614	V537911223	V537911299
I17701	V537910032	V537910504	V537910615	V537911225	V537911301
I17702	V537910033	V537910505	V537910616	V537911227	V537911303
I17703	V537910034	V537910507	V537910617	V537911228	V537911306
I17704	V537910036	V537910508	V537910618	V537911231	V537911307
I17708	V537910038	V537910509	V537910620	V537911232	V537911309
I17709	V537910039	V537910510	V537910621	V537911237	V537911310
I17711	V537910040	V537910511	V537910622	V537911238	V537911313
I17712	V537910041	V537910532	V537910625	V537911241	V537911314
I17716	V537910042	V537910536	V537910627	V537912218	V537911315
V53790015	V537910043	V537910538	V537910630	V537912219	V537911316
V53790017	V537910045	V537910539	V537910632	V537912220	V537911318
V53790035	V53791013	V537910546	V537910633	V537912221	V537911319
V53790114	V53791014	V537910549	V537910635	V537912222	V537911325
V53790138	V537910151	V537910551	V537910636	V537912224	V537911394
V53790261	V537910154	V537910552	V537910637	V537912609	V537911469
V537911476	V537910156	V537910553	V537910638	V537912614	V537911472
V537911477	V537911856	V537912072	V53791064	V537912618	V537911473
V537911479	V537911857	V537912073	V537912135	V537912620	V537911474
V537911480	V537911858	V537912074	V537912136	V537912621	V537913280
V537911482	V537911859	V537912075	V537912137	V537912629	V537913287
V537911482	V537911862	V537912077	V537912138	V537912630	V537913422
V537911486	V537911863	V537912078	V537912139	V537912631	V53791344
V537911487	V537911865	V537912079	V537912140	V537912633	V537913511
V537911488	V537911873	V537912081	V537912141	V537912634	V537913518
V537911490	V53791202	V537912082	V537912142	V537912636	V537913524
V537911491	V537912020	V537912084	V537912143	V537912637	V537913545
V537911493	V537912022	V537912085	V537912144	V537912638	V537913692
V537911495	V537912024	V537912086	V537912146	V537912639	V537913705
V537911501	V537912025	V537912088	V537912147	V537912640	V537914210
V537911503	V537912026	V537912089	V537912148	V537912651	V537914279
V537911504	V537912027	V537912090	V537912149	V537912653	V537914281
V537911505	V537912028	V537912091	V537912150	V537912654	V53791429

V537911506	V537912029	V537912092	V537912151	V537912655	V537914298
V537911509	V537912030	V537912094	V537912152	V537912656	V537914310
V537911511	V537912033	V537912095	V537912153	V537912658	V537914315
V537911515	V537912034	V537912096	V537912154	V537912660	V53791432
V537911517	V537912035	V537912097	V537912155	V537912661	V53791433
V53791152	V537912036	V537912100	V537912156	V537912662	V53791438
V537911522	V537912037	V537912101	V537912160	V537912664	V53791443
V537911523	V537912039	V537912103	V537912161	V537912665	V53791443
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V53791799	V53791924	V53792224	V53792581	V53792858	V53793141
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V53794045	V53794847	V53795373	V537910644	V53799485
V53794046	V53794848	V53795374	V537910645	V53799486
V53794047	V53794849	V53795375	V537910646	V53799488
V53794048	V53794851	V53795376	V53791065	V53799489
V53794051	V53794852	V53795377	V537910652	V53799490

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(i) Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181 within 50 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs earlier, to arrange for a crankshaft material test.

(ii) Operation of the engine beyond 50 hours TIS or 6 months after the effective date of this AD, whichever occurs earlier, or while the material is being tested is not permitted.

(iii) If your crankshaft fails the material testing, remove the crankshaft before further flight.

(iv) If your crankshaft passes the material testing, the crankshaft may be returned to service.

Disposition of Crankshafts That Have Passed the Material Test

(e) A crankshaft that has passed the Lycoming material testing may be returned to service.

Disposition of Crankshafts That Have Failed the Material Test

(f) After the effective date of this AD, do not install in any engine, any crankshaft that has failed the material test.

Denial of Alternative Methods of Compliance

(g) An alternative method of compliance to perform material testing on crankshafts listed by SN in Table 2 of Lycoming MSB 552, dated August 16, 2002, will not be approved.

Special Flight Permits

(h) 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 done.

Documents That Have Been Incorporated By Reference

(i) The actions must be done in accordance with the following Lycoming Mandatory Service Bulletin No. 552, dated August 16, 2002. 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 Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective September 20, 2002.

Issued in Burlington, Massachusetts, on September 16, 2002.

Francis A. Favara,

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

[FR Doc. 02–24030 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30331; Amdt. No. 30241]

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: This rule is effective September 20, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2002.

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.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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 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 test 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 afftected 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 context 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 clone 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 frequently 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, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 13, 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, 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 No.	Subject
08/09/02 ...	MA	Boston	General Edward Lawrence Logan Intl	2/8237	NDB Rwy 4R, Amdt 23.
08/15/02 ...	TX	Dallas-Fort Worth	Dallas-Fort Worth	2/8495	ILS Rwy 18L, Amdt 17B.
08/21/02 ...	AZ	Lake Havasu City	Lake Havasu City	2/8722	VOR/DME or GPS–A, Orig-B.
08/22/02 ...	VT	Morrisville	Morrisville-Stowe State	2/8752	NDB or GPS–B, Amdt 1A.
08/22/02 ...	TX	Denton	Denton Muni	2/8769	ILS Rwy 17, Amdt 6C.
08/27/02 ...	ME	Rockland	Knox County Regional	2/8928	ILS Rwy 13, Amdt 1.
08/27/02 ...	NY	Albany	Albany Intl	2/8995	COPTER ILS Rwy 1, Orig-A.
08/29/02 ...	NE	Ogallala	Searle Field	2/9054	VOR/DME Rwy 8, Orig.
08/29/02 ...	NE	Ogallala	Searle Field	2/9055	VOR Rwy 8, Amdt 5.
08/29/02 ...	NE	Ogallala	Searle Field	2/9056	RNAV (GPS) Rwy 8, Orig.
08/30/02 ...	VA	Newport News	Newport News/Williamsburg Intl	2/9108	LOC BC Rwy 25, Amdt 13D.
09/02/02 ...	CA	Sacramento	Sacramento Mather	2/9098	RNAV (GPS) Rwy 4R, Orig.
09/03/02 ...	NY	New York	John F. Kennedy Intl	2/9225	ILS Rwy 4L. Amdt 10.
09/03/02 ...	MI	Marlette	Marlette	2/9227	RNAV (GPS) Rwy 9, Orig.
09/03/02 ...	MI	Marlette	Marlette	2/9228	RNAV (GPS) Rwy 27, Orig.
09/04/02 ...	MS	Hattiesburg	Bobby L. Chain Muni	2/9245	VOR or GPS Rwy 13, Amdt 10.
09/04/02 ...	NJ	Newark	Newark Intl	2/9247	VOR/DME Rwy 22L, Orig-A.
09/04/02 ...	NJ	Newark	Newark Intl	2/9248	RNAV (GPS) Rwy 22L, Orig.
09/04/02 ...	MO	Springfield	Springfield-Branson Regional	2/9257	NDB Rwy 14, Amdt 11.
09/04/02 ...	TX	Grandbury	Granbury Muni	2/9281	VOR DME–A, Orig.
09/05/02 ...	ME	Rockland	Knox County Regional	2/9352	GPS Rwy 31, Orig-A.
09/05/02 ...	ME	Rockland	Knox County Regional	2/9354	NDB Rwy 31, Orig.
09/05/02 ...	TX	Dallas	Addison	2/9363	ILS Rwy 15; Amdt 9A.
09/09/02 ...	VA	Newport News	Newport News/Williamsburg Intl	2/9522	NDB Rwy 25, Amdt 4C.
09/10/02 ...	FL	Keystone Heights	Keystone Airpark	2/9549	VOR/DME Rwy 4, Orig.

[FR Doc. 02–23826 Filed 9–19–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30330; Amdt. No. 3023]

Standard Instruction 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: This rule is effective September 20, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2002.

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;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 13, 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 October 31, 2002*

Camden, AR, Harrell Field, VOR/DME RWY 36 Amdt 9
Camden, AR, Harrell Field, NDB RWY 18, Amdt 11
Camden, AR, Harrell Field, RNAV (GPS) RWY 18, Orig
Camden, AR, Harrell Field, RNAV (GPS) RWY 36, Orig

** * * Effective November 28, 2002*

Albertville, AL, The Albertville Muni-Thomas J. Brumlik Field, NDB–A, Amdt 4
Mena, AR, Mena Intermountain Muni, VOR/DME–A, Amdt 10
Mena, AR, Mena Intermountain Muni, NDB–B, Amdt 8
Albia, IA, Albia Muni, VOR/DME–A, Amdt 4
Houghton Lake, MI, Roscommon County, RNAV (GPS) RWY 9, Orig
Duluth, MN, Duluth Intl, COPTER ILS RWY 9, Amdt 1
Marks, MS, Selfs, NDB OR GPS–A, Amdt 2, CANCELLED
Marks, MS, Selfs, NDB RWY 2, Amdt 4, CANCELLED
Plattsmouth, NE Plattsmouth Muni, NDB RWY 34, Amdt 4A, CANCELLED
Medina, OH, Medina Muni, VOR RWY 27, Amdt 1
Medina, OH, Medina Muni, RNAV (GPS) RWY 9, Orig
Medina, OH, Medina Muni, RNAV (GPS) RWY 27, Orig
Eastland, TX, Eastland Muni, NDB RWY 35, Amdt 3
Boyceville, WI, Boyceville Muni, RNAV (GPS) RWY 8, Orig
Boyceville, WI, Boyceville Muni, RNAV (GPS) RWY 26, Orig
Marshfield, WI, Marshfield Muni, NDB RWY 34, Orig

[FR Doc. 02–23825 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–55]

RIN 1515–AD16

Extension of Import Restrictions Imposed on Archaeological Material From Mali

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In T.D. 97–80, the Customs Regulations were amended to reflect the imposition of import restrictions on certain archaeological material from Mali. These restrictions were imposed pursuant to an agreement between the

United States and Mali (the Agreement) that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the United States Department of State determined that conditions continue to warrant the imposition of these import restrictions for a period not to exceed five years. The Governments of the United States and Mali exchanged diplomatic notes agreeing to extend the Agreement. Thus, this document amends the Customs Regulations to reflect that the import restrictions currently in place continue, without interruption, for five years from September 19, 2002. T.D. 97–80 contains the Designated List of Archaeological Material from the Region of the Niger River Valley, Mali, and the Bandiagara Escarpment (Cliff), Mali, that describes the articles to which the restrictions and this extension of restrictions apply.

EFFECTIVE DATE: This regulation and the extension of import restrictions reflected in this regulation become effective on September 19, 2002.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U. S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq*) (the Act), the United States entered into a bilateral agreement with Mali on September 19, 1997 (Agreement Between the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment (Cliff)) (the Agreement), concerning the imposition of import restrictions on certain archaeological material from Mali. The U.S. Customs Service issued T.D. 97–80 (62 FR 49594, September 23, 1997) amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions for a period not to exceed five years. The restrictions became effective on September 23, 1997.

Prior to the issuance of T.D. 97–80, Customs issued T.D. 93–74 (58 FR 49428, September 23, 1993) that imposed emergency import restrictions on certain archaeological material from the region of the Niger River Valley in Mali and the Bandiagara Escarpment (Cliff) in Mali forming part of the remains of the ancient sub-Sahara culture. Under T.D. 93–74, § 12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency restrictions was amended accordingly. Subsequently, the same archaeological material covered by T.D. 93–74 was covered in T.D. 97–80 when it was published in 1997, at which time the emergency restrictions of T.D. 93–74 were removed from § 12.104g(b).

On August 19, 2002, the Assistant Secretary of Educational and Cultural Affairs, Department of State, concluded, among other things, that the cultural patrimony of Mali continues to be in jeopardy from pillage of irreplaceable materials representing its heritage and made the necessary determinations under 19 U.S.C. 2602(e) and 2602(a) to extend the import restrictions for a period not to exceed five years (in the Determination to Extend the Agreement). The Government of the United States and the Government of the Republic of Mali exchanged diplomatic notes on September 17, 2002, agreeing to extend the Agreement effective September 19, 2002. Accordingly, Customs is amending § 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material from the Region of the Niger River Valley, Mali, and the Bandiagara Escarpment (Cliff), Mali, describing the materials covered by these import restrictions is set forth in T.D. 97–80. The list and accompanying image database may also be found at the following internet Web site address: *http://exchanges.state.gov/culprop*.

The restrictions on the importation of these archaeological materials from Mali are to continue in effect for five years from September 19, 2002. Importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends import restrictions already imposed on the above-listed cultural property of Mali by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations.

Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, part 12 of the Customs Regulations (19 CFR part 12) is amended, as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Mali by adding ''extended by T.D. 02–55 '' immediately after ''T.D. 97–80'' in the column headed ''T.D. No.''.

Approved: September 18, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–24028 Filed 9–18–02; 11:34 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–226F]

Schedules of Controlled Substances: Temporary Placement of Benzylpiperazine and Trifluoromethylphenylpiperazine Into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place N-benzylpiperazine (BZP) and 1-(3-trifluoromethylphenyl) piperazine (TFMPP) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This final action is based on a finding by the DEA Deputy Administrator that the placement of BZP and TFMPP into Schedule 1 of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of BZP and TFMPP.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Under What Authority Are BZP and TFMPPP Being Temporarily Scheduled?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA)(21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811 (b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelgated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

A notice of intent to temporarily place BZP and TFMPP into Schedule I of the CSA was published in the **Federal Register** on July 18, 2002 (67 FR 47341). The Deputy Administrator transmitted notice of his intention to temporarily place BZP and TFMPP into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (HHS). In response to this notification, the Food and Drug Administration has advised DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for BZP and TFMPP and HHS has no objection to DEA's intention to temporarily place N. benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine into Schedule I of the CSA.

What Factors Were Considered in the Determination To Temporarily Schedule N-benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine?

The Deputy Administrator has considered the available data and the following three factors required for a determination to temporarily schedule a substance under the CSA (21 U.S.C. 811 (c)):

4. Its history and current pattern of abuse;

5. Scope, duration and significance of abuse; and

6. What, if any, risk there is to the public health.

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 USC 812). The data available and reviewed for BZP and TFMPP indicate that they have a high potential for abuse, no currently accepted medical use in treatment in the US and are not safe for use under medical supervision.

What Are BZP and TFMPP?

BZP and TFMPP are piperazine derivatives, BZP was first synthesized in 1944 as a potential antiparasitic agent. There are no therapeutic applications for BZP and TFMPP, BZP and TFMPP have no accepted medical use in treatment in the United States. The safety for use of these two substances has not been determined. They are available primarily as chemical intermediates in syntheses. These two substances are similar in chemical structure and are often found to be abused together in tablets or powder form.

Why Are BZP and TFMPP Being Controlled?

Abuse of BZP was first reported in late 1996 in California. BZP and TFMPP are being encountered in several regions of the United States and their abuse has spread rapidly from the states where they were initially encountered. Over the past few years, in the United States, BZP and TFMPP have increasingly been found in similar venues as the popular club drug 3,4-methylenedioxymethamphetamine (MDMA, also known as Ecstasy). BZP and TFMPP are also sold as MDMA and are targeted to the youth population. The tablet form often bears imprints commonly seen on MDMA tablets such as a fly, crown, heart, butterfly, or bull's head logos in pink, tan, white, or green. BZP and TFMPP have also been found in powder form or liquid form packaged in small convenience sizes sold on the Internet, Illicit distributions occur through smuggling of bulk powder through organizations with connections to overseas sources of supply. The bulk powder is then processed into capsule, tablet, or pill form and distributed through organized networks. These organizations also distribute other controlled substances such as MDMA, 2C–B, marijuana and anabolic steroids.

The increasing abuse of BZP and TFMPP in the United States is evidenced by increasing encounters by law enforcement agencies. DEA, State and local law enforcement agencies reported BZP and TFMPP in drug exhibits seized in the states of California, Connecticut, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Nevada, New York, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington and Wisconsin. Over fifty (50) seizures have been reported and amounted to over 39,000 tablets and 1000 pounds of powder. BZP and TFMPP are being promoted as legal alternatives to MDMA. They are often sold as ''Ecstasy'', or as ''BZP'', ''A^2'', ''legal E'' or ''legal X''. BZP and TFMPP, with their easy availability and their so-called legal status, are becoming drugs of abuse in the United States.

As with amphetamine and MDMA, the effects of BZP are stimulant-like and those of TFMPP are hallucinogen-like. The risks to the public health associated with MDMA and amphetamine, both substances with high potential for abuse, are well known and documented. BZP acts as a stimulant similar in effect to MDMA or amphetamine, producing euphoria and inducing cardiovascular

effects in humans, including increased heart rate, systolic blood pressure and pulse rate. TFMPP, at approximately 100 mg, produces hallucinogenic effects similar to those produced by MDMA. TFMPP is a serotonin releasing agent and binds to serotonin receptors in the brain. In 2001, a report from University Hospital in Zurich, Switzerland details the death of a young female which was attributed to the combined use of benzylpiperazine and MDMA.

What Is the Effect of This Final Rule?

With the issuance of this final order, BZP and TFMPP become subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports BZP and TFMPP or who engages in research or conducts instructional activities with respect to BZP and TFMPP or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with *part 1301* of Title 21 of the Code of Federal Regulations (CFR) by October 21, 2002.

2. *Security.* BZP and TFMPP are subject to Schedule I security requirements and must be manufactured, distributed and stored in accordance with *§§ 1301.7, 1301.72(a),* (c), and (d), *1301.73, 1301.74, 1301.75(a)* and *(c)* and *1301.76* of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of BZP and TFMPP which are distributed on or after October 21, 2002 shall comply with requirements of *§§ 1302.02–1302.07* of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for BZP and TFMPP are established pursuant to *Part 1303* of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of BZP and TFMPP is required to keep an inventory of all stocks of the substances on hand pursuant to *§§ 1304.03, 1304.04* and *1304.11* of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for BZP and TFMPP shall conduct an inventory of all stocks of BZP and TFMPP on or before October 21, 2002.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, *1304.04* and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with § 1304.31 through *§ 1304.33* of Title 21 of the Code of Federal Regulations shall do so regarding BZP and TFMPP.

8. *Order Forms.* All registrants involved in the distribution of BZP and TFMPP must comply with the order form requirements of *part 1305* of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of BZP and TFMPP must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with BZP and TFMPP not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after September 20, 2002 is unlawful.

Regulatory Certification

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action temporarily places BZP and TFMPP into Schedule I of the Controlled Substance Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

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. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811 (h)), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator by 28 CFR 0.104, the Deputy Administrator hereby orders that 21 CFR Part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by adding paragraphs (g)(3) and (g)(4) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(3) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers—7493

(4) 1-(3-trifluoromethylphenyl)piperazine (other name: TFMPP), its optical isomers, salts and salts of isomers—7494

* * * * *

Dated: September 5, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–23878 Filed 9–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–225F]

Schedules of Controlled Substances: Temporary Placement of 2,5-dimethoxy-4-(n)-propylthiophenethylamine Into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This final action is based on as finding by the Deputy Administrator of the DEA that the placement of 2C-T-7 in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of 2C-T-7.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Under What Authority Is 2C-T-7 Being Temporarily Scheduled?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily7 scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

A notice of intent to temporarily place 2C-T-& into Schedule I of the CSA was published in the **Federal Register** on July 18, 2002 (67 FR 47343). The Deputy Administrator transmitted notice of his intention to temporarily place 2C-T-7 into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (DHHS). In response to this notification, the Food and Drug Administration has advised DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for 2C-T-7 and DHHS has no objection to DEA's intention to temporarily place 2,5-dimethoxy-4-(n)-propylthiophenethylamine into Schedule I of the CSA.

What Factors Were Considered in the Determination To Temporarily Schedule 2,5-dimethoxy-4-(n)-propylthiophenethylamine?

As set forth under 21 U.S.C. 811(h), the Deputy Administrator has considered the available data and the following three factors under the CSA (21 U.S.C. 811(c)) that are required for a determination to temporarily schedule a substance:

4. Its history and current pattern of abuse;

5. Scope, duration and significance of abuse; and

6. What, if any, risk there is to the public health.

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for 2C-T-7 indicate that it has a high potential for abuse, no currently accepted medical use in treatment in the United States and is not safe for use under medical supervision.

What Is 2,5-dimethoxy-4-(n)-propylthiophenethylamine?

2,5-dimethoxy-4-(n)-propylthphenethylamine (2C-T-7), a phenethylamine, is structurally related to the Schedule I phenethylamine 4-bromo-2,5-dimethoxyphenethylamine (2CB), and other hallucinogens (*e.g.,* 2,5-dimethoxy-4-methylamphetamine (DOM), and 1-(4-bromo-2,5-dimethoxyphenyl)-2-aminopropane (DOB)) in Schedule I of the CSA. 2C-T-7 has those structural features of phenethylamines which are necessary for stimulant and/or hallucinogenic activity; 2C-T-7 is a sulfur analogue of 2CB. Based on these structural features, 2C-T-7 is likely to have a pharmacological profile similar to 2CB and other Schedule I hallucinogens. The similarity in the effects of 2C-T-7 and 2CB has been supported by Shulgin and Shulgin (Pihkal: A Chemical Love Story; pp. 569–570, 1991) and by ''self-reports'' on the Internet. Shulgin and Shulgin (1991) reported that at an oral dose of 20 mg or 30 mg, 2C-T-7 produced visual hallucinations. They concluded that in terms of being an acceptable hallucinogen, 2C-T-7 was comparable to 2CB and mescaline. Self-reports on the Internet have described the hallucinations resulting from the self-administration of 2C-T-7 as being very 2CB-like, consisting of persistent multiple images, overlaid patterns, and trails. The subjective effects of 2C-T-7 have also been described as being similar to those of 2CB; mood lifting, sense of well being, emotionality, volatility, increased appreciation of music, and psychedelic ideation.

DEA is not aware of any approved therapeutic use of 2C-T-7 in the United States. The safety of this substance for use in humans has never been demonstrated.

Why Is 2C-T-7 Being Controlled?

The continued trafficking and abuse of 2C-T-7 poses an imminent hazard to public safety. The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of ''new non-controlled'' substances in place of or in addition to ''Ecstasy.'' 2C-T-7 is one such substance.

Illicit use of 2C-T-7 was first reported in Germany in 1997. 2C-T-7 was placed under the control of German law on January 20, 1998. In October of 1999, 2C-T-7 tablets were being sold in the Netherlands under the trade name ''Blue Mystic''. Illicit use of 2C-T-7 was reported in Sweden in January of 2000. Currently 2C-T-7 is controlled under the Swedish law pertaining to goods which are dangerous to the public. French Customs authorities reported seizing tablets in 2001 that contained 10 mg of 2C-T-7.

Abuse of 2C-T-7 in the United States was first reported in 1997; an individual

posted his experience associated with the oral ingestion of 20 mg of 2C-T-7 on the Lycaeum website on the Internet. In the year 2000, the abuse of 2C-T-7 by young adults began to spread in the United States as evidenced by widespread discussion on drug website forums and the sale of the substance from an Internet company. The information being discussed on these websites includes the route of administration, recommended doses, and narratives from individuals describing their experiences and effects after self-administering 2C-T-7.

Self-reported experiences and other information posted on these websites indicate that 2C-T-7 is being abused orally (10–50 mg) or intranasally; the oral route is the most common route of abuse. The powder is being mixed in liquids or placed in gelatin capsules. Information posted on these websites indicates that 2C-T-7 is being taken alone or with other drugs, such as MDMA, ketamine, cannabis, N,N-diisopropyl-5-methoxytryptamine (''Foxy Methoxy'') and N,N-dipropyltryptamine (DPT).

Information gathered by DEA indicates that 2C-T-7 has been purchased in powder form over the Internet and distributed as such. In the United States, capsules containing 2C-T-7 powder also have been encountered. In the Netherlands (''Blue Mystics'') and in Canada (''Red Raspberry''), the bulk powder is being processed into tablets.

State and local law enforcement agencies reported 2C-T-7 exhibits seized in the states of Texas and Wisconsin. In Wisconsin, two unrelated exhibits were submitted to the Wisconsin State Crime Laboratory for analysis; the first exhibit consisted of two clear capsules containing 16 to 18 milligrams of white powder and two paper packets. One packet contained 450 milligrams of tan powder and the other paper packet contained 869 milligrams. The powder in these exhibits was identified as 2C-T-7. These two capsules were sold to an informant as ''Twenty-Bird Mescaline.'' The second exhibit analyzed by the Wisconsin State Crime Laboratory was shown to be a mixture of 2C-T-7 and N,N-dipropyltryptamine (DPT). 2C-T-7 has also appeared in illicit traffic in Tennessee, Washington, and Oklahoma, as evidenced by the 2C-T-7 related deaths in these states. To date, DEA has not identified a clandestine laboratory synthesizing 2C-T-7.

2C-T-7 shares those structural similarities with 2CB and other phenethylamines (i.e., DOB, and DOM) which makes it likely to produce similar public health risks. Sensory distortion and impaired judgment can lead to serious consequences for both the user and the general public. 2C-T-7 can have lethal effects when abused alone or in combination with other illicit drugs. To date, three deaths have been associated with the abuse of 2C-T-7. The first death occurred in Oklahoma during April of 2000; a young healthy male overdosed on 2C-T-7 following intranasal administration. The co-abuse of 2C-T-7 with MDMA will pose a significant health risk if 2C-T-7 popularity increases in the same venues as with MDMA. The co-abuse of 2C-T-7 with MDMA has resulted in lethal effects. The other two 2C-T-7 related deaths resulted from the co-abuse of 2C-T-7 with MDMA. They both occurred in April of 2001. One young man died in Tennessee while another man died in the state of Washington.

What Is the Effect of This Final Rule?

While the issuance of this final order, 2C-T-7 becomes subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports 2C-T-7 or who engages in research or conducts instructional activities with respect to 2C-T-7 or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with *part 1301* of Title 21 of the Code of Federal Regulations (CFR) by October 21, 2002.

2. *Security.* 2C-T-7 is subject to Schedule I security requirements and must be manufactured, distributed and stored in accordance with *§§ 1301.71, 1301.72(a),* (c), and (d), *1301.73, 1301.74, 1301.75(a)* and (*c*) and *1301.76* of the Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of 2C-T-7 which are distributed on or after October 21, 2002. Shall comply with requirements of *§§ 1302.03–1302.07* of Title 21 of the Code of Federal Regulations.

4. *Quotas.* Quotas for 2C-T-7 are established pursuant to *part 1303* of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of 2C-T-7 is required to keep inventory of all stocks of this substance on hand pursuant to *§§ 1304.03, 1304.04* and *1304.11* of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for 2C-T-7 shall conduct an inventory of all stocks of 2C-T-7 on or before October 21, 2002.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, *1304.4* and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with *§ 1304.31* through *§ 1304.33* of Title 21 of the Code of Regulations shall do so regarding 2C-T-7.

8. *Order Forms.* All registrants involved in the distribution of 2C-T-7 must comply with the order form requirements of *part 1305* of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of 2C-T-7 shall be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with 2C-T-7 not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after September 20, 2002 is unlawful.

Regulatory Certification

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action temporarily places 2C-T-7 into Schedule I of the CSA.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

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. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by adding paragraph (g)(5) to read as follows:

§ 1308.11 Schedule I.

(g) * * *

(5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers—7348.

* * * * *

Dated: September 6, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–23877 Filed 9–19–02; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0045a, UT–001–0046a; FRL–7377–9]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Metropolitan Provo; State of Utah, and Approval of Revisions to the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action makes a determination of attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) for the metropolitan Provo CO nonattainment area (hereafter Provo area) which was classified as ''moderate''. The Provo area was required by the Clean Air Act Amendments of 1990 to attain the CO NAAQS by December 31, 1995. This determination is based on complete, quality assured ambient air quality monitoring data for the years 1994 and 1995. In addition, on September 27, 2001, the Governor submitted revisions to Utah's rule R307–301 ''Utah and Weber Counties: Oxygenated Gasoline Program''. In this action, EPA is determining that the Provo area attained the CO NAAQS and EPA is approving the revisions to rule R307–301.

DATES: This direct final rule is effective on November 19, 2002, without further notice, unless EPA receives adverse comments by October 21, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and,

Air and Radiation Docket and Information Center, United States Environmental Protection Agency, Room B–108, 1301 Constitution Avenue (Mail Code 6102T) NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' are used we mean the Environmental Protection Agency.

I. Determination of Attainment for the CO NAAQS for the Provo Area

In this action, we are determining that the metropolitan Provo CO nonattainment area, as described in 40 CFR 81.345, attained the 8-hour CO NAAQS by December 31, 1995, based on quality assured ambient air monitoring data for the years 1994 and 1995. In addition, ambient air quality data show that the area continued to attain the CO NAAQS from 1995 through 2001 (the most recent year for which complete data are available.) This action is being taken pursuant to sections 179 (c)(1) and 186(b)(2) of the Clean Air Act (CAA). This determination of attainment does not redesignate the Provo area to attainment for the CO NAAQS. The CAA requires that for an area to be redesignated to attainment the five criteria in section 107(d)(3)(E) must first be satisfied and EPA must fully approve a maintenance plan for the area.

(a) Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, we designated the Provo area as nonattainment for CO because the area had been designated as nonattainment before November 15, 1990. We originally designated the Provo area as nonattainment for CO under the provisions of the 1977 CAA Amendments (see 43 FR 8962, March 3, 1978). This designation was reaffirmed by the 1990 CAA Amendments and the Provo area was classified as ''moderate'' CO nonattainment area with a design value greater than or equal to 12.7 parts per million (ppm). See 56 FR 56694, November 6, 1991. CO nonattainment areas classified as ''moderate'' were expected to attain the CO NAAQS as expeditiously as practical, but no later than December 31, 1995. Further information regarding this CO classification and the accompanying requirements are described in section 187 of the CAA and in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments

of 1990.'' (See 57 FR 13498, April 16, 1992.)

(b) Analysis of Ambient Air Quality Monitoring Data and Determination of Attainment

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA has been that to be considered in attainment for the CO NAAQS, an area must attain the CO NAAQS for at least a continuous two-year calendar period.[1]

Our determination that the Provo area attained the CO NAAQS by December 31, 1995, is based on an analysis of quality assured ambient air quality monitoring data that have been entered into EPA's Aerometric Information and Retrieval System (AIRS) and are relevant to this action. State annual-certified ambient air quality monitoring data for calendar years 1994 and 1995 show a measured design value of 8.2 ppm with an exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Provo nonattainment area. In addition, we note that ambient data in AIRS show continuous attainment of the CO NAAQS in the Provo area from 1995 through the latest complete data year of record which is 2001. Further, preliminary data for 2002 also show attainment.

All of the data discussed above were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and in accordance with EPA policy and guidance. The data have been archived by the State in our AIRS national database. We have evaluated the ambient air quality data and have determined that the Provo area has not violated the CO standard. Therefore, the Provo area has met its CAA requirement and attained the CO NAAQS by December 31, 1995.

II. Revisions to R307–301 for the Oxygenated Gasoline Program for Utah and Weber Counties

(a) Background

Section 211(m) of the 1990 CAA Amendments required the implementation of an oxygenated gasoline program in CO nonattainment areas with a CO design value greater than 9.5 ppm. As both the Provo area (Utah County) and Ogden City (Weber County) were nonattainment for CO and had design values greater than 9.5 ppm, this provision of the CAA applied to both Weber and Utah Counties. CAA section 211(m)(2)(B) set the Federally required oxygenate level at 2.7% oxygen by weight. In response to this CAA requirement, the Governor submitted final revisions to the State's rule R307–8[2] ''Oxygenated Gasoline Program'' on May 14, 1994, for the implementation of a 2.7% program. We approved the revisions to R307–8 on November 8, 1994 (see 59 FR 55585).

On July 11, 1994, the Governor submitted a revision to the Utah SIP that included a CO attainment demonstration for the Provo area. Two components of this attainment demonstration were the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program, to be implemented by January 1, 1996, and the 2.7% oxygenated gasoline program. (We note that the State had actually implemented the 2.7% oxygenated gasoline program in the Provo area even prior to our November 8, 1994, approval of R307–8 and has continued the implementation of this 2.7% program to date.) However, the commitment to implement an enhanced I/M program was not definite. Thus, as part of the July 11, 1994, submittal the State revised R307–8–3.1.B ''Average Oxygen Content Standard'' to require an increase in the oxygen content of gasoline fuels in the Provo-Orem Metropolitan Statistical Area (MSA) from 2.7% to 3.1% oxygen by weight in the event the enhanced I/M program (or a substitute I/M program) was not implemented by January 1, 1996.

The State did not implement the enhanced I/M program in Utah County. Instead, on March 15, 1996, the Governor submitted a revision to the SIP that involved an improved basic I/M program for Utah County. This revision was submitted to satisfy the applicable requirements of both the CAA and section 348 of the National Highway Safety Designation Act (NHSDA) of 1995. We granted interim final approval of this SIP revision on June 9, 1997 (see 62 FR 31349) and we anticipate publishing a final rule fully approving this improved basic I/M program in the near future.

After our November 8, 1994, initial approval of the State's oxygenated gasoline program, the State submitted several revisions to R307–8 which culminated in a submittal by the Governor on July 8, 1998, that superceded and replaced all prior versions. This July 8, 1998, version of R307–8 still retained the language in R307–8–3.1.B requiring the implementation of a 3.1% oxygen content by weight program in Utah County if the enhanced I/M program was not implemented in Utah County by January 1, 1996. We approved the July 8, 1998, revision of R307–8 in conjunction with our March 9, 2001, approval of the Ogden City carbon monoxide redesignation to attainment (see 66 FR 14078), thus making the 3.1% program both State and Federally enforceable for Utah County and the Provo area. (We note that R307–8 never applied the 3.1% program in Ogden City.)

(b) Analysis the Governor's September 27, 2001, Revisions to R307–301

Utah's rule R307–301 is entitled ''Utah and Weber Counties: Oxygenated Gasoline Program.'' It is intended to replace R307–8. The Governor's September 27, 2001, SIP submittal made specific changes to R307–301–3 which is entitled ''Average Oxygen Content Standard.''

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This public process must occur prior to the State submitting its final revisions to us.

At the July 11, 2001, Utah Air Quality Board (UAQB) meeting, the UAQB proposed for public comment revisions to rule R307–301–3. The SIP revisions

[1] June 18, 1990, Memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations.''

[2] The State rule R307–8 ''Oxygenated Gasoline Program'' was re-numbered by the State to R307–301 and the title was changed to ''Utah and Weber Counties: Oxygenated Gasoline Program.''

were subject to a 30-day State public comment period that began on August 1, 2001, and ended on August 31, 2001. The State conducted a public hearing on August 22, 2001. The UAQB approved the SIP revisions on September 5, 2001. Rule R307–301–3 became State-effective on September 10, 2001. The Governor submitted these SIP revisions to EPA on September 27, 2001. In a letter dated October 18, 2001, from Pat D. Hull, Acting Regional Administrator, to Governor Leavitt, we determined the submittal was administratively and technically complete pursuant to 40 CFR part 51, appendix V.

The revisions to R307–301–3 that the Governor submitted on September 27, 2001, remove the requirement for a 3.1% oxygen content by weight program and require only a 2.7% oxygen by weight program. We find the revisions acceptable for the following reasons:

The revisions will not interfere with the attainment of the CO NAAQS or any other requirement of the CAA. As noted above, the Provo area has been continuously attaining the CO NAAQS since 1994. During this period, the Provo area has never implemented a 3.1% oxygenated gasoline program and has only implemented a 2.7% oxygenated gasoline program. Only three exceedances of the CO NAAQS have been recorded in the Provo area since 1994 and none have been recorded since 1996. Also, the CO values since 1996 have generally been considerably below the CO NAAQS and trending downward. Thus, we believe a 2.7% oxygenated gasoline program will continue to be adequate for the Provo area to attain the 8-hour CO NAAQS. Any additional CO emission reductions that a 3.1% oxygenated gasoline program would achieve appear to be unnecessary.

Based on the above analysis and the ambient air quality data that is archived in our AIRS national database for the Provo area, we have concluded that a 2.7% oxygenated gasoline program is sufficient for the Provo area to attain and maintain the CO NAAQS. Therefore, the Governor's September 27, 2001, revisions to R307–301–3 are acceptable.

III. Final Action

In this action, EPA is determining that the Provo carbon monoxide ''moderate'' nonattainment area attained the CO NAAQS by December 31, 1995. We are also approving the Governor's September 27, 2001, revisions to Utah's rule R307–301–3 ''Average Oxygen Content Standard.''

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates 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 should adverse comments be filed. This rule will be effective November 19, 2002, without further notice unless the Agency receives adverse comments by October 21, 2002.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 19, 2002, and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

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

(b) Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA does not have the discretion to engage in a risk assessment or alternatives analysis in acting on SIP revisions.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the 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 regulation.

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, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) 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.''

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.

Thus, Executive Order 13175 does not apply to this rule.

(e) Executive Order 13211 (Energy Effects)

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

(f) Regulatory Flexibility

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

This final approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Therefore, because the final rule does not create any new requirements, I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

(g) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

(h) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 19, 2002.

(i) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(j) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 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, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 6, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

Title 40, chapter I, part 52 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 TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(53) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(53) On September 27, 2001, the Governor of Utah submitted a revision to Utah's SIP involving R307–301 ''Utah and Weber Counties: Oxygenated Gasoline Program.'' Specifically, the State revised R307–301–3 ''Average Oxygen Content Standard'' to only require the implementation of a 2.7% oxygen by weight program and not a 3.1% program that the State had mandated in a 1998 revision.

(i) Incorporation by reference.

(A) Rule R307–301–3 ''Average Oxygen Content Standard'', as adopted on September 5, 2001, by the Utah Air Quality Board, and State effective on September 10, 2001. This rule supersedes and replaces R307–8–3.1.B.

3. New § 52.2353 is added to read as follows:

§ 52.2353 Control strategy: Carbon monoxide.

Determination. EPA has determined that the Provo carbon monoxide ''moderate'' nonattainment area attained

the carbon monoxide national ambient air quality standard by December 31, 1995. This determination is based on air quality monitoring data from 1994 and 1995.

[FR Doc. 02–23816 Filed 9–19–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0238; FRL–7198–9]

Azoxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of azoxystrobin and its z-isomer in or on caneberry subgroup at 5.0 part per million (ppm); cranberry at 0.50 ppm; hop, dried cones at 20.0 ppm; pistachio at 0.50 ppm; vegetable, legume, edible podded, subgroup, except soybean at 3.0 ppm; pea and bean, succulent shelled, subgroup, except cowpea at 0.50 ppm; and pea and bean, dried shelled, except soybean subgroup, except cowpea and field pea at 0.50. The Interregional Research Project #4 (IR-4) and Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 20, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0238, must be received on or before November 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0238 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0238. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 1, 2002 (67 FR 21676) (FRL–6834–7) and August 22, 2001 (66 FR 44136) (FRL– 6794–6) , EPA issued notices pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6356, 2E6372, 2E6375, and 2E6376) by IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 and 0F6218 by Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27409–8300. These notices included summaries of the petitions prepared by Syngenta Crop Protection, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.507 be amended by establishing tolerances for combined residues of the fungicide azoxystrobin, methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and the Z-isomer of azoxystrobin, methyl(Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxyphenyl)-3- methoxyacrylate, in or on food commodities as follows:

1. PP 2E6356 proposed a tolerance for the caneberry subgroup at 5.0 ppm.

2. PP 2E6372 proposed to increase the established tolerance for pistachio from 0.02 ppm to 1.0 ppm. The petition was subsequently revised to propose a tolerance for pistachio at 0.50 ppm.

3. PP 2E6376 proposed a tolerance for cranberry at 0.50 ppm.

4. PP 0F6218 proposed tolerances for the vegetable, legume, group at 3.0 ppm; hop, dried cones at 50 ppm. The petition was subsequently revised to propose tolerances for the vegetable, legume, edible podded subgroup, except soybean at 3.0 ppm; pea and bean, succulent shelled, subgroup, except cowpea at 0.50 ppm; pea and bean, dried shelled, except soybean subgroup, except cowpea and field pea at 0.50; and hop, dried cones at 20.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of azoxystrobin and its Zisomer on caneberry subgroup at 5.0 ppm; cranberry at 0.50 ppm; hop, dried cones, at 20.0 ppm; pistachio at 0.50 ppm; vegetable, legume, edible podded, subgroup, except soybean at 3.0 ppm; pea and bean, succulent shelled, subgroup, except cowpea at 0.50 ppm; pea and bean, dried shelled, except soybean subgroup, except cowpea and field pea at 0.50. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by azoxystrobin is discussed in Unit III.A. of the **Federal Register** of September 29, 2000 (65 FR 58404) (FRL–6749–1).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology Q* is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (general population including infants and children)	NOAEL = <200 mg/kg/day UF = 300 Acute RfD = 0.7 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.67 mg/kg/day	Acute Neurotoxicity - Rat LOAEL = 200 mg/kg based on diarrhea at 2 hours post dose at all dose levels up to and including the LOAEL

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic dietary (all populations)	NOAEL= 18 mg//kg/day UF = 100 Chronic RfD = 0.18 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.18 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity Feeding study - Rat LOAEL in males/females = 34/117 mg/kg/day based on reduced body weights in both sexes and bile duct lesions in males
Short-term (1-7 days) Incidental Oral (Residential)	NOAEL= 25 mg//kg/day UF = 100	FQPA SF = 1X	Prenatal Developmental Oral Toxicity - Rat LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation
Intermediate-term (1 week to several months) incidental oral (Residential)	NOAEL= 21 mg//kg/day UF = 100	FQPA SF = 1X	90-Day Feeding - Rat LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition
Short-term, intermediate-term, and long-term dermal (Residential)	None	No dermal or systemic toxicity was seen at the limit dose (1,000 mg/kg/day). This risk assessment was not performed.	21–Day Repeated Dose Dermal - Rat
Short-term (1-7 days) inhalation (Residential)	Oral NOAEL= 25 mg/kg/day Use route-to-route extrapolation (inhalation absorption rate = 100%).	LOC for MOE = 100 (Residential)	Prenatal Developmental Oral Toxicity - Rat LOAEL = 100 mg/kg/day based on increased maternal diarrhea, urinary incontinence, and salivation
Intermediate-term (1 week to several months) inhalation (Residential)	Oral NOAEL= 21 mg/kg/day Use route-to-route extrapolation (inhalation absorption rate = 100%).	LOC for MOE = 100 (Residential)	90–Day Feeding - Rat LOAEL = 211/223 mg/kg/day in males/females based on decreased body weight gain in both sexes and clinical signs indicative of reduced nutrition
Long-term (greater than 180 days) inhalation	NOAEL = N/A	This risk assessment is not applicable to the use scenario for azoxystrobin	

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.507) for the combined residues of azoxystrobin and its Zisomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm (pecans) to 55 ppm (soybean hay), and on meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at levels ranging from 0.01 to 0.07 ppm, and on milk at 0.006 ppm. Time-limited tolerances (set to expire on December 31, 2003) are established at 30 ppm for the Brassica, head and stem subgroup; at 0.5 ppm for chick pea, seed; at 3.0 ppm for lychee; and at 2.0 ppm for pepper. Risk assessments were conducted by EPA to assess dietary exposures from azoxystrobin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% of the crops with azoxystrobin tolerances (established and recommended) are treated and that all commodities contain tolerance level residues when consumed (with the exception of those with processing factors). DEEM™ default processing/concentration factors were used for all processed commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% of the crops with azoxystrobin tolerances (established and recommended) are treated and that all commodities contain

tolerance level residues when consumed (with the exception of those with processing factors). DEEM™ default processing/concentration factors were used for all processed commodities.

iii. *Cancer*. Azoxystrobin was classified by the Agency as not likely to be a human carcinogen. Therefore, a cancer dietary exposure analysis was not performed.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for azoxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of azoxystrobin.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to azoxystrobin, they are further discussed in the aggregate risk sections.

Although moderately persistent in soils and stable to hydrolysis, the likelihood of azoxystrobin moving into ground water and surface water is low due to high soil/water partitioning coefficients and low single application rates. Three major degradates were detected and found to have greater potential to move through soil than the parent compound.

Based on the FIRST model, the estimated environmental concentrations (EECs) of azoxystrobin for acute and chronic exposures are estimated to be 170 parts per billion (ppb), and 33 ppb for surface water, respectively. Based on the SCI-GROW model the EECs of azoxystrobin for both acute and chronic exposures are estimated to be 3.1 ppb for ground water. These values were based on the highest use rate (turf use). These values represent upper-bound estimates of the concentrations that might be found in surface water and ground water which result from the use of azoxystrobin on turf.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Azoxystrobin is currently registered for use on the following residential non-dietary sites: turf and ornamentals. The risk assessment was conducted using the following residential exposure assumptions: Products containing azoxystrobin are registered for application to turf and ornamentals. They may be applied to turf at rates up to 0.95 lb active ingredient (ai) per acre (not to exceed 5 lb ai/acre/yr) and to ornamentals at rates up to 0.75 lb/ai/per acre every 7 to 14 days, but not to exceed 5 lb ai/acre/yr. The currently registered labels do not prohibit homeowners from mixing/loading/applying either the flowable concentrate or the water-dispersible granule formulations. This residential exposure and risk assessment was conducted using the application rate for turf because it is the highest single use rate.

Residential handlers may receive short-term dermal and inhalation exposure to azoxystrobin when mixing, loading, and applying the formulations. Adults and children may be exposed to azoxystrobin residues from dermal contact with foliage during post-application activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during post-application activities.

As no dermal endpoint was selected by the Agency, a dermal exposure and risk assessment was not conducted for residential handlers or post-application activities.

Therefore, only the following exposure scenarios resulting from lawn treatment were assessed: (1) Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer, (2) object-to-mouth transfer from mouthing of pesticide-treated turfgrass, and (3) incidental ingestion of soil from pesticide-treated residential areas, (4) short-term inhalation for residential handlers. Post-application exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. The exposure via incidental ingestion of other plant material may occur but is considered negligible.

The exposure and risk estimates for the post-application residential exposure scenarios are assessed for the day of application (day 0) because it is assumed that toddlers could contact the lawn immediately after application. Both short-term and intermediate-term exposure are expected. Risk from short-term and intermediate-term incidental ingestion by toddlers is assessed by comparing these exposures to the NOAELs of 25 milligrams/kilogram/day (mg/kg/day) and 21 mg/kg/day, respectively. Short-term adult handler risk is assessed by comparing exposure to the short-term inhalation NOAEL of 25 mg/kg/day.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a

common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The developmental and reproductive toxicity data, from a prenatal development study in rats, a prenatal development study in rabbits, and a two-generation reproductive toxicity study in rats, did not indicate increased susceptibility of young rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for azoxystrobin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because: (1) The toxicology data base is complete; (2) the developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; (3) unrefined chronic dietary exposure estimates (assuming all commodities contain tolerance level residues) will overestimate dietary exposure; (4) modeling data are used for ground and surface source drinking water exposure assessments resulting in estimates considered to be upper-bound concentrations.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to azoxystrobin will occupy 12% of the aPAD for the U.S. population, 12% of the aPAD for females (13-50 years old), 21% of the aPAD for children (1-6 years old), and 12% of the aPAD for seniors (55+ years). In addition, there is potential for acute dietary exposure to azoxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AZOXYSTROBIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.7	12	170	3.1	21,000
Children (1-6 years old)	0.7	21	170	3.1	5,300
Females (13-50 years old)	0.7	12	170	3.1	18,000
Seniors (55+ years)	0.7	12	170	3.1	21,000

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to azoxystrobin from food will utilize 13% of the cPAD for the U.S. population, 21% of the cPAD for children (1-6 years old), 12% of the cPAD for females (13-50 years old), and 14% of the cPAD for seniors (55+ years old). Based on the use pattern, chronic residential exposure to residues of azoxystrobin is not expected. In addition, there is potential for chronic dietary exposure to azoxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO AZOXYSTROBIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.18	13	33	3.1	5,500
Children (1-6 years old)	0.18	21	33	3.1	1,400
Females (13-50 years old)	0.18	12	33	3.1	4,800
Seniors (55+ years)	0.18	14	33	3.1	5,400

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The short-term aggregate risk assessment estimates risks likely to result from 1- to 30-day exposure to azoxystrobin residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term assessment, while average values are used for food and drinking water exposure.

A short-term risk assessment is required for adults because there is a residential handler inhalation exposure scenario. In addition, a short-term risk assessment is required for infants and children because there is a residential post-application oral exposure scenario. As no short-term dermal endpoint was established, there is no dermal component to this aggregate risk assessment.

Azoxystrobin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,100 for adults and 450 for children (1-6 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of azoxystrobin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	1,100	100	33	3.1	6,800
Children (1-6 years old)	450	100	33	3.1	1,900

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The intermediate-term aggregate risk assessment estimates risks likely to result from 1-6 months of exposure to azoxystrobin residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the intermediate-term assessment, while average values are used for food and drinking water exposure.

An intermediate-term risk assessment is not required for adults because residential handler scenarios are not expected to occur for longer than a short-term timeframe. However, an intermediate-term risk assessment is required for infants and children because there is a residential post-application oral exposure scenario. As no dermal endpoint was established, there is no dermal component to this aggregate risk assessment.

Azoxystrobin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for azoxystrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 440 for children 1-6 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of azoxystrobin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5:

TABLE 5.— AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO AZOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Children (1-6 years old)	440	100	33	3.1	1,600

5. *Aggregate cancer risk for U.S. population*. Azoxystrobin was classified by EPA as not likely to be a human carcinogen. The Agency concludes that pesticides uses of azoxystrobin are not likely to pose a carcinogenic hazard to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate methodology is available for enforcement of the proposed tolerances for azoxystrobin and its z-isomer on plants. An enforcement method for azoxystrobin in livestock commodities has been validated by the EPA analytical laboratory for the analysis of milk and livestock tissues.

The method may be requested from: Paul Golden, US EPA/OPP/BEAD/ACB, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2960; Fax: (410) 305–3091; e-mail address: RAM Mailbox.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits (MRLs) have been established for residues of azoxystrobin on caneberries, cranberries, pistachios, hops, or legumes.

V. Conclusion

Therefore, the tolerances are established for combined residues of azoxystrobin, methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate and the z-isomer of azoxystrobin, methyl(Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxyphenyl)-3- methoxyacrylate, in or on caneberry subgroup at 5.0 ppm; cranberry at 0.50 ppm; hop, dried cones at 20.0 ppm; pistachio at 0.5 ppm; vegetable, legume, edible podded, subgroup, except soybean at 3.0 ppm; pea and bean, succulent shelled, subgroup, except cowpea at 0.50 ppm; and pea and bean, dried shelled, except soybean subgroup, except cowpea and field pea at 0.50.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0238 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 19, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy

of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0238, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.507 is amended by revising the entry for pistachio and alphabetically adding the following

commodities to the table in paragraph (a) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* *	* * *
Caneberry subgroup	5.0
Cranberry	0.50
* *	* * *
Hops, dried cones	20.0
* *	* * *
Pea and bean, dried shelled, except soybean, subgroup, except cowpea, and field pea	0.50
Pea and bean, succulent shelled, subgroup, except cowpea	0.50
Pistachio	0.50
* *	* * *
Vegetable, legume, edible podded, subgroup, except soybean	3.0
* *	* * *

* * * * *

[FR Doc. 02–23808 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0253; FRL–7273–7]

Diflubenzuron; Pesticide Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of diflubenzuron in or on forage and hay of alfalfa. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa. This regulation establishes a maximum permissible level for residues of diflubenzuron in these feed commodities. The tolerances will expire and are revoked on June 30, 2004.

DATES: This regulation is effective September 20, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0253, must be received on or before November 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0253 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0253. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305—5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide diflubenzuron, [N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide], in or on alfalfa, forage and alfalfa, hay at 6.0 parts per million (ppm). These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such

tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Recently, EPA has received objections to a tolerance it established for diflubenzuron on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to establish the emergency exemption tolerances for diflubenzuron while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and on August 16, 2002, EPA extended (for an additional 30 days) the public comment period on these objections, first initiated for 60 days in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7) and on August 16, 2002 (67 FR 53505) (FRL–7193–6). Second, the nature of the current action is extremely time sensitive as it addresses an emergency situation. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing these tolerances for diflubenzuron.

III. Emergency Exemption for Diflubenzuron on Alfalfa and FFDCA Tolerances

The Applicant (Utah Department of Agriculture and Food) states that outbreaks of the Mormon cricket and various grasshopper species have increased in Utah's alfalfa fields this season, due in large part to the drought being experienced. Because of the drought conditions, there is no feed on public lands for the insects, and the insects are moving faster to the private farmland in Utah. Historically, grasshoppers and crickets have posed a threat to all crops, even plaguing pioneers 150 years ago. The Mormon cricket can be economically devastating, and destroys sagebrush, alfalfa, small grains, seed, grasses, and vegetable crops. Grasshoppers have also been increasing in localized areas during the past four years, and in 2001, the Applicant states that crop production was hit hard from the heavily infested spots from both the grasshoppers and the Mormon cricket. Many fields left untreated in 2001 experienced a 100% reduction in yield, and the Applicant states that the infestation levels for 2002 are even greater than estimated. While there are several chemical controls registered for use in Utah for crickets and grasshoppers, regulations prohibiting more than one application combined with prohibitive costs make multiple applications an ineffective solution. The Applicant states that diflubenzuron is the only pesticide that has been proven effective for full-season control of grasshopper and cricket outbreaks. Diflubenzuron has a longer period of residual activity than the registered alternatives, which allows for control of delayed hatching nymphs, later hatching grasshopper species, and secondary infestations, which precludes the need for additional applications. The Applicant asserts that the registered alternative have very short residual activity and/or are prohibitively expensive for use in this situation. Significant economic losses were expected to occur this year for alfalfa producers, without the use of diflubenzuron to control these pests. EPA has authorized under section 18 of FIFRA the use of diflubenzuron on alfalfa for control of the Mormon cricket and various grasshopper species in Utah. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of diflubenzuron in or on alfalfa forage and hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with section 18 of FIFRA. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is establishing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under section 408(l)(5)of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on alfalfa forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether diflubenzuron meets EPA's registration requirements for use on alfalfa or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of diflubenzuron

by a State for special local needs under section 24(c) of FIFRA. Nor do these tolerances serve as the basis for any State other than Utah to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diflubenzuron, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflubenzuron and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of diflubenzuron in or on alfalfa hay and forage at 6.0 ppm.

No alfalfa residue data were submitted for this request. The proposed use rate of diflubenzuron for alfalfa is the same as that registered for use on grass. Therefore, the data from grass was translated to alfalfa for this section 18 use. The established tolerances for meat and milk commodities are adequate to cover any residues which may result from this section 18 use. Based upon previous feeding studies, the secondary residues in meat and milk will not exceed the established tolerances as a result of this section 18 use.

Residues of diflubenzuron in/on alfalfa are not expected to increase dietary exposure. Since alfalfa is not consumed by humans, any exposure to residues of diflubenzuron from this emergency exemption use will result from the consumption of meat or milk. The use of diflubenzuron in alfalfa is not expected to result in exceedances of the tolerances that already exist for meat and milk. Therefore, establishing the alfalfa tolerances will not increase the most recent estimated aggregate risks resulting from the use of diflubenzuron, as discussed in the **Federal Register** for February 15, 2002 (67 FR 7085) (FRL–6821–7) final rule establishing a tolerance for residues of diflubenzuron in/on pears, because in that prior action, risk was estimated assuming all meat and milk commodities contained tolerance level residues. Refer to the February 15, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for diflubenzuron for use in human risk assessment is discussed in final rule mentioned above, published in the **Federal Register** of February 15, 2002.

EPA assessed risk scenarios for diflubenzuron under chronic exposures only. Acute toxicological endpoints have not been identified for diflubenzuron, and there are no registered or proposed uses which would result in short- and intermediate-term exposure; thus these exposure analyses were not necessary. Although diflubenzuron itself is not classified as a carcinogen, two of its metabolites, PCA (p-chloroaniline) and CPU (p-chlorophenylurea) are probable human carcinogens and have been assigned Q1*s. Since these degradates are found in mushrooms, milk, and liver, as a result of diflubenzuron use, EPA has concluded that the residues of concern are diflubenzuron and its metabolites PCA and CPU.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the chronic exposure assessments: Anticipated residue information based on field trial data, and percent of crop treated (%CT) information for some commodities were used (Tier 3). A value of 1% was used for %CT values <1%.

Using these exposure assessments, the EPA concluded that exposure to diflubenzuron from food will utilize <1% of the chronic population adjusted dose (cPAD) for the US Population, 5% for Infants (<1 yr old), and <1% for Children (1 to 6 years old). In addition, despite the potential for dietary exposure to diflubenzuron in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of diflubenzuron in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 1.

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO DIFLUBENZURON

Population Subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.02	<1	0.09	0.0023	700
All Infants (<1 yr)	0.02	5	0.09	0.0023	190
Children (1-6 yr)	0.02	<1	0.09	0.0023	200

Cancer aggregate risk assessments were not performed for diflubenzuron and PCA, since diflubenzuron is not a carcinogen and PCA is not a significant degradate in drinking water. The potential cancer risk from dietary (food only), exposure to residues of PCA is 4.7×10^{-7}, which is negligible. The results of the cancer analysis for CPU indicate that the estimated cancer dietary (food only) risk from CPU 3.8×10^{-8} associated with the proposed use of diflubenzuron is below the Agency's level of concern. In addition, there is potential for chronic dietary exposure to CPU in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA

does not expect the aggregate cancer risk to exceed EPA's level of concern, as shown in the following Table 2:

TABLE 2.—AGGREGATE CANCER RISK ASSESSMENT FOR EXPOSURE TO DIFLUBENZURON

Population Subgroup	Residential Exposure	Aggregate Cancer Risk (food and residential)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Cancer DWLOC (ppb)
U.S. population	0	3.8×10^{-8}	0.23	0.065	2.2

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to diflubenzuron residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov*.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for diflubenzuron on alfalfa forage and hay. Therefore, no compatibility problems exist for the proposed tolerances.

C. Conditions

One application may be made using ground or aerial equipment, at a rate of 2 fl. oz. of product (0.0325 lb. active ingredient) per acre. A 14-day pre-harvest interval and a 12-hour re-entry interval must be observed.

VI. Conclusion

Therefore, the tolerances are established for residues of diflubenzuron, [N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide], in or on alfalfa forage, and alfalfa hay at 6.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0253 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 19, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–-5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–2002–0253, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the

location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a section 18 FIFRA exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.377 is amended by adding the following language and table under paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b)*Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of diflubenzuron and its metabolites PCA (p-chloroaniline) and CPU (p-chlorophenylurea), expressed as the parent diflubenzuron, in connection with use of the pesticide under section 18 emergency exemptions granted by

EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Alfalfa, forage	6.0	6/30/2004
Alfalfa, hay	6.0	6/30/2004

* * * * *

[FR Doc. 02–23819 Filed 9–19–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0243; FRL–7200–8]

Halosulfuron-methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on asparagus; vegetables, fruiting (except cucurbits), group; bean, dry, seed and bean, snap, succulent. Gowan Company and Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 20, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0243, must be received on or before November 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0243 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins and Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–5687 and (703) 308–9368, respectively; e-mail address: *tompkins.jim@epa.gov* and *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the**Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0243. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 3, 2002 (67 FR 38276) (FRL–7179–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 1E6322) by Interregional Research Project Number 4(IR–4), 681 U.S. Highway 1 South, North Brunswick, New Jersey 08902–3390. In addition to the **Federal Register** of August 31, 2001 (66 FR 45993) (FRL–6796–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a, as amended by the FQPA announcing the filing of pesticide petitions 0F6169 and 1F6229) by Gowan Company, P.O. Box 5569; Yuma, AZ 85366. These notices included a summary of the petitions prepared by Gowan Company, the registrant. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.479(a) be amended by establishing tolerances for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, in or on vegetables, fruiting (except cucurbits), group at 0.05 part per million (ppm) (PP 0F6169), asparagus at 0.8 ppm (1F6229); and dry bean and succulent snap bean at 0.05 ppm (1E6322). The tolerance in or on asparagus at 0.8 ppm established by the current action will replace the time limited tolerance for asparagus established under § 180.479(b) in the **Federal Register** of December 27, 2001 (66 FR 66778) (FRL–6816–1).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances in the **Federal Register** of November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of halosulfuron-methyl on asparagus at 0.8 ppm; bean, dry, seed at 0.05 ppm; bean, snap, succulent at 0.05 ppm and vegetables, fruiting (except cucurbits), group at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by halosulfuron-methyl are discussed in Unit II.A. of the final rule on halosulfuron-methyl pesticide tolerances in the **Federal Register** of September 29, 2000 (65 FR 58424) (FRL–6746–2).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for halosulfuron-methyl used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day) UF/MOE	Hazard Based Special FQPA Safety Factor	Endpoint for Risk Assessment
Dietary Risk Assessments			
Acute Dietary (females 13–50 years of age)	NOAEL = 50	1x	Developmental Toxicity - Rabbit

TABLE 1.—SUMMARY TOXICOLOGICAL DOSE AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose (mg/kg/day) UF/MOE	Hazard Based Special FQPA Safety Factor	Endpoint for Risk Assessment
	UF = 300[a] Acute RfD = 0.17 mg/kg/day		LOAEL = 150 mg/kg/day based on decreased mean litter size, increased number of resorptions (total and per dam) and increased postimplantation loss (developmental toxicity)
Acute Dietary general population including infants and children	NOAEL = N/A UF = N/A Acute RfD = N/A	N/A	No appropriate dose/endpoint selected.
Chronic Dietary all populations	NOAEL = 10 UF = 300[a] Chronic RfD = 0.03 mg/kg/day	1x	Chronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females
Incidental Oral Short-Term (1–30 Days) Residential Only	NOAEL = 50 UF = 300[a] MOE = 300	1x	Developmental Toxicity-Rabbit LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency. (maternal toxicity)
Incidental Oral Intermediate-Term (1–6 Months) Residential Only	NOAEL = 10 UF = 300[a] MOE = 300	1x	13 Week Subchronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females
Non-Dietary Risk Assessments			
Dermal Short-Term (1–30 days) Residential	Dermal NOAEL = 100 MOE = 300	 1x	21-Day Dermal Toxicity Study - Rat LOAEL = 1000 mg/kg/day based on decreased body weight gain in males
Dermal[b] Intermediate-Term (1–6 Months) Residential	Oral NOAEL = 10 MOE = 300	 1x	13 Week Subchronic Toxicity – Dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females.
Dermal[b] Long-Term (>6 Months) Residential	Oral NOAEL= 10 MOE = 300	 1x	Chronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females
Inhalation[c] Short-Term (1–30 days) Residential	Oral NOAEL = 50 MOE = 300	 1x	Developmental Toxicity-Rabbit LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency. (Maternal toxicity)
Inhalation[c] Intermediate-Term (1–6 Months) Residential	Oral NOAEL = 10 MOE = 300	 1x	13 Week Subchronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gain and food efficiency in females
Inhalation[c] Long-Term (>6 Months) Residential	Oral NOAEL = 10 MOE = 300	 1x	Chronic Toxicity - Dog LOAEL = 40 mg/kg/day based on decreased body weight gains in females
Cancer	Classification: ''not likely to be carcinogenic to humans'' by the oral route, based on no evidence of carcinogenicity from studies in rats and mice		

*[a] = UFDB = 300 (10x for inter-species extrapolation and 10 x for intra- species variability, 3x for lack of DNT).
[b] = A 75% dermal absorption factor was used for route to route extrapolation.
[c] = Absorption via inhalation route is presumed to be equivalent to oral absorption.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.479) for the residues of halosulfuron-methyl, in or on a variety of raw agricultural commodities. Additionally, tolerances for residues of halosulfuron-methyl and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (CSA, expressed as parent equivalents) are established at 0.1 ppm on meat-by-products of cattle, goats, hogs, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute Exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% of the crops with halosulfuron-methyl tolerances (both established and proposed) are treated and that all commodities contain tolerance level residues when consumed.

The acute dietary exposure estimates are provided for females 13–50 years old only. No appropriate endpoint attributable to a single exposure was identified for the general U.S. population including infants, children and adult males. This assessment concludes that the acute dietary exposure estimates are below the Agency's level of concern (<100% aPAD) at the 95th exposure percentile for females 13–50 (<1% of the aPAD). The results are presented in the following Table 2.

TABLE 2.—ACUTE DIETARY EXPOSURE ESTIMATES AT THE 95TH PERCENTILE OF EXPOSURE

Population Subgroup	Exposure (mg/kg/day)	% aPAD
Females 13–50 years old	0.00068	<1

ii. *Chronic Exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% of the crops treated with halosulfuron-methyl tolerances (both established and proposed) are treated and that all commodities contain tolerance level residues when consumed.

The tier 1 chronic dietary exposure assessment was conducted for all supported halosulfuron-methyl food uses. The chronic dietary exposure estimates are presented for the general U.S. population including infants, children and adult males in the following Table 3. This assessment concludes that the chronic dietary exposure estimates are below the Agency's level of concern (<100% cPAD) for the general U.S. population (<1% of the cPAD). The most highly exposed population subgroup is all infants <1 year old at 2.4% of the cPAD.

TABLE 3.—RESULTS OF CHRONIC DIETARY EXPOSURE ANALYSIS

Population Subgroup	Exposure (mg/kg/day)	% cPAD
U.S. Population (total)	0.00028	<1
All Infants (<1 year)	0.00071	2.4
Children 1–6 years	0.00052	1.7
Children 7–12 years	0.00039	1.3
Females 13–50	0.00023	<1
Males 13–19	0.00027	<1
Males 20+ years	0.00023	<1
Seniors 55+	0.00024	<1

iii. *Cancer.* Halosulfuron-methyl is classified as a ''not likely'' human carcinogen based on a lack of evidence of carcinogenicity in male and female mice and rats. A cancer risk is not expected.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for halosulfuron-methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of halosulfuron-methyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to halosulfuron-methyl they are further discussed in Unit III.E.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of halosulfuron-methyl for acute exposures are estimated to be 105 parts per billion (ppb) for surface water and 0.065 ppb for ground water. The EECs for chronic exposures are estimated to be 105 ppb for surface water and 0.065 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Halosulfuron-methyl is currently registered for use on the following residential non-dietary sites: Application to commercial and residential turf and on other non-crop sites including airports, cemeteries, fallow areas, golf courses, landscaped areas, public recreation areas, residential property, road sides, school grounds, sod or turf seed farms, sports fields, landscaped areas with established woody ornamentals and other similar use sites. Application may be by commercial applicator or homeowner. The risk assessment was conducted using the following residential exposure assumptions: No chemical-specific exposure data for handler activities were submitted to the Agency in support of the registered lawn uses. The Agency's Draft Standard Operating Procedures (SOPs) for Residential Exposure Assessments, and Recommended Revisions (Policy Number 11, revised Feb. 22, 2001), were used as the basis for the residential handler exposure calculations. The handler exposure data used in this assessment are from the Outdoor Residential Exposure Task Force (ORETF). The task force recently submitted proprietary data to the Agency on hose-end sprayers, push-type granular spreaders, and handgun sprayers. The ORETF data were used in this assessment in place of PHED data for the garden hose-end sprayer scenario. The ORETF data were designed to replace the present PHED data with higher-confidence, higher quality data that contain more replicates than the PHED data for those scenarios.

Table 4 shows the assumptions and exposure calculations for this scenario. For short-term exposure and risk for residential lawn applicators (''handlers''), the resulting dermal MOE is 21,000 and the inhalation MOE is 7,000,000. The Total MOE of 20,000 for residential handlers is well above the target MOE of 300, and therefore, does not trigger the Agency's level of concern.

TABLE 4.—SHORT-TERM HANDLER EXPOSURE AND RISK ESTIMATES FOR RESIDENTIAL LAWN APPLICATORS

PHED Scenario Selected from Draft SOP for Residential Exposure Assessments	Exposure Route	Application Rate (lb ai/A)	Acres Treated (acres/day)	ORETF Unit Exposure (mg/lb ai)	Absorption Factor	Daily Dose[1] (mg/kg/day)	Short-Term MOE[2]	Total MOE[3]
Garden Hose End Sprayer/Liquid Open Pour (Mix, Load, and Apply)	Dermal	0.062	0.5	11	1.0	0.0043	21,000	20,000
	Inhalation	0.062	0.5	0.016	1.0	0.0000071	7,000,000	20,000

[1] Daily Dose =[Application Rate (lb ai/A) x Acres Treated (A/day) x Unit Exposure (mg/lb ai handled) x Absorption Factor]/Body Weight (70 kg)
[2] MOE = NOAEL/Daily Dose; where dermal NOAEL = 100 mg/kg/day, and inhalation NOAEL = 10
[3] Total MOE = 1 / [(1/dermal MOE) + (1/inhalation MOE)]

The following postapplication exposure scenarios resulting from lawn treatment were assessed: (1) Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer, (2) object-to-mouth transfer from mouthing of pesticide-treated turfgrass, (3) incidental ingestion of soil from pesticide-treated residential areas, and (4) children's and adult's postapplication dermal exposure. Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. The exposure via incidental ingestion of other plant material may occur but is considered negligible.

The exposure estimates are based on some upper-percentile (i.e., maximum application rate, initial amount of transferrable residue and duration of exposure) and some central tendency (i.e., surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from turf, and assumptions regarding transfer of chemical residues and hand-to mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

The exposure and risk estimates for the residential exposure scenarios are assessed for the day of application (day ''0'') because it is assumed that toddlers could contact the lawn immediately after application. Both short-term and intermediate-term oral and dermal exposure are expected, but inhalation exposure is expected to be negligible. Risk from short-term and intermediate-term incidental ingestion by toddlers is assessed by comparing these exposures to the NOAELs of 50 mg/kg/day and 10 mg/kg/day, respectively. Dermal postapplication risk was assessed by comparing the exposures to the NOAELs of 100 mg/kg/day and 10 mg/kg/day, respectively. The results of the exposure calculations are presented in the following Tables 5 through 8.

TABLE 5.—POSTAPPLICATION DERMAL EXPOSURE AND RISK FROM TREATED LAWNS

Subgroup Exposed	Application Rate (lb ai/A)	Dislodgeable Foliar Residue[1] (ug/cm^2)	Short- / Intermediate-Term Dermal Transfer Coefficient (cm^2/hr)	Body Wt (kg)	Daily Dose[2] (mg/kg/day)		Dermal MOE[3]	
					Short-term	Intermediate-term	Short-term	Intermediate-term
Adults	0.062	0.035	14,500/7,300	70	0.014	0.0054	7,000	1,800
Children	0.062	0.035	5,200/2,600	15	0.024	0.0090	4,200	1,100

[1] Dislodgeable Foliar Residue$^{\text{Postapplication day zero}}$ (ug/cm^2) = Application rate (lb ai/A) x Fraction of ai Retained on the Foliage (0.05) x [(1- Fraction of Residue That Dissipates Daily (0.1)]$^{\text{Postapplication day}}$ x 4.54E+8 µg/Lb x 2.47E-8 A/cm^2 (11.2)
[2] Daily Dose = [Dislodgeable Foliar Residue x Absorption Factor (1 for short-term, 0.75 for intermediate-term) x 0.001 mg/ug x Dermal Transfer Coefficient x Exposure Time (2 hrs/day)]/Body weight

[3] Dermal MOE = Dermal NOAEL/Daily Dose; where short-term NOAEL = 100 mg/kg/day, and intermediate-term NOAEL = 10 mg/kg/day

TABLE 6.—POSTAPPLICATION ORAL HAND-TO-MOUTH EXPOSURE AND RISK FOR CHILDREN FROM TREATED LAWNS

Appl. Rate (lb ai/A)	Fraction of ai Retained on the Foliage	Saliva Extraction Factor	Dislodgeable Foliar Residue[1] (ug/cm^2)	Hand Surface Area (cm^2/event)	Short-term/ Intermediate-term Freq. (events/hr)	Body Weight (kg)	Daily Dose[2] (mg/kg/day)		Oral MOE[3]	
							Short-term	Intermediate-term	Short-term	Intermediate-term
0.062	0.05	50%	0.035	20	20/9.5	15	0.00093	0.00044	54,000	23,000

[1] Dislodgeable Foliar Residue$^{Postapplication\ day}$ (ug/cm^2)=Application rate (lb ai/A) x Fraction of ai Retained on the Foliage x (1- Fraction of Residue That Dissipates Daily, 0.10)$^{Postapplication\ day}$ x 4.54E+8 µg/lb x 24.7E-9 A/cm^2 (11.2138)
[2] Daily Dose = (Dislodgeable Foliar Residue (ug/cm^2) x Hand Surface Area (cm^2/event) x Extraction factor x Frequency (events/hr) x 0.001 mg/ug x Exposure time (2 hrs/day)]/[Body Weight (kg)]
[3] Oral MOE = Oral NOAEL/Daily Dose; where Short-term NOAEL = 50 mg/kg/day, and Intermediate-term NOAEL = 10 mg/kg/day

TABLE 7.—POSTAPPLICATION ORAL OBJECT-TO-MOUTH (TURFGRASS) EXPOSURE AND RISK FOR CHILDREN FROM TREATED LAWNS

Application Rate (lb ai/A)	Fraction of ai Retained on the Foliage	Grass Residue[1] ug/cm^2)	Ingestion Rate (cm^2/day)	Body Weight (kg)	Daily Dose[2] (mg/kg/day)	Oral MOE[3]	
						Short-term	Intermediate-term
0.062	0.20	0.031	25	15	0.00023	220,000	43,000

[1] Grass residue$^{Postapplication\ day}$ (ug/cm^2) = Application rate (lb ai/A) x Fraction of ai Retained on the Foliage x (1- Fraction of Residue That Dissipates Daily)$^{Postapplication\ day}$ x 4.54E+8 µg/lb x 24.7E-9 A/cm^2
[2] Daily Dose = [Grass reside (ug/cm^2) x Ingestion rate (cm^2/day) x 0.001 mg/ug] / [Body Weight (kg)]]
[3] Oral MOE = Oral NOAEL/Daily Dose; where Short-term NOAEL = 50 mg/kg/day, and Intermediate-term NOAEL = 10 mg/kg/day

TABLE 8.—POSTAPPLICATION INCIDENTAL SOIL INGESTION EXPOSURE AND RISK FOR CHILDREN FROM TREATED LAWNS

Appl. Rate (lb ai/A)	Fraction of ai Retained in the Soil	Soil Residue[1] (ug/g)	Ingestion Rate (mg/day)	Body Weight (kg)	Daily Dose[2] (mg/kg/day)	Oral MOE[3]	
						Short-term	Intermediate-term
0.062	1	0.47	100	15	3.1E-06	16,000,000	3,200,000

[1] Soil residue $^{Postapplication\ day}$ (ug/cm^2) = Application rate (lb ai/A) x Fraction of ai Retained on the Foliage x (1- Fraction of Residue That Dissipates Daily) $^{Postapplication\ day}$ x 4.54E+8 µg/lb x 24.7E-9 A/cm^2 x 0.67 cm^3/g soil
[2] Daily Dose = [Soil reside (ug/g) x Ingestion rate (mg/day) x 0.000001 g/ug] / [Body Weight (kg)]]
[3] Oral MOE = Oral NOAEL/Daily Dose; where Short-term NOAEL = 50 mg/kg/day, and Intermediate-term NOAEL = 10 mg/kg/day

Both short-term and intermediate-term MOEs for each scenario are above the target MOE of 300, and are not of concern.

When a common effect (i.e., decreased body weight gain) is observed in those studies selected for the endpoints for all routes of exposure; MOEs are to be combined where appropriate. Aggregate residential risk was assessed for adults and children (Tables 9 and 10). For children, short-term and intermediate-term aggregate risk was assessed based on postapplication dermal and oral exposure. For adults, short-term aggregate residential risk was assessed based on exposure through application (handler) and postapplication dermal exposure. Intermediate aggregate risk for adults was not assessed because the application of halosulfuron-methyl is not expected to occur for more than 30 days. The Total MOEs resulting from the combined MOEs for both adults and children, are also above the target MOE of 300, and are not of concern.

TABLE 9.—ADULT'S AGGREGATE EXPOSURE AND RISK ESTIMATES FROM RESIDENTIAL LAWNS

Adult's Scenario	Exposure Route	Rate (lb ai/acre)	Acres Treated (acres/day)	PHED Unit Exposure (mg/lb ai)	Short-term Daily Dose (mg/kg/day)	Short-term MOE	Total Short-term MOE
1. Mix/load and broadcast application of liquid formulation (garden hose-end sprayer)	dermal	0.062	0.5	30	0.0043	21,000	5,200
	inhalation	0.062	0.5	0.016	0.0000071	7,000,000	5,200
2. Postapplication exposure	dermal	0.062	N/A	N/A	0.014	7,000	5,200

TABLE 10.—CHILDREN'S AGGREGATE EXPOSURE AND RISK ESTIMATES FROM RESIDENTIAL LAWNS

TTR/GR/SR_0 (ug/cm^2 or g)[1]	Children's ScenariosExposure Route	Short-Term $PDR^{0\ norm}$ (mg/kg/day)	Intermediate $PDR^{0\ norm}$ (mg/kg/day)	Short-Term MOE	Intermediate-Term MOE	Total Short-Term MOE	Total Intermedite-term MOE
(1) Dermal contact	0.035	0.024	0.0090	4,200	1,100	3,800	1,000
(2) Hand-to-mouth	0.035	0.00093	0.00044	54,000	23,000	3,800	1,000
(3) Mouth grass	0.14	0.00023	0.00023	220,000	43,000	3,800	1,000
(4) Soil ingestion	0.047	3.1E-6	3.1E-6	16,000,000	3,2000,000	3,800	1,000

[1] TTR=turf transferable residue on the ''0''; GR=gras residue on the day ''0''; SR_0=soil residue on the day ''0.''
[2] PDR $_{0\text{-norm}}$ = potential doe rate on day ''0.''

Halosulfuron-methyl may be used on turf at recreational use sites, and, therefore may result in postapplication exposure to adults and children involved in recreational activities. Exposures to adults and children from the use of halosulfuron-methyl at recreational use sites are assumed to be the same as those assessed for residential use sites, and therefore, a separate recreational exposure assessment was not included. Refer to section 4.4 of this risk assessment for details on assumptions, input variables and risk estimates for residential use sites. Residential turf exposure assessment results in what are considered upper bound risk estimates. Therefore, it is not expected that the upper bound residential exposure scenario would occur on the same day as an upper bound recreational exposure scenario. Exposure from these two exposure scenarios are not aggregated. Rather, the residential risk estimate should serve as an upper bound for both residential and recreational exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether halosulfuron-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances in the **Federal Register** of November 26, 1997 (62 FR 62961) (FRL–5754–7).

D. Safety Factor for Infants and Children

1.*In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of young rats in the reproduction study with halosulfuron-methyl. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of halosulfuron-methyl.

3. *Conclusion.* There is a complete toxicity data base for halosulfuron-methyl except for a developmental neurotoxicity study and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that, based on reliable data, an additional database uncertainty factor of 3X is necessary to protect the safety of infants and children in assessing halosulfuron-methyl exposures and risks. This factor is necessary to address a data deficiency for the developmental neurotoxicity study. The additional uncertainty factor of 3X is incorporated into the numerical expression for the acute and chronic RfD and PAD (aPAD and cPAD) and applied to all dietary and residential (non-dietary) exposure scenarios. For residential assessments, an MOE of 300 (10X for interspecies extrapolation, 10X for intraspecies variation, and the additional database uncertainty factor of 3X) is required.

No Special FQPA Safety Factor is necessary to protect the safety of infants and children in assessing halosulfuron-methyl exposure and risks because:

i. There is no evidence of increased susceptibility of young rats in the reproduction study with halosulfuron-methyl. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of halosulfuron-methyl.

ii. There are no residual uncertainties identified in the exposure databases. The dietary (food and drinking water) exposure assessments will not underestimate the exposure (postapplication exposure to children as well as incidental oral exposure to toddlers) and risks posed by halosulfuron-methyl.

Recently, EPA has received objections to a tolerance it established for residues of halosulfuron-methyl in or on the melon subgroup (66 FR 66786, December 26, 2001) and an emergency exemption for asparagus (66 FR 66778, December 27, 2001). The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has initiated a public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7), which ends on September 17, 2002. Although that proceeding remains ongoing, prior to

acting on this current tolerance action, EPA reviewed the halosulfuron-specific objections raised by NRDC and has addressed them below.

In reference to NRDC's statements that the Agency erred by not retaining the additional 10X children's safety factor in light of the data gap for developmental neurotoxicity study, the Agency re-reviewed its determination that a different safety factor, 3X, would be safe for infants and children. Taking into account the lack of the developmental neurotoxicity study, EPA concluded that an additional traditional Database Uncertainty Factor of 3X is needed for all dietary and residential (non-dietary) exposure scenarios until the data are received and evaluated. An uncertainty factor of 3X (as opposed to a higher value) was viewed to be adequate because the doses selected for dietary and non-dietary risk assessments would address the concerns for the alterations of the fetal nervous system seen in the developmental toxicity study in rats and provide a large margin of safety in regard to any uncertainty arising from the lack of a developmental neurotoxicity study. The NOAEL of 50 mg/kg/day (used for acute dietary, short-term incidental oral and inhalation risk assessments) and the NOAEL of 10 mg/kg/day (used for chronic dietary and intermediate-term incidental oral, dermal and inhalation risk assessments) are 5X and 25X lower, respectively, than the NOAEL of 250 mg/kg/day in the rat developmental study where alterations of the fetal nervous system were seen at 750 mg/kg/day (LOAEL). It was these alterations of the fetal nervous system seen at 750 mg/kg/day in the rat developmental study that caused EPA to require submission of a developmental neurotoxicity study. Thus, in combination with the 3X database uncertainty factor, the doses selected for risk assessment provide a 15X (acute) and 75X (chronic) margin of safety with regard to observed developmental neurotoxic effects. Consequently, based on the available data, use of a 3X factor instead of a 10X factor will provide an adequate margin of safety for the protection of infants and children.

NRDC also claimed that there were several other data gaps necessitating retention of the additional 10X safety factor for the protection of infants and children. NRDC claimed that no cancer risk assessment or short-term or intermediate-term residential risk assessments had been conducted. NRDC's allegations in this regard are contradicted by the **Federal Register** notice establishing the halosulfuron-methyl tolerances. EPA did assess the cancer risk posed by halosulfuron-methyl and concluded that ''no cancer risk is expected from exposure to halosulfuron-methyl.'' (66 FR 66333, 66338, December 26, 2001). This conclusion was based on EPA's qualitative conclusion that halosulfuron-methyl is not likely to be a human carcinogen. *Id.* Having concluded that, as a qualitative matter, halosulfuron-methyl is not likely to be a human carcinogen EPA did not perform a quantitative cancer risk assessment, as such risk assessment would not be scientifically justified. EPA's statement earlier in the **Federal Register** notice regarding not conducting a cancer risk assessment referred to the fact that a quantitative assessment was unnecessary. *Id.* at 66336. Short-term and intermediate-term risk residential risk assessments were performed and considered by the Agency. *Id.* at 66337-66338.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by USEPA Office of Water are used to calculate DWLOCs 21/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in Unit III.C., Exposure Assessment, for acute exposure, the acute dietary exposure from food to halosulfuron-methyl will occupy <1% of the aPAD for females 13 years and older. The acute dietary exposure estimates are provided for females 13–50 years old only. No appropriate endpoint attributable to a single exposure was identified for the general U.S. population including infants, children, and adult males. In addition, there is potential for acute dietary exposure to halosulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 11:

TABLE 11.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	aPAD (mg/kg)	Food Exposure (mg/kg/day)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13–50 years old	0.17	0.00068	105	0.065	5100

2. *Chronic risk*. Using the exposure assumptions described in Unit III.C., Exposure Assessment, for chronic exposure, EPA has concluded that exposure to halosulfuron-methyl from food will utilize <1% of the cPAD for the U.S. population, 2.4% of the cPAD for all infants <1 year old and 1.7% of the cPAD for children 1–6 years . Based the use pattern, chronic residential exposure to residues of halosulfuron-methyl is not expected. In addition, there is potential for chronic dietary exposure to halosulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 12:

TABLE 12.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	cPAD mg/kg/day	Food Exposure (mg/kg/day)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.03	0.00028	105	0.065	1,000
All infants (<1 year old)	0.03	0.00071	105	0.065	300
Females 13–50 years old	0.03	0.00023	105	0.065	900
Males 13–19 years old	0.03	0.00027	105	0.065	1,000

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in Unit III.C., Exposure Assessment, for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 5200 for adults from exposure to residential lawns including MOEs of 21,000 for dermal, 7,000,000 for inhalation and 7,000 for postkapplication dermal; 3800 for children from exposure to residential lawns including MOEs of 4,200 for dermal contact, 54,000 for hand-to-mouth, 220,000 for mouthing grass, and 16,000,000 for soil ingestion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron-methyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 13:

TABLE 13.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	5300	300	105	0.065	5500
Females 13–50 years old	4700	300	105	0.065	4700
All infants (<1 year old)	3600	300	105	0.065	1500
Males 13–19 years old	5400	300	105	0.065	5500

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Halosulfuron-methyl is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for halosulfuron-methyl.

Using the exposure assumptions described in Unit III.C., Exposure Assessment, for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,000 for children from residential lawns including MOEs of 1100 for dermal contact, 23,000 for hand-to-mouth, 43,000 for mouthing grass, and 3,200,000 for soil ingestion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of halosulfuron-methyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 14:

TABLE 14.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO HALOSULFURON-METHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
All infants (<1 year)	960	300	105	0.065	230

5. *Aggregate cancer risk for U.S. population*. Halosulfuron-methyl is classified as a ''not likely'' human carcinogen based on a lack of evidence of carcinogenicity in male and female mice and rats. Accordingly, exposure to halosulfuron-methyl is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to halosulfuron-methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical enforcement method is available to enforce the proposed tolerance for residues of halosulfuron-methyl in or on asparagus; vegetables, fruiting (except cucurbits), group; bean, dry, seed and bean, snap succulent. The method used to validate residues of halosulfuron-methyl is the ''Analytical Method for the Determination of MON 12000 in Raw Agricultural Commodities and Processed Fractions,'' RES–109–97–4, which has been approved by the Agency for enforcement of tolerances for halosulfuron-methyl *per se* in plant commodities and has been sent to FDA for publication in PAM II. The method limit of quantification (LOQ) was 0.05 ppm.

An adequate analytical method is available to enforce the established tolerances for secondary residues in livestock commodities. The Agency-approved analytical method for livestock commodities is Monsanto method RES–046–93. The method quantifies halosulfuron-methyl and the 3-chlorosulfonamide acid metabolite expressed as parent equivalents. The limit of quantitation is 0.01 ppm.

Adequate enforcement methodology (example: gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Paul Golden, Analytical Chemistry Lab. Office of Pesticide Programs, Environmental Protection Agency, Environmental Science Center, 701 Maples Road, Fort Mead, MD 20755–5350; telephone number: (410) 305–2960; e-mail address: *golden.paul@epa.gov*.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRL) have been established for residues of halosulfuron-methyl in/on asparagus, bean, dry, seed, and bean, snap, succulent, tomatoes, and bell or non-bell peppers. International harmonization is therefore not an issue.

V. Conclusion

Therefore, the tolerances are established for residues of halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, in or on asparagus at 0.8 ppm; vegetables, fruiting (except cucurbits), group at 0.05 ppm; bean, dry, seed at 0.05 ppm and bean, snap, succulent at 0.05 ppm. Paragraph (b) of § 180.479 is removed and reserved since the tolerance established in this document for asparagus at 0.8 ppm replaces the tolerance for asparagus and the tolerance for tomato is removed because the vegetables, fruiting (except cucurbits), group at 0.05 ppm includes tomatoes.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0243 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 19, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy, Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0243, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.479 is amended as follows:

i. By revising the section heading and alphabetically adding the following

commodities to the table in paragraph (a)(2).

ii. The text of paragraph (b) is removed and reserved.

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a) *General.* * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Asparagus	0.8
Bean, dry, seed	0.05
Bean, snap, succulent	0.05
* * * * *	
Vegetables, fruiting (except cucurbits), group	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–23995 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0219; FRL–7198–5]

Methoxyfenozide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide and the combined residues of methoxyfenozide and its glucuronide metabolite on various agricultural food commodities. This regulation also establishes tolerances for indirect or inadvertent residues for methoxyfenozide and establishes tolerances for indirect or inadvertent combined residues for methoxyfenozide and its metabolites on various food commodities, and increases the already established tolerances for residues of methoxyfenozide and increases the already established tolerances for the combined residues of methoxyfenozide and its glucuronide metabolite on various food commodities. Rohm and Haas Company and the Interregional Research Project Number 4 (IR–4), Technology Center of New Jersey, the State University of New Jersey requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The chemical was subsequently purchased by Dow Agrosciences from Rohm and Haas Company. The specific food commodities affected by the establishment or increase of these tolerances are set forth in the preamble to this document.

DATES: This regulation is effective September 20, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0219, must be received on or before November 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0219 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph M. Tavano, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6411; e-mail address: *tavano.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at http://www.epa.gov/. To access this document, on the home page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00 .html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0219. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Registers** of January 10, 2000, 65 FR 1370–1381; FRL–6394–6; March 19, 2001, 66 FR 15432–15459; FRL–6766–7; May 23, 2001, 66 FR 28482–28487; FRL–6782–5 and August 24, 2001, 66 FR 44629–44634; FRL–6796–2; and August 14, 2002, 67 FR 52996–53001; FRL–7191–9. EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petitions (PP 9F6033; 9F6062; 0F6201; 0F6213; 1F 6259; 1F6287; 2E6382 and

2E6408) by Rohm and Haas Company,100 Independence Mall West, Philadelphia, PA 19106–2399 and the Interregional Research Project Number 4 (IR–4), Technology Centre of New Jersey, the State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. These notices included a summary of the petitions prepared by Rohm and Haas Company, the registrant or the Interregional Research Project Number 4 (IR–4). There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.544 be amended by establishing tolerances for residues of the insecticide methoxyfenozide in or on almond, hulls; artichoke, globe; field corn grain; field corn forage; field corn stover (fodder); corn, oil; aspirated grain fractions; sweet corn (K + CWHR); sweet corn forage; sweet corn stover (fodder); corn silage; stone fruits crop group; prunes; grapes; Spanish lime; longan; lychee; tree nut crop group; pulasan; raisins; rambutan; fruiting vegetables (except cucurbits); crop subgroup 4A leafy green vegetables; 4B leaf petioles; head and stem Brassica; crop subgroup 5B leafy Brassica greens; at 45.0, 3.0, 0.05, 15.0, 105, 0.2, 1.0, 0.05, 30, 60, 5.0, 5.0, 7.0, 1.0, 2.0, 2.0, 2.0, 0.1, 2.0, 1.5, 2.0, 2.0, 25.0, 10.0, 6.5, 20 parts per million (ppm) respectively and an increase in the established tolerance for residues of methoxyfenozide to 0.1 ppm in milk and an increase in the established tolerances for residues of methoxyfenozide and its glucuronide metabolite in the fat of cattle, goats, horses, hogs and sheep; liver of cattle, goats, horses, hogs and sheep; and meat byproducts (except liver) of cattle, goats, horses hogs and sheep to 0.5, 0.4 and 0.1 ppm respectively. These petitions also requested that 40 CFR 180.544 be amended by establishing time limited tolerances for the indirect or inadvertent residues of methoxyfenozide and its metabolites RH–117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH–151,055 glucose conjugateof RH–117,236; 3,5-dimethylbenzoicacid *N*-tert-butyl-*N*-[3(β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH–152,072 the malonylglycosyl conjugate of RH 117,236 in or on root and tuber vegetables; leaves of root and tuber vegetables; bulb vegetables; leafy vegetables (except Brassica); Brassica vegetables; legume vegetables; foliage of legume vegetables; forage, fodder, hay, and straw of cereal grains; grass forage, fodder and hay; forage, fodder, straw and hay of non-grass animal feeds; and herbs and spices when present therein as a result of application of methoxyfenozide to growing crops at 0.05, 0.1, 0.1, 0.2, 0.2, 0.05, 8.0, 7.0, 7.0, 8.0 and 8.0 ppm respectively.

Based on the residue data submitted, EPA has determined that the following changes to the requested tolerances listed above are necessary. A higher tolerance of 125 ppm is required for field corn stover. A higher tolerance of 30.0 ppm is required for vegetable, leafy (except Brassica), leafy greens subgroup. A higher tolerance of 25 ppm is required for vegetable, leafy (except Brassica), leaf petioles subgroup. A higher tolerance of 7.0 ppm is required for vegetables, leafy, Brassica (cole), head and stem subgroup. A higher tolerance of 30.0 ppm is required for vegetables, leafy, Brassica (cole), greens subgroup. A separate tolerance of 0.30 is needed for plums (fresh prune). A lower tolerance of 25.0 ppm is required for almond hulls. A higher tolerance of 2.0 ppm is required for aspirated grain fractions. No tolerance is required for corn silage since residues in silage are covered by the proposed tolerance for field corn forage. A tolerance for processed prunes is not needed. A lower tolerance of 3.0 ppm is required for stone fruit (except plum, fresh prune). The proposed higher tolerances for hog commodities are not needed. A tolerance of 0.02 ppm is required for poultry, fat and 0.02 for poultry, meat. A tolerance of 0.02 ppm is required for eggs. A tolerance of 0.10 ppm is required for poultry, liver and 0.02 ppm for poultry meat byproducts (mbyp) (except liver). Higher tolerances for the indirect or inadvertent residues of methoxyfenozide in or on vegetable, bulb, group; vegetable, root and tuber, group and vegetable, root and tuber, leaves, group at 0.20, 0.10, and 0.20 ppm respectively are required. Tolerances for the indirect or inadvertent residues of methoxyfenozide in or on leafy and Brassica vegetables are not needed since direct tolerances are being established for them. Higher tolerances for the indirect or inadvertent combined residues of methoxyfenozide benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide and its metabolites RH–117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide], RH–151,055 [glucose conjugate of RH–117,236; 3,5-dimethyl benzoic acid *N*-tert-butyl-*N*-[3 (β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH–152,072 the malonylglycosyl conjugate of RH 117,236 in or on animal feed, non-grass (forage, fodder, straw, hay), group; grain, cereal, forage, fodder, and straw, group; grass, forage, fodder, and hay, group; herbs and spices, group; vegetable, legume, group; and vegetable, legume, foliage, group at 10.0 ppm, 10.0 ppm, 10.0 ppm, 10.0 ppm, 0.10 ppm and 10.0 ppm respectively are needed.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of the insecticide methoxyfenozide in or on almond, hulls; artichoke, globe; cattle, fat; corn, field, grain; corn, field, forage; corn, field, stover; corn, oil; corn, aspirated grain fractions; corn, sweet (K + CWHR); corn, sweet, forage; corn, sweet, stover; fruit, stone, group (except plum, fresh prune); goat, fat; grape; horse, fat; lime, Spanish; longan; lychee; milk; nut, tree, group; pistachio; plum (fresh prune); poultry, fat; poultry, meat; pulasan; raisin; rambutan; sheep, fat; vegetable,

fruiting (except cucurbits), group; vegetable, leafy (except Brassica), leafy greens subgroup; vegetable, leafy (except Brassica), leaf petioles subgroup; vegetable, leafy, Brassica (cole), head and stem subgroup; vegetable, leafy, Brassica (cole), greens subgroup at 25.0, 3.0, 0.50, 0.05, 15.0, 125.0, 0.20, 2.0, 0.05, 30.0, 60.0, 3.0, 0.50, 1.0, 0.50, 2.0, 2.0, 2.0, 0.10, 0.10, 0.10, 0.30, 0.02, 0.02, 2.0, 1.5, 2.0, 0.5, 2.0, 30.0, 25.0, 7.0 and 30.0 ppm respectively, and for the combined residues of methoxyfenozide and its glucuronide metabolite in or on cattle, liver; cattle, meat byproducts (except liver); eggs; goat, liver; goat meat byproducts (except liver); horse, liver; horse, meat byproducts (except liver); poultry, liver; poultry, meat byproducts (except liver); sheep, liver; and sheep, meat byproducts (except liver) at 0.40, 0.10, 0.02, 0.40, 0.10, 0.40, 0.10, 0.10, 0.02, 0.40 and 0.10 ppm, respectively. EPA also has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the indirect or inadvertent residues for methoxyfenozide in or on vegetable, bulb, group; vegetable, root and tuber, group; and vegetable, root and tuber, leaves, group when present therein as a result of the application of methoxyfenozide to growing crops at 0.20, 0.10 and 0.20 ppm, respectively and time-limited indirect or inadvertent combined residues for methoxyfenozide and its metabolites RH–117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide], RH–151,055 glucose conjugate of RH–117,236; 3,5-dimethylbenzoicacid *N*-tert-butyl-*N*-[3(β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH–152,072 the malonylglycosyl conjugate of RH–117,236 in or on animal feed, non-grass (forage, fodder, straw, hay), group; grain, cereal, forage, fodder, and straw, group; grass, forage, fodder, and hay, group; herbs and spices, group; vegetable, legume, group; and vegetable, legume, foliage, group when present therein as a result of the application of methoxyfenozide to growing crops at 10.0, 10.0, 10.0, 10.0, 0.10 and 10.0 ppm, respectively. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by methoxyfenozide are discussed below as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

In an acute neurotoxicity study in rats (MRID 44617802), statistically significant decreased hindlimb grip strength was observed in male rats at 3 hours (approximate time of peak effect) following a single oral dose of 2,000 milligrams/kilogram (mg/kg) (limit dose) of methoxyfenozide. Decreased hindlimb grip strength was also observed in the male rats at 7 and 14 days, but was not statistically significant. No other systemic or neurotoxic effects were observed in the male rats or in the female rats at any time in this study. Since this marginal effect occurred only in one sex, was statistically significant at only one time, was observed only at the high dose (limit dose) and no other signs of toxicity were observed in the rats in this study, this possible effect is not considered to be biologically significant. In addition, neither decreased hindlimb grip strength nor any other signs of neurotoxicity were observed in any of the animals at any time in a 90–day subchronic neurotoxicity study in rats (MRID 44617803).

In a 2–week range-finding dietary study in rats (MRID 44617722), treatment-related effects were observed at ≥5,000 ppm in the liver (increased liver weights and hepatocellular hypertrophy in males and females), in the thyroid gland (hypertrophy/hyperplasia of follicular cells in males and females), and in the adrenal gland (increased adrenal weights and/or hypertrophy of the zona fasciculata in females). Hypertrophy/hyperplasia of thyroid follicular cells was also observed in males and females at 1,000 ppm, the LOAEL in this study. The NOAEL was 250 ppm. Treatment-related hematological changes were not observed in the rats in this study.

In a 3–month feeding study in rats (MRID 44617722), the predominant treatment-related effects were increased liver weights in males and females and periportal hepatocellular hypertrophy in all males and females at 20,000 ppm (highest dose tested) and at 5,000 ppm. In addition, at 20,000 ppm, a slightly decreased (7–8%) red blood cell (RBC) count and slightly decreased (7–8%) hemoglobin concentration, compared to control rats, were observed in the females. The LOAEL in this study was 5,000 ppm (353 mg/kg/day in males and 379 mg/kg/day in females). The NOAEL was 1,000 ppm (69 mg/kg/day in males and 72 mg/kg/day in females). Although observed in the 2–week dietary study and in the 2–year chronic feeding/carcinogenicity study in rats, treatment-related effects in the thyroid and adrenal glands were not observed in the rats in this 3–month study. There is no available biological explanation for this difference in findings in the studies.

In a 2–year combined chronic feeding/carcinogenicity study in rats (MRID 44617731), the following treatment-related effects were observed at 20,000 ppm (highest dose tested): decreased survival in males, decreased body weight and food efficiency in females during the last year of the study, hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits; methemoglobinemia; and increased platelet counts) in males and females, increased liver weights and periportal hepatocellular hypertrophy in males and females, thyroid follicular cell hypertrophy in males, altered thyroid colloid in males and females, and increased adrenal weights in males and females. At 8,000 ppm, the following treatment-related effects were observed: hematological changes (decreased RBC counts, hemoglobin concentrations, and/or hematocrits in males and females), liver toxicity (increased liver weights in males and periportal hepatocellular hypertrophy in males and females), histopathological changes in the thyroid (increased follicular cell hypertrophy in males and altered colloid in males) and possible adrenal toxicity (increased adrenal weights in males and females). The LOAEL in this study was 8,000 ppm (411 mg/kg/day in males and 491 mg/kg/day in females), based on the effects described above. The NOAEL was 200 ppm (10.2 mg/kg/day in males and 11.9 mg/kg/day in females). This NOAEL was used to establish the RfD for methoxyfenozide. Utilizing an uncertainty factor (UF) of 100 to account for both interspecies extrapolation (10X) and intraspecies variability (10X), the chronic RfD for methoxyfenozide was calculated to be 0.10 mg/kg/day. No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because of the decreased survival in males and the decreased body weights and food efficiency in females at 20,000 ppm. In addition, the highest dose tested for both males and females, 20,000 ppm (1,045 mg/kg/day males and 1,248 mg/kg/day in females), is higher than the limit dose of 1,000 mg/kg/day.

In a 2–week range-finding study in dogs (MRID 44617724), treatment-

related hematological changes were observed in both males and females at 3,500 ppm, 7,000 ppm, 15,000 ppm and 30,000 ppm (highest dose tested). These changes included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, decreased MCHC, increased MCV, increased MCH, increased Heinz bodies, methemoglobinemia, changes in RBC morphology such as Howell-Jolly bodies and polychromasia, increased reticulocyte counts, increased nucleated RBC and increased platelet counts. At the same dose levels (≥ 3,500 ppm), increased spleen weights and/or enlarged spleens were also observed. At ≥ 7,000 ppm, plasma total bilirubin was increased. The LOAEL in this study was 3,500 ppm (90–184 mg/kg/day in males and females). The NOAEL was 300 ppm (11–16 mg/kg/day in males and females).

In a 3–month feeding study in dogs (MRID 44617724), no treatment-related effects other than a suggestion of decreased body weight gains in males and females were observed in either males or females at the highest dose tested viz. 5,000 ppm (198 mg/kg/day in males and 209 mg/kg/day in females). Although hematological effects were noted in dogs in the 2–week range-finding study at ≥ 3,500 ppm (90–184 mg/kg/day) and in the 1–year chronic feeding study at ≥3,000 ppm (106 mg/kg/day in males and 111 mg/kg/day in females), hematological changes were not observed in this 3–month study at 5,000 ppm (198/209 mg/kg/day). There is no available biological explanation for this difference in findings in the studies.

As part of the 3–month study in dogs (MRID 44617724), some male and female dogs were given 15 ppm (0.6 mg/kg/day) of methoxyfenozide in the diet for 15 weeks followed by an increase in the dietary dose to 15,000 ppm (422 mg/kg/day in males and 460 mg/kg/day in females) for an additional 6 weeks. After about 2 weeks and 6 weeks at 15,000 ppm, hematological examinations were conducted. No hematological changes in these dogs were observed. Apparently, pretreatment of the dogs at 15 ppm for 15 weeks prevented the occurrence of hematological changes which would have been expected to occur based on results in the 2–week and 1–year feeding studies. One possible explanation is that the liver microsomal enzyme system may have been stimulated so much during pretreatment at 15 ppm that the metabolic (detoxification ?) rate of methoxyfenozide was increased to the point where blood levels of methoxyfenozide may have remained below critical effect levels at 15,000 ppm. Another possible explanation is that compensatory mechanisms for replacing damaged RBC in pretreated dogs may have been so efficient that hematological changes were not observed in these dogs even at 15,000 ppm. Other explanations for this finding are also possible.

In a 1–year chronic feeding study in dogs (MRID 44617728), the predominant toxic effects were anemia and signs of an associated compensatory response. At 30,000 ppm, the highest dose tested, the following treatment-related effects were observed in both males and females: decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, nucleated RBC, increased platelets, increased serum total bilirubin, bilirubinurea, increased hemosiderin in macrophages in liver and spleen, and increased hyperplasia in bone marrow of rib and sternum. Increased liver weights in males and females and increased thyroid weights in males were also observed at 30,000 ppm. Signs of anemia were also noted at 3,000 ppm and included decreased RBC counts, decreased hemoglobin concentrations, decreased hematocrits, methemoglobinemia, increased platelets, and increased serum total bilirubin and bilirubinurea. The LOAEL in this study was 3,000 ppm (106 mg/kg/day in males and 111 mg/kg/day in females). The NOAEL was 300 ppm (9.8 mg/kg/day in males and 12.6 mg/kg/day in females).

In a 3–month feeding study in mice (MRID 44617723), the only treatment-related effect was decreased body weight gain in males and females at 7,000 ppm, the highest dose tested. The LOAEL in this study was 7,000 ppm (1,149 mg/kg/day in males and 1,742 mg/kg/day in females) and the NOAEL was 2,500 ppm (428 mg/kg/day in males and 589 mg/kg/day in females). In an 18–month carcinogenicity study in mice (MRID 44617729), no treatment-related effects were observed at doses up to and including the limit dose of 7,000 ppm (1,020 mg/kg/day in males and 1,354 mg/kg/day in females). No evidence of carcinogenicity was observed in this study. Dosing was considered adequate because the highest dose tested for both males and females, 7,000 ppm (1,020 mg/kg/day in males and 1,354 mg/kg/day in females, respectively), is higher than the limit dose of 1,000 mg/kg/day.

In a battery of four mutagenicity studies (with and without metabolic activation, as appropriate for the specific study), technical grade methoxyfenozide was negative for genotoxicity in all four studies. The four studies satisfy the new revised mutagenicity guideline requirements for a new chemical (published in 1991). An additional mutagenicity study, performed on RH–117,236 (Metabolite M-B), a metabolite of methoxyfenozide, was also negative for genotoxicity.

Based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies, methoxyfenozide is classified as a ''not likely'' human carcinogen according to the EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

In a developmental toxicity study in rats (MRID 44638201), no signs of maternal toxicity in dams or of developmental toxicity in fetuses were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was >1,000 mg/kg/day. Similarly, in a developmental toxicity study in rabbits (MRID 44617726), no signs of maternal toxicity or of developmental toxicity were observed at the limit dose of 1,000 mg/kg/day. The NOAEL in this study for both maternal toxicity and developmental toxicity was 1,000 mg/kg/day. The LOAEL was >1,000 mg/kg/day.

In neither the developmental toxicity study in rats nor in the developmental toxicity study in rabbits was there any evidence for increased susceptibility of fetuses to *in utero* exposure to methoxyfenozide. In these studies, methoxyfenozide was determined not to be a developmental toxicant.

In a 2-generation (1 litter/generation) reproduction study in rats (MRID 44617727), treatment-related parental toxicity was observed only at 20,000 ppm, the highest dose tested. At this dose, increased liver weights were observed in males and females of both generations and midzonal to periportal hepatocellular hypertrophy was observed in the livers of all males and females of both generations. The LOAEL for parental toxicity was 20,000 ppm (1,552 mg/kg/day for males and 1,821 mg/kg/day for females) and the NOAEL was 2,000 ppm (153 mg/kg/day for males and 181 mg/kg/day for females). There were no treatment-related effects on reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 20,000 ppm. Since no treatment-related effects were observed in the pups, the NOAEL for neonatal toxicity was also 20,000 ppm. The NOAEL for parental toxicity in this reproduction study is higher than the NOAEL for the 2–year combined

chronic feeding/carcinogenicity study in rats because many of the toxic effects observed in the 2–year study at the LOAEL (hematological changes, liver toxicity, histopathological changes in the thyroid gland and increased adrenal weights) were not examined in the reproduction study.

In a metabolism study in rats (MRID 44617804), ^{14}C-methoxyfenozide was rapidly absorbed, distributed, metabolized and almost completely excreted within 48 hours. The major route of excretion was feces (86–97%) with lesser amounts in the urine (5–13%). An enterohepatic circulation was observed. The test material was metabolized principally by O-demethylation of the A-ring methoxy group and oxidative hydroxylation of the B-ring methyl groups followed by conjugation with glucuronic acid. No significant sex-related or dose-dependent differences in metabolic disposition were noted. Seven metabolites and the parent accounted for 74–90% of the administered dose in all groups. The glucuronide conjugates are considered to be less toxic than the parent compound because glucuronide conjugation is well known to be a commonly occurring ''detoxification'' mechanism in mammalian species since it results in the formation of more polar, more water-soluble metabolites which are readily and easily excreted from the body (in this case, in the bile and urine). Further, based on similarities of chemical structure, the non-conjugated metabolites would be expected to be no more toxic than the parent compound.

In a dermal absorption study in rats (MRID 44638201) using an 80% wettable powder formulation as the test material, the cumulative dermal absorption of test material after a 10 or 24 hour dermal exposure was determined to be 2%.

In a 28–day dermal toxicity study in rats (MRID 44617725), no treatment-related systemic or skin effects were observed at the limit dose of 1,000 mg/kg/day (HDT).

Regarding effects on endocrine organs, methoxyfenozide affected the thyroid gland and adrenal gland in the 2–week and 2–year feeding studies in rats. In the thyroid gland, hypertrophy/hyperplasia of follicular cells and altered colloid were observed in males and females at or near the LOAEL in both of these studies. In the adrenal gland, increased adrenal weights and hypertrophy of the zona fasciculata were also observed in males and females at or near the LOAEL. In addition, in the 1–year chronic feeding study in dogs, increased thyroid weight in males was observed, but only at the very high dose of 30,000 ppm. Other than the morphological changes described above, there were no signs of thyroid or adrenal dysfunction in these or in any other studies on methoxyfenozide.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is shown in the following Table 2:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Acute Dietary	None	No appropriate endpoint was identified in the oral toxicity studies including the acute neurotoxicity study in rats and the developmental toxicity studies in rats and rabbits.	None
	UF = N/A	Acute RfD = Not Applicable	

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METHOXYFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Chronic Dietary (Non cancer) All Population Subgroups	NOAEL = 10.2 mg/kg/day	Hematological changes (decreased RBC, hemoglobin and/or hematocrit), liver toxicity (increased weights, hypertrophy), histopathological changes in thyroid (increased follicular cell hypertrophy, altered colloid), possible adrenal toxicity (increased weights).	2–Year combined chronic feeding/carcinogenicity, rats
	UF = 100; FQPA = 1X	Chronic RfD = 0.10 mg/kg/day Chronic Population Adjusted Dose (cPAD) = 0.10 mg/kg/day This cPAD applies to All population subgroups.	
Short-Term, Intermediate-Term, and Long-Term (Dermal)	None	No systemic toxicity was seen at the limit dose following repeated dermal application to rats.	None
Short-Term-Intermediate-Term, and Long-Term (Inhalation)	None	Based on low vapor pressure, the low acute toxicity of both the technical and formulated products as well as the application rate and application method, there is minimal concern for inhalation exposure.	None
Cancer	None	None.	None

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.544) for the residues of methoxyfenozide, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide. Thus, the risk from acute exposure is considered negligible.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments:

a. A tier 1(assumptions: tolerance level residues and 100 percent crop treated) was conducted.

b. The established tolerances of 40 CFR 180.544 and the new tolerances established today were included in the analysis.

c. Anticipated residues and percent crop treated were not used in this analysis.

d. The processing factors applied were the DEEM default values.

As shown in table 2 of this preamble, the resulting dietary food exposures occupy up to 34.3% of the Chronic PAD for the most highly exposed population subgroup, children, 1–6 years old. These results should be viewed as conservative (health protective) risk estimates. Refinements such as use of percent crop-treated information and/or anticipated residue values would yield even lower estimates of chronic dietary exposure.

TABLE 2.—SUMMARY:CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)

Population Subgroup[1]	Exposure (mg/kg/day)	% of Chronic PAD[2]
U.S. Population (Total)	0.018704	18.7
All infants (<1 year old)	0.020335	20.3
Nursing infants	0.010197	10.2
Non-nursing infants	0.024603	24.6

TABLE 2.—SUMMARY:CHRONIC DIETARY EXPOSURE ANALYSIS BY DEEM (TIER 1)—Continued

Population Subgroup[1]	Exposure (mg/kg/day)	% of Chronic PAD[2]
Children (1–6 years old)	0.034286	34.3
Children (7–12 years old)	0.024543	24.5
Females 13+ (nursing)	0.021335	21.3
Non-hispanic/non-white/non-black	0.021910	21.9

[1] The subgroups listed are: (1) the U.S. Population (total); (2) those for infants and children; (3) the most highly exposed of the females subgroups, in this case Females 13+ (nursing), and (4) the most highly exposed of the remaining subgroups, in this case Non-hispanic/non-white/non-black.
[2] Percent Chronic PAD = (Exposure ÷ Chronic PAD) x 100.

iii. *Cancer*. Methoxyfenozide is classified as a ''not likely'' human carcinogen. Therefore this risk is considered negligible.

iv. *Anticipated residue and percent crop treated information*. Anticipated residue and percent crop treated information was not used in the Agency's assessment.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for methoxyfenozide in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of methoxyfenozide.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to methoxyfenozide they are further discussed in the aggregate risk sections.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of methoxyfenozide for acute exposures are estimated to be 290 parts per billion (ppb) for surface water and 12 ppb for ground water. The EECs for chronic exposures are estimated to be 197 ppb for surface water and 12 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that methoxyfenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The toxicology database for methoxyfenozide included acceptable developmental toxicity studies in both

rats and rabbits as well as a 2–generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide.

3. *Conclusion*. The 10X safety factor for the protection of infants and children (as required by FQPA) has been removed (i.e. reduced to 1x) for the following reasons:

- The toxicology data base for methoxyfenozide is complete for assessment of potential hazard to infants and children.
- Based on weight-of-the-evidence considerations, the HIARC determined that a developmental neurotoxicity study in rats is not required to support the registration of methoxyfenozide.
- In developmental toxicity studies in rats and rabbits (MRID 44638201, 44617726), no increased susceptibility in fetuses as compared to maternal animals was observed following *in utero* exposures.
- In a 2-generation reproduction study in rats (MRID 44617727), no increased susceptibility in pups as compared to adults was observed following *in utero* and post-natal exposures.
- The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of methoxyfenozide.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD -(average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No appropriate toxicological endpoint attributable to a single (acute) dietary exposure was identified. No acute risk is expected from exposure to methoxyfenozide.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to methoxyfenozide from food will utilize 18.7% of the cPAD for the U.S. population, 24.6% of the cPAD for non-nursing infants and 34.3% of the cPAD for children (1–6 years old). There are no residential uses for methoxyfenozide that result in chronic residential exposure to methoxyfenozide. In addition, there is potential for chronic dietary exposure to methoxyfenozide in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—DWLOCS FOR CHRONIC (NON-CANCER) DIETARY EXPOSURE

Population Subgroup	Chronic PAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day)[1]	SCI-GROW (µg/L)	GENEEC 56–day avg (µg/L)	DWLOC (µg/L)[2,3,4]
U.S. Population (total)	0.10	0.019	0.081	12	197	2,800
Females 13+[5]	0.10	0.021	0.079	12	2,400	
Infants/Children[5]	0.10	0.034	0.066	12	197	660
Other[5]	0.10	0.022	0.078	12	197	2,700

[1] Maximum Water Exposure (mg/kg/day) = Chronic PAD (mg/kg/day) -[Chronic Food Exposure + Chronic Residential Exposure (mg/kg/day)]. Methoxyfenozide has no registered residential uses.

[2] DWLOC (µg/L) = [Maximum water Exposure (mg/kg/day) x body wt (kg)] ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)]. µg/L = parts per billion.

[3] EPA default body weights are: General U.S. Population, 70 kg;Males (13+ years old), 70 kg;Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.

[4] EPA default daily drinking rates are 2 L/day for Adults and 1 L/day for Children.

[5] Within each of these subgroups, the subpopulation with the highest (chronic) food exposure was selected; namely, Females (13+/nursing); Children 1–6 yrs;and, Non-hispanic/non-white/non-black, respectively.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Methoxyfenozide is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Methoxyfenozide is classified as a ''not likely'' human carcinogen. Therefore, exposure to methoxyfenozide is expected to create at most a negligible risk of cancer.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Enforcement methods for target crops.* Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The similar methods that are used vary depending on the matrices involved. The enforcement method for cottonseed is TR 34–96–88 (high production liquid chromatography using ultraviolet detection (HPLC/UV); MRID 44617821), which has undergone a successful petition method validation (PMV) trial conducted by EPA (D261663). The enforcement method for pome fruit (also proposed for globe artichoke and lychee) is TR 34–98–87 (HPLC/UV; MRID 44626304), which has also undergone a successful PMV trial conducted by EPA (D261664). The other proposed enforcement methods are on: corn, TR 34–00–38 (HPLC/UV; MRID 45213504); tree nuts, TR 34–00–107 (HPLC/UV; MRID 45373503); stone fruit, TR 34–00–109 (HPLC/UV; MRID 45313302); leafy and Brassica (cole) vegetables, fruiting vegetables, grapes and raisins, TR 34–99–74 (HPLC/UV or MS; MRID 44873410). Adequate confirmatory method validation, radiovalidation, and independent laboratory validation (ILV) data for these methods have been provided.

2. *Enforcement method for rotational crops.* Method TR 34–00–41(MRID 45194701) is designated as the enforcement method for indirect or inadvertent residues in rotational crops (D269986). The method determines residues of methoxyfenozide (HPLC/UV) in high moisture crops; and residues of methoxyfenozide and its metabolites RH–117,236, RH–151,055, and RH–152,072 (HPLC/MS) in low moisture crops. Adequate confirmatory method validation, radiovalidation, and ILV data have been submitted. EPA concluded (D274209) a PMV trial on this method was not needed because of its similarity to TR 34–98–87.

3. *Enforcement methods for animal commodities.* The tolerance enforcement method for animal commodities (except poultry) is TR 34–98–106 (MRID 44626305), which has undergone a successful PMV trial conducted by EPA (D261665). The method determines residues of parent methoxyfenozide (HPLC/UV) in fat, cream, milk, and muscle;and residues of methoxyfenozide and its metabolite RH–141,518 (HPLC/MS) in liver and kidney (D249438). A similar method, TR 34–00–40 (MRID 45213505), will be the enforcement method for poultry commodities. TR 34–00–40 determines methoxyfenozide in fat (HPLC/UV) and muscle (HPLC/MS);and methoxyfenozide and RH–141,518 (HPLC/MS) in eggs and liver (D269969). EPA concluded (D274209) a PMV trial on this method was not needed because of its similarity to TR 34–98–106. Adequate confirmatory method validation, radiovalidation, and ILV data have been submitted for both methods.

4. *Multiresidue methods testing.* Methoxyfenozide is not recoverable by the Food and Drug Administration multiresidue method protocols of the Pesticide Analytical Method, Volume I (D249438). Test data for metabolites RH–141,518, RH–117,236, RH–151,055, and RH–152,072 are also required, but have not been submitted. Submission of such test data will be made a condition of registration.

These methods may be requested from: Calvin Furlow, PIRIB, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov*.

B. International Residue Limits

There are no Codex or Canadian MRLs established for residues of methoxyfenozide. Mexican MRLs are established for residues of methoxyfenozide in cottonseed (0.05 ppm) and maize (0.01 ppm). The U.S. tolerances on these commodities are 2.0 ppm and 0.05 ppm, respectively. Based on the current use patterns, the U.S. tolerance levels can not be reduced to harmonize with the Mexican MRLs, so incompatibility will exist.

C. Conditions

Submission of test data showing the recovery of metabolites RH–141,518, RH–117,236, RH–151,055, and RH–152,072 through the multiresidue test protocols of PAM, Vol. 1.

Submission of additional field accumulation trials (the 24 reportedly in progress). In the interim period, only time-limited tolerances (5 year) should be established.

- Submission of the following additional field trials, conducted per their respective proposed use pattern:
- Three for spinach (one each from Regions 1, 2, and 10)
- Two for celery (both from Region 3, preferably using Intrepid 2F)
- Three for mustard greens (one each from Regions 2, 3, and 10)
- Two for plums (one each from Regions 10 and 11)

Submission of the following additional information from the hen feeding study:

- Results of analysis (to be conducted) of the fat and meat (muscle) samples for residues of RH–141,518;
- Freezer storage stability data that covers the period of time these poultry fat and meat (muscle) samples have been maintained in storage;and,
- Revised tolerances and tolerance expression (to include RH 141,518) for these matrices, if warranted.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide methoxyfenozide in or on almond, hulls; artichoke, globe; cattle, fat; corn, field, grain; corn, field, forage; corn, field, stover; corn, oil; corn, aspirated grain fractions; corn, sweet (K + CWHR); corn, sweet, forage; corn, sweet, stover; fruit, stone, group (except plum, fresh prune); goat, fat; grape; horse, fat; lime, Spanish; longan; lychee; milk; nut, tree, group; pistachio; plum (fresh prune); poultry, fat; poultry, meat; pulasan; raisin; rambutan; sheep, fat; vegetable, fruiting (except cucurbits), group; vegetable, leafy (except Brassica), leafy greens subgroup; vegetable, leafy (except Brassica), leaf petioles subgroup; vegetable, leafy, Brassica (cole), head and stem subgroup; vegetable, leafy, Brassica (cole), greens subgroup at 25.0, 3.0, 0.50,0.05, 15.0, 125.0, 0.20, 2.0, 0.05, 30.0, 60.0, 3.0, 0.50, 1.0,0.50, 2.0,2.0, 2.0 0.10, 0.10,0.10,0.30, 0.02, 0.02, 2.0, 1.5, 2.0, 0.5, 2.0, 30.0, 25.0, 7.0 and 30.0 part per million (ppm) respectively and for the combined residues of methoxyfenozide and its glucuronide metabolite in or on cattle,

liver; cattle, meat byproducts (except liver); eggs; goat, liver; goat meat byproducts (except liver); horse, liver; horse, meat byproducts (except liver); poultry, liver; poultry, meat byproducts (except liver); sheep, liver; and sheep, meat byproducts (except liver) at 0.40, 0.10, 0.02, 0.40, 0.10, 0.40, 0.10, 0.10, 0.02, 0.40 and 0.10 part per million (ppm) respectively. These petitions also requested that 40 CFR 180.544 be amended by establishing time limited tolerances for the indirect or inadvertent residues for methoxyfenozide in or on vegetable, bulb, group; vegetable, root and tuber, group; and vegetable, root and tuber, leaves, group when present therein as a result of the application of methoxyfenozide to growing crops at 0.20, 0.10 and 0.20 part per million (ppm) respectively and time limited indirect or inadvertent combined residues for methoxyfenozide and its metabolites RH–117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH–151,055 glucose conjugate of RH–117,236; 3,5-dimethylbenzoicacid *N*-tert-butyl-*N*-[3(β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH–152,072 the malonylglycosyl conjugate of RH 117,236 in or on animal feed, non-grass (forage, fodder, straw, hay), group; grain, cereal, forage, fodder, and straw, group; grass, forage, fodder, and hay, group; herbs and spices, group; vegetable, legume, group; and vegetable, legume, foliage, group when present therein as a result of the application of methoxyfenozide to growing crops at 10.0, 10.0, 10.0, 10.0, 0.10 and 10.0 part per million (ppm) respectively.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0219 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 19, 2002.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0219, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact;there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary;and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the

Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks*(62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.544 is revised to read as follows:

§ 180.544 Methoxyfenozide;tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide methoxyfenozide per se; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide in or on the following food commodities:

Commodity	Parts per million
Almond, hulls	25
Apple, wet pomace	7.0
Artichoke, globe	3.0
Brassica, head and stem, subgroup	7.0
Brassica, leafy greens, subgroup	30
Cattle, fat	0.50
Cattle, meat	0.02
Corn, field, forage	15
Corn, field, grain	0.05
Corn, field, refined oil	0.20
Corn, field, stover	125
Corn, sweet, forage	30
Corn, sweet, kernal plus cob with husks removed	0.05
Corn, sweet, stover	60
Cotton, gin byproducts	35
Cotton, undelinted seed	2.0
Fruit, pome, group	1.5
Fruit, stone, group, except fresh prune plum	3.0
Goat, fat	0.50
Goat, meat	0.02
Grain, aspirated fractions	2.0
Grape	1.0
Grape, raisin	1.5
Hog, fat	0.1
Hog, meat	0.02
Horse, fat	0.50
Horse, meat	0.02
Leaf petioles subgroup	25
Leafy greens subgroup	30
Longan	2.0
Lychee	2.0
Milk	0.10
Nut, tree, group	0.10
Pistachio	0.10
Plum, prune, fresh	0.30
Poultry, fat	0.02
Poultry, meat	0.02

Commodity	Parts per million
Pulasan	2.0
Rambutan	2.0
Sheep, fat	0.50
Sheep, meat	0.02
Spanish lime	2.0
Vegetable, fruiting, group	2.0

(2) For combined residues of the insecticide methoxyfenozide; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide and its glucuronide metabolite RH-141,518; β-D-Glucopyranuronic acid, 3-[2-(1,1-dimethylethyl)-2-(3,5-dimethylbenzoyl)-hydrazino]carbonyl-2-methylphenyl-] in the following commodities:

Commodity	Parts per million
Cattle, liver	0.40
Cattle, meat byproducts, except liver	0.10
Egg	0.02
Goat, liver	0.40
Goat, meat byproducts, except liver	0.10
Hog, liver	0.1
Hog, meat byproducts, except liver	0.02
Horse, liver	0.40
Horse, meat byproducts, except liver	0.10
Poultry, liver	0.10
Poultry, meat byproducts, except liver	0.02
Sheep, liver	0.40
Sheep, meat byproducts, except liver	0.10

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the insecticide methoxyfenozide in connection with the use of the pesticide under section 18 emergency exemption granted by EPA. The tolerances will expire on the dates specified in the following tables.

Commodity	Parts per million	Expiration/revocation date
Corn, field, forage	10	12/31/03
Corn, field, grain	0.02	12/31/03
Corn, field, stover	75	12/31/03
Corn, oil	0.1	12/31/03
Soybean, aspirated grain fractions	20	12/31/03
Soybean, forage	10	12/31/03
Soybean, hay	75	12/31/03
Soybean, refined oil	1.0	12/31/03
Soybean, seed	0.04	12/31/03

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* (1) Tolerances are established for the indirect or inadvertent residues of the insecticide methoxyfenozide per se; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide in or on the following raw agricultural commodities, when present therein as a result of the application of methoxyfenozide to growing crops as listed in paragraph (a) of this section:

Commodity	Parts per million	Expiration/Revocation Date
Vegetable, bulb, group	0.20	09/30/07
Vegetable, root and tuber, group	0.10	09/30/07
Vegetable, leaves of root and tuber, group	0.20	09/30/07

(2)Tolerances are established for the indirect or inadvertent combined residues of methoxyfenozide; benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide and its metabolites RH-117,236 free phenol of methoxyfenozide; 3,5-dimethylbenzoic acid *N*-tert-butyl-*N*'-(3-hydroxy-2-methylbenzoyl) hydrazide, RH-151,055 glucose conjugate of RH-117,236; 3,5-dimethyl benzoic acid *N*-tert-butyl-*N*-[3 (β-D-glucopyranosyloxy)-2-methylbenzoyl]-hydrazide and RH-152,072 the malonylglycosyl conjugate of RH 117,236 in or on the following raw agricultural commodities, when present therein as a result of the application of methoxyfenozide to growing crops as listed in paragraph (a) of this section:

Commodity	Parts per million	Expiration/Revocation Date
Animal feed, non-grass, group	10.0	09/30/07
Grain, cereal, forage, fodder and straw, group	10.0	09/30/07
Grass, forage, fodder, and hay, group	10.0	09/30/07
Herb and spice, group	10.0	09/30/07
Vegetable, legume, group	0.10	09/30/07
Vegetable, foliage of legume, group	10.0	09/30/07

[FR Doc. 02–23996 Filed 9–19–02;8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–115, 96–149; FCC 02–214]

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Connumications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules to implement section 222 of the Communications Act of 1934 (as amended by the Telecommunications Act of 1996), which governs carriers' use and disclosure of customer proprietary network information (CPNI). This document affirms the continued use of the total service approach to define what carriers may do under section 222(c)(1) without notice to customers, and allows a carrier to choose whether to use an opt-out or opt-in approval method for obtaining customer approval for a carrier to use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. Specifically, this document allows the use of CPNI by carriers or disclosure to their affiliated entities providing communications-related services, as well as third-party agents and joint venture partners providing communications-related services, only after a carrier receives a customer's knowing consent in the form of notice and ''opt-out'' approval. This document also permits disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services requires express customer consent, described as ''opt-in'' approval. This document also further refines the rules governing the process by which carriers provide notification to customers of their CPNI rights. Specifically, it clarifies the form, content and frequency of carrier notices. Additionally, this document affirms the Federal Communications Commission's conclusion that customers' preferred carrier (PC) freeze information constitutes CPNI and thereby warrants privacy protection pursuant to section 222, and announces the Commission's decision to forbear from imposing the express consent requirements announced in this document with respect to PC-freezes. This document also reaffirms existing Commission rules addressing winback and retention marketing, and declines to adopt further rules regarding a carrier's denial of CPNI to another carrier with customer authorization.

DATES: Effective October 21, 2002, except §§ 64.2007, 64.2008, and 64.2009, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Marcy Greene, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2410, or via the Internet at *mgreene@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in CC Docket Nos. 96–115 and 96–149, adopted July 16, 2002, and released July 25, 2002. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Report and Order

1. The Commission resolves in this Order several issues in connection with carriers' use of customer proprietary network information (''CPNI'') pursuant to section 222 of the Telecommunications Act of 1996. Through section 222, Congress recognized both that telecommunications carriers are in a unique position to collect sensitive personal information and that customers maintain an important privacy interest in protecting this information from disclosure and dissemination. The rules adopted by the Commission focus on the nature of the customer approval needed before a carrier can use, disclose or permit access to CPNI.

2. *Background.* This proceeding was initiated in 1996 to implement section 222 of the Communications Act of 1934 (as amended), which governs carriers' use and disclosure of CPNI. On February 26, 1998, the Commission adopted regulations implementing section 222 in its *CPNI Order*. [63 FR 20236, April 24, 1998]. In particular, it concluded that section 222(c)(1) of the Act allows a carrier to use a customer's CPNI, derived from the complete service subscribed to from that carrier, for marketing purposes within the existing service relationship. This is known as the ''total service approach.'' The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a ''notice and opt-in'' approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. On September 3, 1999, the Commission released an *Order on Reconsideration* [64 FR 53242, Oct. 1, 1999] that affirmed the opt-in approach, but streamlined the CPNI rules so that carriers could use CPNI to market customer premises equipment and information services without customer approval, and lessened carriers' CPNI record-keeping responsibilities. It also eliminated restrictions on a carrier's ability to use CPNI to regain customers that switched to another carrier, known as ''winbacks.''

3. After the Commission adopted the *Order on Reconsideration*, but prior to its release, the Court of Appeals for the Tenth Circuit vacated portions of the 1998 *CPNI Order*. The court found that the Commission did not show that the opt-in form of consent protected privacy and promoted competition in a manner consistent with the First Amendment of the U.S. Constitution.

4. In an October 6, 2000 Order, *AT&T* v. *Bell Atlantic* (denying a complaint by AT&T regarding the manner in which Bell Atlantic markets the services of its long distance affiliate to its local exchange customers), the Commission interpreted the Tenth Circuit's vacatur as applying only to the discrete issue that was before the court. On September 7, 2001, the Commission released a *Clarification Order and Second Further Notice of Proposed Rulemaking* [66 FR 50140, Oct. 2, 2001] that determined that all CPNI rules except those relating to opt-in remained in effect, and that carriers may choose to obtain customer approval by means of an opt-out approach until the Commission adopted

final rules. This Order sought comment on adopting either an opt-in or opt-out approach.

5. On July 16, 2002, the Commission adopted a *Third Report and Order* that allows a carrier to choose whether to use an opt-out or opt-in approval method for obtaining customer approval for a carrier to use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. The Order allows a carrier—subject to opt-out or opt-in approval—to disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to (i) Its agents, (ii) its affiliates that provide communications-related services, and (iii) its joint venture partners and independent contractors. Carriers must obtain opt-in customer approval for all other uses and disclosures of CPNI to which other exceptions do not apply.

6. *Discussion.* This document allows carriers to choose the method(s) by which consumers may express their opt-out or opt-in choices. However, carriers are required to make available to all customers a method to opt-out that is of no cost to the customer and that is available 24 hours a day, seven days a week. This document confirms the previous determination that preferred carrier freezes (PC freezes) fit within the statutory definition of CPNI, and forbears from imposing the affirmative approval requirements in the CPNI rules so that preferred carrier freeze information can be disclosed among carriers.

Final Paperwork Reduction Act Analysis

7. This Order contains new and modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the OMB, as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Clarification Order and Second Further Notice of Proposed Rulemaking* issued in CC Docket No. 96–115 and CC Docket No. 96–149. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Third Report and Order

9. The initial need for the proceeding of which this *Report and Order* is a part is that on May 17, 1996, the Commission initiated a rulemaking in response to requests for guidance from the telecommunications industry regarding the obligations of telecommunications carriers under section 222 of the Act and related issues. The Commission released the *CPNI Order* on February 26, 1998, in which it addressed the scope and meaning of section 222 and promulgated implementing regulations. On August 18, 1999, the Tenth Circuit issued an opinion vacating a portion of the *CPNI Order in U S WEST* v. *FCC.* That left the Commission with a need to clarify the CPNI rules and their future operation. The Commission does so herein.

10. On August 28, 2001, the Commission adopted an order *(CPNI Clarification Order)* clarifying the status of its CPNI rules in light of the Tenth Circuit order and issuing a Further Notice of Proposed Rulemaking *(Clarification Order Further NPRM).* Specifically, the Commission sought comment on (1) Its interpretation of the scope of the Tenth Circuit order; (2) what type of approval (opt-in or opt-out) would best serve the government's goals while respecting constitutional limits; (3) ways in which consumers can consent to a carrier's use of their CPNI; (4) what methods of approval would serve the governmental interests at issue and afford informed consent, while also satisfying the First Amendment's requirement that any restrictions on speech be narrowly tailored; (5) the interests and policies underlying section 222 that are relevant to formulating an approval requirement, including an analysis of the privacy interests that are at issue, and on the extent to which it should take competitive concerns into account; (6) the likely difference in competitive harms under opt-in and opt-out approvals; and (7) whether adoption of an opt-out mechanism is consistent with the rationale for the total service approach set forth in the *CPNI Order.* In addition, the Commission sought comment on whether its consent mechanism would affect its previous findings on the interplay between sections 222 and 272.

11. In this Order, the Commission reaches the objective of resolving several issues in connection with carriers' use of customer proprietary network information pursuant to section 222 of the Telecommunications Act of 1996. In formulating the required approval mechanism described below, we carefully balance carriers' First Amendment rights and consumers' privacy interests so as to permit carriers flexibility in their communications with their customers while providing the level of protection to consumers' privacy interests that Congress envisioned under section 222.

12. More specifically, The Commission adopts an approach that comports with the decision of the United States Court of Appeals for the Tenth Circuit vacating the Commission's requirement that carriers obtain express customer consent for all sharing between a carrier and its affiliates, as well as unaffiliated entities. The Commission adopts today an approach that is derived from a careful balancing of harms, benefits, and governmental interests. First, use of CPNI by carriers or disclosure to their affiliated entities providing communications-related services, as well as third-party agents and joint venture partners providing communications-related services, requires a customer's knowing consent in the form of notice and ''opt-out'' approval. Second, disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services requires express customer consent, described as ''opt-in'' approval. Finally, the Commission reaffirms its ''total services approach,'' which permits the carrier to use CPNI to market new product offerings within the carrier-customer service relationship, on the basis of the customer's implied consent.

13. In this Order, the Commission also further refines the rules governing the process by which carriers provide notification to customers of their CPNI rights. Specifically, clarifying the form, content and frequency of carrier notices. In addition, although the Commission decline to reconsider its conclusion that customers' preferred carrier (PC) freeze information constitutes CPNI and thereby continue to accord it privacy protection pursuant to section 222, the Commission chooses to forbear from imposing the express consent requirements announced in this Order with respect to PC-freezes. Through its limited exercise of forbearance, the Commission balances customers'

privacy concerns with carriers' meaningful commercial interests, resulting in PC-freeze information being made more readily available among competing carriers, consistent with the public interest. The Commission also affirms its previous determination that the word ''information'' in section 272 does not include CPNI, which is governed instead by section 222 of the Act.

14. Finally, the Commission accompanies this Order with a Further Notice of Proposed Rulemaking (''Further NPRM'') to refresh the record on two issues raised in the *CPNI Order Further NPRM:* foreign storage of and access to domestic CPNI, and CPNI safeguards and enforcement mechanisms. The Commission additionally requests comment on what, if any, appropriate regulations should govern the CPNI held by carriers that go out of business, sell all or part of their customer base, or seek bankruptcy protection.

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

15. One party, the Organization for the Promotion and Advancement of Small Telecommunications Companies (''OPASTCO''), commented specifically in response to the IRFA. OPASTCO argues that the IRFA was ''deficient'' for two reasons. First, OPASTCO notes that the IRFA ''reverts to language which incorrectly suggests that small ILECs are not ''small entities'' under the Regulatory Flexibility Act.'' Further, OPASTCO takes issue with the IRFA's determination that whatever consent rules are ultimately adopted will be applicable to all carriers. OPTASCO argues that ''the Commission has not considered any alternatives, contrary to the requirements of 5 U.S.C. 603(c).''

16. The Commission confirms OPASTCO's assumption that the *Clarification Order's* IRFA did contain a clerical error regarding the classification of small ILECs. Accordingly, we affirm that Commission practice is to discuss small ILECs as ''small entities'' within our IRFAs, under the RFA. However, we note that no party was prejudiced or harmed by this error because the IRFA put potentially affected entities on notice by affirmatively stating that the Commission was ''consider[ing] small ILECs within this analysis and us[ing] the term ''small LECs'' to refer to any ILECs that arguably might be defined by SBA as ''small business concerns.'' Hence, the clerical error was cured in the very document in which it was alleged to be present.

17. OPASTCO's concern, therefore, that ''if the rulemaking body itself has no preconceived idea of what the final rules might be, there is no way it can make the prejudgment that its final rules will be appropriate for all entities,'' takes a statement from the IRFA out of context. Furthermore, OPASTCO's contention inaccurately describes the Commission's decision-making process and outcome in this proceeding.

18. First, although the *Clarification Order* did not propose specific consent requirements, the *Clarification Order* did ''seek comment on ways in which carriers can obtain their customers' consent and the extent to which an opt-in or opt-out approach would satisfy both sections 222 and the Tenth Circuit's concerns that any restrictions on speech be no more than necessary to serve the asserted state interests.'' Accordingly, although specific consent rules were not proposed, the only two potential types of consent (opt-in and opt-out) were explicitly mentioned and offered to interested parties for consideration and comment. In an instance such as this, where the Commission has previously considered what type of consent to require, and where the Order in question mentions the only two potential options for obtaining consent, it is unreasonable to claim that the Commission or any interested party had and has no idea what the final rules might be. Clearly, the Commission knew and adequately advised interested parties that the final rules would involve opt-in approval, opt-out approval, or some combination of the two. In fact, every commenter, including OPASTCO, focused extensively on whether the Commission should adopt opt-in or opt-out consent requirements. The Commission also notes that the IRFA went on to state that ''[w]e have, however, taken the limited resources of small entities into account in promulgating certain existing CPNI rules, and intend to do so again in addressing the customer consent requirements.'' The omission of ILECs, whether or not evidence of Commission oversight, is rendered moot by its inclusion of this statement.

19. Furthermore, the previously adopted opt-in approval rules were subject to, and complied with, the requirements of the RFA. Accordingly, the Commission has previously undertaken an analysis of opt-in and potential alternatives with respect to small carriers. Although such analysis does not supplant the analysis that the Commission must perform in this Order and in this FRFA, it provides meaningful guidance. In previous CPNI Orders, the Commission has received comment from several parties on the impact of proposed rules on small carriers. After extensive analysis, the Commission found that ''[a]fter consideration of possible alternatives, we have concluded that our rules should apply equally to all carriers.'' Thus any argument that the Commission ever neglected the interests of small carriers is thereby rendered invalid. The Commission's reasoning remains valid today. The Commission stated: ''we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI.'' Additionally, the weight added by Congressional intent is critical in this context and deserves comment. In drafting section 222, Congress determined that CPNI protections should apply to consumers of ''[e]very telecommunications carrier.'' Finally, the Commission notes that the rules it adopts today are less burdensome on all carriers, including small carriers, than the Commission's original opt-in rules.

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

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

22. The Commission has included small incumbent local exchange carriers (ILECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

23. *Total Number of Telephone Companies Affected.* The U.S. Bureau of Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by these rules.

24. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities that may be affected by these rules.

25. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data collected annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, there are 1,329 local exchange carriers, including incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that they are fewer than 1, 329 small entity LECs that may be affected by the proposals in the *Second Further Notice.*

26. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that the Commission collects annually in connection with TRS. According to its most recent data, 229 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 229 small entity IXCs that may be affected by this order.

27. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. The most reliable source of information regarding the number of CAPs nationwide of which the Commission is are aware appears to be the data that it collect annually in connection with the TRS. According to the Commission's most recent data, 532 companies reported that they were engaged in the provision of either competitive access services or competitive local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 532 small entity CAPs that may be affected by this order.

28. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 22 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission

estimates that there are fewer than 22 small entity operator service providers that may be affected by this order.

29. *Pay Telephone Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone providers. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 936 small entity pay telephone operators that may be affected by this order.

30. *Wireless Carriers.* Wireless telephony includes cellular, personal communications services (PCS) or specialized mobile radio (SMR) service providers. The SBA has developed a definition of small entities for radiotelephone (wireless) companies; however, neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. Though categorized under the same size standard as other wireless services discussed in this paragraph, paging is now considered a separate industry. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Commission considers paging and messaging services to fall within this category. According to the most recent Provider Locator data, 858 carriers reported that they were engaged in the provision of wireless telephony and 576 companies reported that they were engaged in the provision of paging and messaging services. Although it seems certain that some of these carriers are not independently owned and operated, the Commission is unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 858 small carriers providing wireless telephony services and fewer than 576 small companies providing paging and messaging services that may be affected by these rules.

31. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of toll resellers nationwide of which the Commission is aware appears to be the data that it collects annually in connection with the TRS. According to the Commission's most recent data, 710 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, the Commission is unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 710 small entity resellers that may be affected by this order.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. In this Order, the Commission takes a number of steps that may affect small entities that use customers' CPNI outside of the total service approval or statutory exceptions in section 222. Some of the approval and notice requirements discussed herein will require additional reporting, recordkeeping or compliance requirements for service providers; however, certain approval and notice requirements discussed herein will also decrease certain reporting, recordkeeping or compliance requirements for service providers. The Commission believes that, overall, these new requirements will lessen the regulatory burden on small carriers by allowing carriers to obtain customers' consent through an opt-out approval mechanism to use customers' CPNI for marketing communications-related services.

33. This Order imposes the following additional reporting, recordkeeping or compliance requirements on all carriers. None of these requirements should affect small carriers disproportionately or require special professional skills. First, carriers must obtain opt-in CPNI approval for certain CPNI uses, and have the choice of obtaining opt-out or opt-in approval for other CPNI uses. As discussed in section III.C.1, *supra,* a carrier may determine whether to use one notice or multiple notices, and may request and provide notice relevant only to the CPNI uses the carriers proposes to make. Accordingly, if, as OPASTCO claims, its members only intend to use CPNI internally for marketing communications-related services, its member small carriers will only have to obtain opt-out approval from their customers.

34. Carriers who use opt-out approval must provide notice to their customers every two years. This requirement, while an added burden on all carriers, is counterbalanced by the fact that carriers who choose to use the opt-out method will be able to use and disclose more CPNI for marketing than under the opt-in method. Accordingly, a carrier that finds the burden of biennial notices to outweigh the benefit of expanded CPNI access can choose to obtain opt-in approval from its customers and avoid the biennial notice requirement. Additionally, notice requirements are common in the telecommunications industry and the requirements adopted here allow carriers flexibility in determining how to provide such notices. Accordingly, all carriers, including small carriers, should already have resources in place to provide notices required by such regulations to their customers.

35. The Commission requires carriers who use e-mail notices to advise their customers of their opt-out CPNI choices to abide by certain requirements. These requirements are not burdensome. To the degree that any carrier could seriously argue that these requirements are burdensome, carriers are not required to use e-mail to notify their customers of CPNI policies. Accordingly, a carrier can choose the least burdensome notification method allowed under our rules, based on the carrier's individual circumstances.

36. In addition, the Commission adds minor content requirements to our notice rules to synchronize the rules with the newly adopted consent requirements. These requirements should require minimal effort on the part of carriers, large and small, to implement. Furthermore, the Commission also streamlines the notice requirements for carriers to obtain limited, one-time use of consumers' CPNI for the duration of an inbound or outbound call with the customer, which will benefit small carriers.

37. The Commission adopts a 30-day minimum period of time that carriers must wait after giving customers' opt-out notice before assuming customer approval. Every carrier commenter supported the 30-day time period. Such a time period imposes minimal burden on carriers. This is especially true because the 30-day waiting period has been the interim rule since we adopted the *CPNI Clarification Order* and has been the subject of no carrier complaints or concerns.

38. The Commission adopts a requirement that carriers make available to every customer a method to opt-out that is of no additional cost and available 24 hours a day, seven days a week. This requirement can be satisfied through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose. To the degree that carriers find that the burden of meeting this requirement outweigh the value of using an opt-out approval method, carriers are free to use opt-in. Carriers are otherwise free to determine what methods to use to allow customer to effectuate their CPNI elections. Although this requirement will impose a burden on small and large carriers alike, the Commission strongly believes that two factors mitigate against allowing small carriers to utilize less burdensome alternatives. First, as the Commission has previously held, there is nothing in this record that convinces it that customers of small carriers are entitled to lesser protection of the privacy of their calling records than those customers of larger carriers. Accordingly, it would be inappropriate to allow small carriers to provide less effective methods for customers to effectuate their CPNI choices. Second, to the degree that these requirements impose burdens on carriers, those burdens are outweighed by the value of using an opt-out approval mechanism to obtain customer approval to use CPNI for marketing communications-related services. Should carriers find that not to be the case in their individual situations, they can avoid the 24/7 requirement by adopting an opt-in approval mechanism.

39. The Commission forbears from applying our CPNI approval regulations to preferred carrier (''PC'') freezes, allowing small and large carriers alike easier access to PC-freeze information.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

41. While the approval and related notice measures adopted in this Order apply similarly to both small and large entities, the Commission expects that small entities are likely to benefit to the extent such firms have fewer or reduced resources available, as compared to large firms. The Commission's previously adopted rules required all carriers to obtain opt-in approval from their customers to use CPNI outside of the total service approach. Although the Commission allowed carriers to use opt-out as an interim measure in light of the Tenth Circuit's opinion, that approach was never codified or adopted as a permanent rule. As discussed above, this Order adopts an approach that is derived from a careful balancing of harms, benefits, and governmental interests. First, use of CPNI by carriers or disclosure to their affiliated entities providing communications-related services, as well as third-party agents and joint venture partners providing communications-related services, requires a customer's knowing consent in the form of notice and ''opt-out'' approval. Second, disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services requires express customer consent, described as ''opt-in'' approval. Finally, the Commission reaffirms its ''total services approach,'' which permits the carrier to use CPNI to market new product offerings within the carrier-customer service relationship, on the basis of the customer's implied consent.

42. Accordingly, the Commission concludes that the measures adopted and described in this Order would reduce regulatory burdens for small carriers including resellers, by allowing carriers access to CPNI for marketing communications-related services to their customers via an opt-out mechanism. Further, the Order specifically allows carriers to use opt-in approval for all CPNI uses should a carrier determine that opt-in is more appropriate for its individual circumstances, allowing carriers to make decisions regarding their customers and resources.

43. Furthermore, as noted above, the previously adopted opt-in rules were subject to and complied with the requirements of the RFA. Accordingly, the Commission has previously undertaken an analysis of opt-in and potential alternatives with respect to small carriers. Although such analysis does not replace the analysis that the Commission must perform in this Order, it provides meaningful guidance. In previous CPNI Orders, the Commission received comment from several parties on the impact of proposed rules on small carriers. After extensive analysis, the Commission found that ''[a]fter consideration of possible alternatives, we have concluded that our rules should apply equally to all carriers.'' The Commission's reasoning remains valid today. Of special importance in this context, the Commission's consistent determination, made throughout this proceeding, that ''we are unpersuaded that customers of small businesses have less meaningful privacy interests in their CPNI.'' This is especially true because, in drafting section 222, Congress determined that CPNI protections should apply to consumers of ''[e]very telecommunications carrier.''

44. In this Order, the Commission also describes commenters' positions regarding other appropriate approval methods and related notice issues and states why those alternatives that the Commission does not adopt would not serve the public interest. For example, many carriers, including small carriers, proposed that we allow carriers to use opt-out approval for all CPNI uses. However, as it points out in this Order, the Commission must fulfill its statutorily imposed duty to protect consumers' CPNI, while balancing those interests with carriers' First Amendment interests. Therefore, as discussed in detail in the Order, the Commission concludes that the CPNI rules it adopts—which balance in an equitable fashion all consumers'' privacy rights with carriers' First Amendment rights—strike the right balance for small and large carriers alike. Moreover, the Commission gains assurance from knowing that the rules it adopts benefit small carriers and serve the public interest by allowing carriers with expanded access to consumers' CPNI from its original opt-in rules.

45. *Report to Congress.* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this

Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

46. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 222 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222 and 303(r), that the *Third Report and Order* and *Third Further Notice of Proposed Rulemaking* in CC Docket Nos. 96–115, 96–149, and 00–257 *are adopted*, and that part 64 of the Commission's rules, 47 CFR part 64, is amended as set forth in the rule changes. The requirements of this Order shall become effective October 21, 2002, except §§ 64.2007, 64.2008, and 64.2009 which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

47. *It is further ordered* that the collection of information contained herein is contingent upon approval by the Office of Management and Budget.

48. *It is further ordered* that the California Public Utilities Commission's Motion to Accept Late-Filed Comments is hereby *granted*.

49. *It is further ordered* that, pursuant to sections 1, 4(i), 10 and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160 and 222, MCI WorldCom's Petition for Further Reconsideration *is granted* to the extent indicated herein and otherwise *denied*.

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154.

1a. Revise § 64.2003 to read as follows:

§ 64.2003 Definitions.

Terms in this subpart have the following meanings:

(a) *Affiliate*. The term ''affiliate'' has the same meaning given such term in section 3(1) of the Communications Act of 1934, as amended, 47 U.S.C. 153(1).

(b) *Communications-related services*. The term ''communications-related services'' means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(c) *Customer*. A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(d) *Customer proprietary network information (CPNI)*. The term ''customer proprietary network information (CPNI)'' has the same meaning given to such term in section 222(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).

(e) *Customer premises equipment* (CPE). The term ''customer premises equipment (CPE)'' has the same meaning given to such term in section 3(14) of the Communications Act of 1934, as amended, 47 U.S.C. 153(14).

(f) *Information services typically provided by telecommunications carriers*. The phrase ''information services typically provided by telecommunications carriers'' means only those information services (as defined in section 3(20) of the Communications Act of 1934, as amended, 47 U.S.C. 153(2)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase ''information services typically provided by telecommunications carriers,'' as used in this subpart, shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(g) *Local exchange carrier* (LEC). The term ''local exchange carrier (LEC)'' has the same meaning given to such term in section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. 153(26).

(h) *Opt-in approval*. The term ''opt-in approval'' refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request consistent with the requirements set forth in this subpart.

(i) *Opt-out approval*. The term ''opt-out approval'' refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in § 64.2009(d)(1) after the customer is provided appropriate notification of the carrier's request for consent consistent with the rules in this subpart.

(j) *Subscriber list information* (SLI). The term ''subscriber list information (SLI)'' has the same meaning given to such term in section 222(h)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(3).

(k) *Telecommunications carrier or carrier*. The terms ''telecommunications carrier'' or ''carrier'' shall have the same meaning as set forth in section 3(44) of the Communications Act of 1934, as amended, 47 U.S.C. 153(44).

(l) *Telecommunications service*. The term ''telecommunications service'' has the same meaning given to such term in section 3(46) of the Communications Act of 1934, as amended, 47 U.S.C. 153(46).

4. Amend § 64.2005 by revising paragraphs (a) introductory text, and (a)(2); (b) introductory text, and (b)(1) to read as follows:

§ 64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval.

* * * * *

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share

CPNI with its affiliates, except as provided in § 64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversion.

* * * * *

5. Revise § 64.2007 to read as follows:

§ 64.2007 Approval required for use of customer proprietary network information.

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(1) A telecommunications carrier relying on oral approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

(b) *Use of Opt-Out and Opt-In Approval Processes.* (1) A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (b)(2) of this section.

(2) *Joint Venture/Contractor Safeguards.* A telecommunications carrier that discloses or provides access to CPNI to its joint venture partners or independent contractors shall enter into confidentiality agreements with independent contractors or joint venture partners that comply with the following requirements. The confidentiality agreement shall:

(i) Require that the independent contractor or joint venture partner use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;

(ii) Disallow the independent contractor or joint venture partner from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and

(iii) Require that the independent contractor or joint venture partner have appropriate protections in place to ensure the ongoing confidentiality of consumers' CPNI.

(3) Except for use and disclosure of CPNI that is permitted without customer approval under section § 64.2005, or that is described in paragraph (b)(1) of this section, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

6. Add § 64.2008 to subpart U to read as follows:

§ 64.2008 Notice required for use of customer proprietary network information.

(a) *Notification, Generally.* (1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) *Content of Notice.* Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

(4) The notification must be comprehensible and must not be misleading.

(5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.

(6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

(8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.

(9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.

(10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) *Notice Requirements Specific to Opt-Out.* A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The

contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice;

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) *Notice Requirements Specific to Opt-In.* A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(f) *Notice Requirements Specific to One-Time Use of CPNI.* (1) Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

(i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

(ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

(iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and

(iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

7. Amend § 64.2009 by revising paragraphs (c) and (d) and by adding paragraph (f) to read as follows:

§ 64.2009 Safeguards required for use of customer proprietary network information.

* * * * *

(c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.

(d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

* * * * *

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

[FR Doc. 02–23199 Filed 9–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2099; MM Docket No. 01–62; RM–10053, RM–10109, RM–10110, RM–10111, RM–10112, RM–10113, RM–10114, RM–10116]

Radio Broadcasting Services; Ardmore, Brilliant, Brookwood, Gadsden, Hoover, AL; Linden, McMinnville, TN; Moundville, New Hope, AL; Okolona, MS; Pleasant Grove, AL; Pulaski, TN; Russellville, Scottsboro, Troy, Trussville, Tuscaloosa, AL; Walden, TN and Winfield, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making in this Proceeding jointly filed by Capstar TX Limited Partnership, Clear Channel Broadcasting Licenses, Inc., and Jacor Licensee of Louisville II, Inc., this document grants multiple channel substitutions and changes of community of license in Alabama, Mississippi and Tennessee. Specifically, this document substitutes Channel 288C2 for Channel 290A at Trussville, Alabama, reallots Channel 288C2 to Hoover, Alabama, and modifies the Station WENN license to specify operation on Channel 288C2 at Hoover. In order to accommodate the Channel 288C2 allotment at Hoover, this document substitutes Channel 290C3 for

Channel 288A at Tuscaloosa, Alabama, reallots Channel 290C3 to Brookwood, Alabama, and modifies the Station WRTR license to specify operation on Channel 290C3 at Brookwood. To accommodate Channel 290C3 at Brookwood, this document substitutes Channel 249A for Channel 290A at Winfield, Alabama, and modifies the license of Station WKXM to specify operation on Channel 249A. In order to accommodate Channel 249A at Winfield, it substitutes Channel 278A for Channel 249A at Russellville, Alabama, and modifies the Station WKGL license to specify operation on Channel 278A. In order to accommodate Channel 288C2 at Hoover, this document also substitutes Channel 289C0 for Channel 289C at Troy, Alabama, and modifies the Station WZHT license to specify operation on Channel 289C0. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No.01–62 adopted August 28, 2002, and released August 30, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

This document reallots Channel 279C1 from Gadsden, Alabama, to Trussville, Alabama, and modifies the Station WQEN license to specify Trussville as its community of license. In order to allot Channel 279C1 to Trussville, Alabama, this documents reallots Channel 280C2 from Columbus, Mississippi, to Okolona, Mississippi, and modifies the Station WACR license to specify Okolona as its community of license. This document allots Channel 267A to Linden, Tennessee, and Channel 278A to New Hope, Alabama. This document substitutes Channel 279C3 for Channel 280A at McMinnville, Tennessee, reallots Channel 279C3 to Walden, Tennessee, and modifies the Station WTRZ license to specify operation Walden as its community of license. *See* 66 FR 14872, March 14, 2001. The reference coordinates for the Channel 288C2 allotment at Hoover, Alabama, are 33–22–41 and 86–48–35. The reference coordinates for the Channel 290C3 allotment at Brookwood, Alabama, are 33–12–36 and 87–24–40. The reference coordinates for the Channel 249A allotment at Winfield, Alabama, are 33–12–36 and 87–24–40. The reference coordinates for the Channel 289C0 allotment at Troy, Alabama, are 31–52–03 and 86–14–58. The reference coordinates for the Channel 280C2 allotment at Okolona, Mississippi, are 33–51–38 and 88–30–44. The reference coordinates for the Channel 258A allotment at Vardaman, Mississippi, are 33–46–13 and 89–15–26. The reference coordinates for the Channel 267A allotment at Linden, Tennessee, are 35–37–47 and 87–45–09. The reference coordinates for the Channel 278A allotment at New Hope, Alabama, are 34–34–50 and 86–25–17. The reference coordinates for the Channel 279C3 allotment at Walden, Tennessee, are 35–14–32 and 85–22–17. The reference coordinates for the Channel 279C1 allotment at Trussville, Alabama, are 33–26–38 and 86–52–47.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Trussville, Channel 290A and adding Hoover, Channel 288C2.

3. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Gadsden, Channel 279C1 and adding Trussville, Channel 279C1.

4. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 288A at Tuscaloosa and adding Brookwood, Channel 290C3.

5. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 290A and adding Channel 249A at Winfield.

6. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 289C and adding Channel 289C0 at Troy.

7. Section 73.202(b), the Table of FM Allotments, under Alabama, is amended by adding New Hope, Channel 278A.

8. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 280C2 at Columbus and adding Okolona, Channel 280C2.

9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Vardaman, Channel 258A.

10. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Linden, Channel 267A.

11. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing McMinnville, Channel 280A and adding Walden, Channel 279C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–23883 Filed 9–19–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 183
Friday, September 20, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 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 certain serial number (SN) Pratt and Whitney (PW) models PW4164, PW4168, and PW4168A turbofan engines. This proposal would require operators to initially and repetitively borescope-inspect 14th and 15th stage rubstrips located on the 13th and 14th stage stator set for wear. This proposal is prompted by reports of high pressure compressor (HPC) surges during the takeoff phase of flight that have been attributed to increased stage 14 and stage 15 HPC blade tip clearances caused by excessive wear on the HPC inner rear case rear hook. The actions specified by the proposed AD are intended to prevent engine power loss during takeoff due to HPC surge.

DATES: Comments must be received by November 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov''*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 656–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130; 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 2002–NE–15–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. 2002–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received reports of eleven HPC surge events occurring during the takeoff phase of flight, on PW models PW4164, PW4168, and PW4168A turbofan engines. The manufacturer has attributed these surges to increased stage 14 and stage 15 HPC blade tip clearances, caused by excessive wear on the rear hook of the HPC inner rear case assembly part number (P/N) 53H272–01. The rear hook wear allows the 14th and 15th stage rubstrips, located on the 13th and 14th stage stator in the HPC inner rear case assembly, to rub against the blade tips resulting in increased blade tip clearances and a reduced surge margin. This proposal requires initial and repetitive borescope inspections of the 14th and 15th stage rubstrips for wear and removing the engine from service if the inspection finds 14th and 15th stage rubstrip wear beyond specified limits, in order to replace the 13th and 14th stage stator set with a serviceable stator set and to replace the HPC inner rear case assembly. This proposal also requires, on uninstalled engines, borescope inspection of the 14th and 15th stage rubstrips, and if any evidence of wear through to parent material is revealed, replacement of the HPC inner case assembly with HPC inner case assembly P/N 58H026–01, and replacement of the worn 13th and 14th stage stator set and with a serviceable 13th and 14th stage stator set. This condition, if not corrected, could result in engine takeoff power loss due to HPC surge.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt &

Whitney Alert Service Bulletin (ASB) PW4G–100–A72–170, Revision 2, dated June 24, 2002. The ASB:

- Is applicable to engines serial numbers P733301 through P733500 not having HPC inner rear case assembly P/N 58H026–01 installed, and describes procedures for initial and repetitive borescope inspections of 14th and 15th stage rubstrips for wear; and
- If wear exceeds specified limits, requires removal for replacement,

within certain additional cycles, with a serviceable 13th and 14th stage stator set P/N 57H283–01; and

• If wear exceeds specified limits, requires removal for replacement of the HPC inner rear case assembly P/N 53H272–01 with a new design HPC inner rear case assembly P/N 58H026–01.

The FAA has also reviewed and approved the technical contents of Pratt & Whitney SB PW4G–100–72–159, Revision 1, dated July 12, 2000, that introduces a new HPC inner rear case with different rear hook material, by either modification of the case assembly or replacing the HPC inner rear case assembly with new design HPC inner rear case assembly P/N 58H026–01.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW models PW4164, PW4168, and PW4168A turbofan engines of the same type design, the proposed AD would require:

• Initial and repetitive borescope inspections of 14th and 15th stage rubstrips, located on the 13th and 14th stage stator set P/N 57H283–01, for wear; AND

• Removing the engine from service if the inspection finds 14th and 15th stage rubstrip wear beyond specified limits, in order to replace the 13th and 14th stage stator set with a serviceable stator set and to replace the HPC inner rear case assembly; AND

• On uninstalled engines, borescope inspection of the 14th and 15th stage rubstrips, and if any evidence of wear through to parent material is revealed, replacement of the HPC inner case assembly with case assembly P/N 58H026–01, and replacement of the worn 13th and 14th stage stator set with a serviceable 13th and 14th stage stator set.

Installation of an HPC inner rear case assembly P/N 58H026–01, and a serviceable 13th and 14th stage stator set P/N 57H283–01, constitutes terminating action to the repetitive borescope inspections of this proposed AD. The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 90 Pratt & Whitney models PW4164, PW4168, and PW4168A turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 21 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per engine to perform the proposed inspection, and that the average labor rate is $60 per work hour. Assuming an average accumulation of 100 cycles-in-service per month per engine, the FAA estimates an average of two borescope inspections be required per engine per year. Parts cost is not included in this analysis, as this AD requires inspection. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $7,560.

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:

Pratt & Whitney: Docket No. 2002–NE–15–AD.

Applicability

This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) models PW4164, PW4168, and PW4168A turbofan engines, serial numbers P733301 through P733500. These engines are installed on, but not limited to Airbus Industries A330 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent engine power loss during takeoff due to high pressure compressor (HPC) surge, do the following:

(a) For engines with an HPC inner case assembly part number (P/N) 58H026–01 installed, no action is required.

Airplanes With One Affected Engine Installed

(b) If only one of the engines on the airplane is affected by this AD, do the following:

(1) Perform borescope inspections in accordance with the Accomplishment Instructions, Borescope Inspection for Engines Installed on Aircraft, paragraphs 1.A. through 1.I of Pratt & Whitney Alert Service Bulletin (ASB) PW4G–100–A72–170, Revision 2, dated June 24, 2002, using the following Table 1 schedule:

TABLE 1.—INSTALLED-ENGINE BORESCOPE INSPECTION SCHEDULE

Engine cycles accumulated	Initial borescope-inspect 14th and 15th stage rubstrips
(i) Fewer than 900 cycles-since-new (CSN) or cycles-since-refurbishment (CSR) of the HPC inner rear case assembly, on the effective date of this AD.	Before accumulating 1,500 CSN or CSR, whichever occurs later.
(ii) More than 900 CSN or CSR but fewer than 1,500 CSN or CSR, on the effective date of this AD.	Within 600 cycles-in-service (CIS) after the effective date of this AD.
(iii) More than 1,500 CSN or CSR, on the effective date of this AD	Within 600 cycles since the last inspection of 14th and 15th stage rubstrips, or 600 CIS after the effective date of this AD, whichever occurs earlier.

(2) Use the wear limits and disposition the engine in accordance with the Accomplishment Instructions, Borescope Inspection for Engines Installed on Aircraft, paragraphs 2 through 4 of Pratt & Whitney ASB PW4G–100–A72–170, Revision 2, dated June 24, 2002.

Airplanes With Two Affected Engines Installed

(c) For engines installed on airplanes with two engines affected by this AD, do the following:

(1) Perform borescope inspections in accordance with the Accomplishment Instructions, Borescope Inspection for Engines Installed on Aircraft, paragraphs 1.A. through 1.I of Pratt & Whitney ASB PW4G–100-A72-170, Revision 2, dated June 24, 2002, using the schedule in Table 1.

(2) If a borescope inspection of one engine reveals any evidence of wear through to the parent material of either the 14th stage or 15th stage rubstrip, then borescope-inspect the other engine on the aircraft within 10 additional CIS. If the other engine shows any evidence of wear through to the parent material of either 14th stage or 15th stage rubstrip, then remove either engine from the aircraft within 25 additional CIS and replace with an engine not affected by this AD.

Borescope Inspections of Uninstalled Engines

(d) For engines removed from the aircraft and not scheduled for HPC disassembly, perform a borescope inspection in accordance with the Accomplishment Instructions, Borescope Inspection for Engines Removed From the Aircraft and Not Scheduled for HPC Disassembly, paragraphs 1.A. through 1.I of Pratt & Whitney ASB PW4G–100–A72–170, Revision 2, dated June 24, 2002. Use the wear limits and disposition the engine in accordance with paragraphs 2 through 3 of the ASB.

(e) Thereafter, perform the borescope inspections of paragraphs (b), (c), or (d) of this AD within 600 cycles since last inspection.

Terminating Action

(f) Installation of an HPC inner rear case assembly P/N 58H026–01 in accordance with Pratt & Whitney service bulletin (SB) No. PW4G–100–72–159, Revision 1, dated July 12, 2000 constitutes terminating action for the repetitive engine borescope inspections of this AD.

Alternative Methods of Compliance

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

(h) 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 done.

Issued in Burlington, Massachusetts, on September 13, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–23882 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Turbomeca S.A. Arriel- 1 D, 1 D1, 1S, 1 S1, 2 S1, and –2B series turboshaft engines. That proposal would have required the insertion of a sleeve in the attachment boss of the compressor bleed valve. That proposal was prompted by several cases of contained centrifugal compressor impeller blade ruptures that occurred in service. This proposed action revises the proposed rule by retaining the insertion of a sleeve in the attachment boss of the compressor bleed valve, adding requirements for bonding the sleeve in the bleed-valve mounting pad, and expanding the applicability to Turbomeca Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1, and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. The actions specified by this proposed AD are intended to prevent acoustic excitation of the centrifugal compressor impeller blades resulting in contained compressor impeller blade ruptures and power loss that could lead to an uncommanded in-flight shutdown.

DATES: Comments must be received by November 19, 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–06–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.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A, 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00; fax 33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New

England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7136; 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–06–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–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Turbomeca S.A. Arriel 1 D, 1 D1, 1S, 1 S1, 2 S1, and 2B series turboshaft engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 6, 2001 (66 FR 46562). That NPRM required installing a sleeve into the attachment boss of the compressor bleed valve. That NPRM was prompted by several cases of contained centrifugal compressor impeller blade ruptures that occurred in service. That condition, if not corrected, could result in contained compressor impeller blade ruptures and power loss that could lead to an uncommanded in-flight shutdown.

Since that NPRM was issued, the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that the sleeve inserted in the attachment boss of the compressor bleed valve must be bonded in the bleed-valve mounting pad, and that the affected population of Turbomeca S.A. engines is expanded.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engine Mandatory Service Bulletins (MSB's):

- MSB No. 292 72 2054, dated September 20, 1999, that incoporates Modification TU 54 and provides instructions for the removal of the compressor bleed valve, installation of the sleeve, and reinstallation of the compressor bleed valve on Arriel 2 B and 2 S1 engines.
- MSB No. 292 72 0261, dated September 20, 1999, that incorporates Modification TU 300 and provides instructions for the removal of the compressor bleed valve, installation of the sleeve, and reinstallation of the compressor bleed valve on Arriel 1 D, 1 D1, 1 S, and 1 S1 engines.
- MSB No. 292 72 2070, Update 1, dated October 5, 2001, that incorporates Modification TU 70A, and provides instructions for bonding the sleeve in the bleed-valve mounting boss on Arriel 2 B, 2 B1, 2 C, 2 C1, and 2 S1 engines.
- MSB No. 292 72 0275, Update 1, dated October 2, 2001, that incorporates Modification TU 316A, and provides instructions for bonding the sleeve in the bleed-valve mounting boss on Arriel 1 A2, 1 C, 1 C1, 1 2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, and 1 S1 engines.

Bilateral Agreement Information

This engine model is manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require bonding a sleeve in the compressor bleed-valve mounting pad. The actions would be required to be done in accordance with the MSB's described previously.

Economic Analysis

There are approximately 1,406 Turbomeca S.A. Arriel 1 and Arriel 2 model turboshaft engines of the affected design in the worldwide fleet. The FAA estimates that 476 engines installed on helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 1.0 work hour per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $430 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $233,240.

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:

Turbomeca S.A: Docket No. 2001–NE–06–AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. These engines are installed on, but not limited to, Eurocopter France AS350B1, AS350B2, AS350B3; Astar 350D, Fennic AD550U2 and Sikorsky S–76A and S–76C series helicopters.

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

Compliance

Compliance with this AD is required within 30 days after the effective date of this AD, unless already done.

To prevent acoustic excitation of the centrifugal compressor impeller blades, resulting in contained blade ruptures and power loss that could lead to an uncommanded in-flight shutdown, do the following:

Modification TU 300 Not Incorporated

(a) For Arriel 1 D, 1 D1, 1 S, and 1 S1 engines that do not have TU 300 incorporated, incorporate TU 300 and TU 316A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca mandatory service bulletin (MSB) 292 72 0261, dated September 20, 1999.

(2) Install sleeve part number (P/N) 0 292 15 333 0 and the bleed valve in accordance with 2.B.(1)(d) through 2.B.(1)(g) of the Instructions to be Incorporated of Turbomeca MSB 292 72 0275, Update No. 1, dated October 2, 2001.

Modification TU 300 Incorporated

(b) For Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S and 1 S1 engines that have modification TU 300 incorporated, incorporate modification TU 316A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca. MSB 292 72 0275, Update 1, dated October 2, 2001.

Modification TU 54 Not Incorporated

(c) For Arriel 2 B and 2 S1 engines that do not have modification TU 54 incorporated, incorporate TU 54 and TU 70A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca MSB 292 72 2054, dated September 20, 1999.

(2) Install sleeve P/N 0 292 15 333 0 and the bleed valve in accordance with the 2.B.(1)(d) through 2.B.(1)(g) or 2.B.(2)of the Instructions to be Incorporated of Turbomeca MSB 292 72 2070, Update 1, dated October 5, 2001.

Modification TU 54 Incorporated

(d) For Arriel 2 B, 2 B1, 2 C, 2 C1 and 2 S1 engines that have modification TU 54 incorporated, incorporate modification TU 70A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca MSB 292 72 2070, Update 1, dated October 5, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directives No. 2002–126(A) and 2002–27(A), dated March 6, 2002 that replaced DGAC AD's 1999–391(A) and 1999–392(A), dated October 6, 1999.

Issued in Burlington, Massachusetts, on September 12, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–23881 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Partial withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document partially withdraws the proposed rulemaking in which the agencies proposed to amend its requirements on statewide and metropolitan planning (65 FR 33922, May 25, 2000; comment period ended at 65 FR 41891, July 7, 2000). This partial withdrawal is based on the level of critical comment received, the development of alternative means for implementing the topics addressed in the NPRM and the pendency of reauthorization of the surface transportation program. The agencies are withdrawing this rulemaking except for those sections that relate to ''consultation with non-metropolitan local officials'' which are addressed in the SNPRM published on June 19, 2002, at 67 FR 41648.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchinski, Statewide Planning Division (TPL–11) (statewide

planning), (202) 366–1626, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, D.C. 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Sections 1203, 1204, and 1308 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA–21 to 49 U.S.C. 5303–5306 which address the metropolitan planning process in the context of the FTA's responsibilities. In addition section 5206(e) of the TEA–21 directed that all intelligent transportation system (ITS) improvements funded with highway trust fund monies (including those from the mass transit account) be consistent with the national ITS architecture.

The FHWA and the FTA published a notice of proposed rulemaking on May 25, 2000 (65 FR 33922); that detailed proposed revisions to the existing planning regulations 23 CFR part 450. Comments were solicited by August 23, 2000 (later extended to September 23, 2000; July 7, 2000 65 FR 41891). We are also terminating a related rulemaking dealing with revisions to regulations regarding the implementation of the National Environmental Policy Act (NEPA) for projects funded or approved by the FHWA or the FTA, which was proposed simultaneously with the planning NPRM in a separate document, published elsewhere in today's **Federal Register**.

A companion NPRM for the Intelligent Transportation System Architecture (ITS) and Standards, 23 CFR parts 655 and 940 was published on May 25, 2000, at 65 FR 33994. A final rule was published on January 8, 2001, at 66 FR 1446. Efforts were made to coordinate development of the ITS and planning rules, specifically with regard to the requirement for an ''ITS integration strategy'' as proposed in 23 CFR 1410.322(b)(11) of the planning NPRM.

The comments discussed below indicated a substantial diversity of opinion from a wide variety of interests, including environmental groups, transit organizations, the State Departments of Transportation, and metropolitan planning organizations. In the Fall of 2000, a series of congressional hearings raised additional issues that we have reviewed. Based on the comments received, the time elapsed since publication and the close proximity of reauthorization of the surface transportation program we have decided to partially withdraw the proposed rules and rely in the interim on both existing regulatory and TEA–21 statutory requirements (*e.g.* Federal certifications of Transportation Management Areas, Metropolitan/State Federal Planning Findings, *etc.*) as well as non-regulatory approaches to implement the TEA–21 planning provisions, such as reinforcing compliance through workshops, pilot activities, case studies, information sharing and selective enforcement of compliance with existing FHWA and FTA regulations and enforcement tools on a case-by-case basis. However, we are not withdrawing the portions of the May 2000 planning NPRM as they pertain to consultation with non-metropolitan local officials. We are addressing that issue in a separate SNPRM published previously in the **Federal Register**.

The Statewide Metropolitan Planning regulation at 23 CFR 450, continues in force except as modified by Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, June 1998).[1]

Discussion of Comments on the NPRM

After reviewing the comments submitted in response to the NPRM, the FHWA and the FTA have decided to partially withdraw our rulemaking on this issue. As indicated earlier the extent of controversy, the divergence of opinion and the close proximity of reauthorization all suggest withdrawal of the proposed rules except the section that addresses consultation with non-metropolitan local officials. We will reconsider the possibility of issuing regulations after reauthorization of the surface transportation program. During the comment period on the proposed rules, the FTA and the FHWA held seven public meetings to present information on the NPRM. Comments were not solicited at those meetings. Attendees were encouraged to submit all comments to the docket. However, a summary of questions raised at the meetings and the general responses of the FHWA and the FTA presenters is included in the docket.

In addition the FTA and the FHWA responded to requests for presentations at several meetings during the comment period of the NPRMs. The agencies made the following presentations: Texas Planning Conference, Alaska (arranged teleconference), Michigan, Florida, and the Association of Metropolitan Planning Organizations policy conference. A summary of all comments by section of the NPRM has been prepared by the FHWA and the FTA and inserted in the docket. We have carefully reviewed all comments.

During the comment period (on September 12 and 13, 2000), the Senate Environment and Public Works and the House Transportation and Infrastructure Committees held hearings regarding the NPRMs. The FHWA and the FTA have reviewed the comments and questions raised at the hearings.

Summary of Comments Received

There were approximately 425 documents (representing just over 300 discrete comments when form letters from multiple groups and individuals are accounted for) submitted to the docket for the planning NPRM. The comments were distributed among types of organizations as indicated below. We received diverse and, even, opposing comments. General comments concerning the rule are addressed initially, followed by specific responses to individual sections of the regulatory proposals. We received comments from the following:

Interest groups and associations—69
Businesses—2
Congressional—1
Federal agencies—7
Local governments—34
Metropolitan Planning Organizations—70
Private individuals—14
Regional Councils—44
State DOTs—52
Other State agencies—17
Transit agency—16
Tribes and tribal organizations—11

[1] For guidance on implementing the provisions of the TEA–21 please see the memorandum, dated February 2, 2001, entitled ''Implementing TEA–21 Planning Provisions'' available at the following URL: *http://www.fhwa.dot.gov/hep/tea21mem.htm.*

Distribution Table

The NPRM proposed renumbering of 23 CFR part 450 as 23 CFR part 1410 and amending Chapter VI of Title 49 CFR by removing part 613 and adding part 621. We did not receive any comments on this proposal.

Section-by-Section Discussion of the Comments

The discussion in this section presents comments received on specific sections.

Section 1410.100 Purpose

No comments were received on this section.

Section 1410.102 Applicability

We did not receive any comments on this section

Section 1410.104 Definitions

We received a comment from a State DOT that the regulations should define 'transportation control measures (TCM)'' to include only those projects included in the State implementation plan (SIP). It was our intent in the NPRM that TCMs be defined to include only those measures that are specifically identified and committed to in the applicable SIP. The definition used in the NPRM was taken from the transportation conformity rule for consistency.

A State DOT suggested that ''systematic process'' be dropped from the definition of ''congestion management system (CMS).''

More than twenty discrete comments were received on the proposed definition of ''consultation;'' opposed and supportive. Representatives of Indian Tribal Governments proposed revised wording to address the issue concerning consultation with Indian Tribal Governments. Numerous comments were received suggesting minor revisions to our proposed definition of ''coordination.''

Definitions for ''design concept,'' ''design scope,'' ''federally funded non-emergency transportation services,'' ''financial estimate,'' and ''freight shipper'' were included in the NPRM. One commenter observed that the definition of design concept was too restrictive for attainment areas and proposed modification. A suggestion to define financial estimates in precise detail was offered.

One commenter suggested revising the term ''Governor'' by adding ''or designee'' in the definition. A proposal to clarify ''ITS Integration Strategy'' was offered by the Intelligent Transportation Society of Maryland. A similar proposal was made by a State DOT for ''illustrative projects.''

Several commenters, primarily State DOTs and MPOs, observed that the terminology ''interim plan and TIP'' was either not necessary or confusing.

One commenter offered the idea that the definition of MPO needed emphasis on the policy body as the MPO. Approximately five commenters suggested that the term ''most recent assumptions'' be tied to a statutory definition or left to the MPO to determine. A few comments were offered to modify the term ''provider of transportation freight services.

Several commenters raised questions concerning the prohibition against extensions in nonattainment areas and limitation in attainment areas.

The TEA–21 Negotiated Rulemaking Committee—Tribal Caucus suggested that the definition should allow a tribal government to request designation as a transportation management area (TMA).

A suggestion to modify the point at which the twenty-year period commenced was offered by a commenter. A proposal to drop the terminology ''or special census as appropriate'' from the definition of urbanized area was offered.

Proposals from State DOTs and MPOs were offered to define the terms ''comprehensive update,'' ''project phase,'' ''planning process participants,'' and ''conformity freeze.''

The environmental justice elements of the NPRM generated a great deal of comment. One common thread in these comments was the suggestion that key terms be defined.

Subpart B—Statewide Transportation Planning and Programming

Section 1410.200 Purpose

One State DOT observed that this section should emphasize ''general strategies'' to serve operations and management since the statewide plan can be a policy plan. Another commenter observed that this section should reference ''multimodal,'' as well as ''intermodal.''

Section 1410.202 Applicability

One commenter asked that this section acknowledge the possibility of other agencies being designated by the Governor as participants in the planning process.

Section 1410.204 Definitions

No comments were received on this section.

Section 1410.206 Statewide Transportation Planning Process Basic Requirements

We received over fifty comments from advocacy groups, professional groups, State DOTs, State agencies and MPOs on this section. The comments were split between two clear poles: a general perception that the NPRM did not go far enough to demonstrate how MPOs and State DOTs can achieve environmental justice goals and a line of reasoning that suggests that the proposed requirements were too detailed and burdensome. In the latter instance, a companion argument was offered frequently that the NPRM confused the principles of environmental justice with the principles of Title VI of the Civil Rights Act (42 U.S.C. 2000d–1).

Section 1410.208 Consideration of Statewide Transportation Planning Factors

Three general themes emerged from the comments submitted on this section: (1) Guidance on the compliance with the seven planning factors should be minimal and tied to best practices and good examples; (2) the term ''planning process participants'' was too vague; and (3) proposed section 1410.208(b) was unnecessary.

Section 1410.210 Coordination of Planning Process Activities

We received several comments from local government officials, State DOTs, and advocacy groups regarding this section, generally seeking to modify key relationships or add entities for coordination. One commenter suggested that we change coordination to ''consultation'' or ''communication'' where other States or countries are involved. Another commenter suggested adding Indian Tribal Governments to the entities involved in coordination and several commenters proposed more specificity of coordination procedures for clarity.

We also received comments requesting clarification of the proposed rule as to the application of transportation conformity to the statewide transportation planning process.

Section 1410.212 Participation by Interested Parties

We received over 150 comments from State DOTs, local governments, advocacy organizations and others on this section. The bulk of them focused on the issue of consultation with non-metropolitan local officials. We have addressed this issue in a separate SNPRM published previously in the **Federal Register** as noted above.

One tribal government suggested that we use negotiated rulemaking procedures for tribal governments in the completion of the rulemaking process.

Section 1410.214 Content and Development of Statewide Transportation Plan

Two new sections were proposed to reflect legislative changes: ITS and optional financial plan. Approximately twenty-five comments from State DOTs, MPOs and professional associations were submitted on the ITS architecture proposal. The comments on the ITS provisions were generally split between supporting the proposal and opposing it based on a perceived additional burden. Some commenters felt that the strategy of main streaming ITS investments in this fashion and dealing with them as part of the planning process would not permit technology to be implemented in a timely fashion. Some DOTs observed that the burden of getting agreements signed with all implementers was too great.

Comments on the financial plan provisions of this section were generally focused on understanding how this plan related to the financial plan required of MPOs. The commenters were looking for clarification of intent and requirement.

Section 1410.216 Content and Development of Statewide Transportation Improvement Program (STIP)

Three general comments were raised regarding the requirement for financial estimates to support the MPO plan and TIP development. State DOTs questioned the inclusion of the transit operator as a party to the estimate development as being beyond statutory requirement. At least two commenters questioned what the time frame should be for developing estimates. Finally, one commenter questioned the extended authority given to the State to develop the estimates.

One commenter suggested that the provisions of § 1410.216(b) be revised to require participation by agencies based on ownership or degree of environmental impact. It was suggested also that this involvement be extended to environmental restoration or enhancement projects. Three general threads of commentary were offered on § 1410.216(c). State DOTs and some MPOs questioned the identification of ITS projects on several grounds, most notably the burden of clearly identifying them. The general need for this section was also questioned. Finally, several commenters wanted clarification of the term ''project phase.''

Several comments were raised regarding the level of detailed information required for a TIP, especially with regard to categories of funding sources for projects. A significant battery of comments was offered regarding the role of Indian Tribal Governments in the STIP development process. One Indian tribe suggested the idea that Tribal Governments should be included with those agencies regularly informed regarding the STIP development process.

A Tribal Government representative suggested that Indian Tribal Governments should be included in those cooperating agencies that must be consulted in STIP modification procedures.

Section 1410.218

This section addressed revisions made as a result of the replacement of the Major Investment Study requirement. The discussion of comments received is found under section 1410.318 below.

Section 1410.220 Funding of Planning Process

A tribal government suggested that tribal governments should be identified among the participants eligible to receive funds.

Section 1410.222 Approvals, Self-Certification and Findings

Three general areas of comment for this section appear in the docket: (1) The FHWA and the FTA should be able to approve TIP/STIP extensions; (2) tribal governments should be afforded an expanded role in TIP/STIP development; and (3) the environmental justice provisions should be more explicitly spelled out. Many State DOTs and MPOs requested that STIP/TIP extensions be allowed in nonattainment and maintenance areas.

Section 1410.224 Project Selection

One set of commenters requested the addition of tribal governments to those with selection authority. One commenter questioned whether the language of this section permits the unrestricted movement of projects across all three years of a STIP. Finally, a commenter felt that this section continues to remain unclear.

Section 1410.226 Applicability of NEPA to Transportation Planning and Programming

We did not receive any comments on this section.

Subpart C—Metropolitan Transportation Planning and Programming

Section 1410.300 Purpose of Planning Process

One commenter suggested that this section should recognize that one purpose of the metropolitan planning process is to plan transportation systems that will minimize transportation related fuel consumption and air pollution.

Section 1410.302 Organizations and Processes Affected by Planning Requirements

One commenter suggested that the preamble does not explain why the reference to project selection was proposed to be dropped from the regulation since this is the link between programming and the actual receipt of Federal funds.

Another commenter wanted us to add the following language: ''the provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming and project development processes in metropolitan areas pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303–6.''

Section 1410.304 Definitions

We did not receive any comments on this section.

Section 1410.306 What Is a Metropolitan Planning Organization and How Is It Created?

Comments on this section tended to focus on MPO policy board membership issues regarding representation (elected officials and operators of major modes of transportation) and opposing or favoring the proposed changes regarding multiple MPOs in a single metropolitan area. Several MPOs offered the idea that MPO policy board membership should favor elected officials. These individuals also tended to oppose providing representation for operators of major modes of transportation.

The MPO commenters addressing the matter of multiple MPOs tended to support the NPRM proposal that would reduce the possibility of such designations.

Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas

Only one comment was made on this section and it favored the language as proposed.

Section 1410.310 Agreements Among Organizations Involved in the Planning Process

The comments received on this section tended to focus on the addition of the ITS agreement to the list of agreements already contained in this section. The concerns ranged from the necessity of adding an agreement to the need for additional guidance on what should be addressed in the agreement. Some commenters, typically professional association and ITS oriented groups, supported the provision, others (often MPOs and State DOTs) objected to it. Some comments questioned whether an MPO would have the staff to conduct needed work. Bringing the operating agencies to the planning process was raised also as a concern, largely in terms of the potential to add to the burden of coordination and slow down the planning process.

Several commenters addressed the proposed provisions regarding an agreement on ITS policy and operational issues. One commenter felt that the agreement strategy was unrealistic and potentially destructive in terms of promoting ITS. The comments provided suggested that the U.S. DOT take a leadership role in promoting approaches to main streaming ITS, rather than relying on individual localized approaches.

Section 1410.312 Planning Process Organizational Relationships

One commenter suggested that the records of agreements should be made available to the public. Another comment observed that the transit agency should not be on equal footing with MPOs and State DOTs in concluding agreements.

Section 1410.314 Planning Tasks and Unified Work Program

We received less than ten comments on this section. One commenter suggested that the unified planning work program (UPWP) should be more of a policy document. Another letter suggested that the States should be held to the same standard as MPOs. Finally, another commenter said that the requirement for consultation with the U.S. Environmental Protection Agency (EPA) in nonattainment areas is inappropriate and will lead to time delays.

Section 1410.316 Transportation Planning Process and Plan Development

The environmental justice aspect of this section received the bulk of comments. Over fifty separate commenters submitted suggestions for change. Few, if any, commenters were content with the proposed wording as published. The majority of comments, typically from MPOs, and State DOTs, tended to suggest that the proposal was burdensome, unclear, insufficient, potentially subject to unending litigation, and confusing in terms of the relationship between Title VI and environmental justice.

A second area of major comment was the public involvement provision. Generally, there was support for these provisions. Some suggestions, from interest groups and citizens, were offered for greater precision in requirements, most notably regarding documentation of response to comments, definitions of key groups afforded opportunity to participate, and evaluation of processes.

The planning factor provisions attracted a few comments. A couple of comments supported the development of performance standards for addressing the factors. One letter asked that we identify the rationale for the planning process to identify strategies for complying with the Americans with Disabilities Act (ADA)(42 U.S.C. Chapter 126). Another letter recommended a two year phase-in for consultation with Indian tribal governments. Finally, a comment from an MPO wanted to know if TIP amendments are adopted that trigger a reference to existing plans, even though less than twenty years remains on its horizon, the plan should be acceptable as a basis for Federal action.

Section 1410.318 Relation of Planning and Project Development Processes

State DOTs, MPOs, environmental groups and transit agencies submitted comments on this section, generally reflecting diverse policy perspectives in favor or against the proposals. The clear intent of section 1308 of the TEA–21 was to direct the Secretary to eliminate and propose an alternative to the separate major investment study (MIS) requirement. The technical structure of the law is such that this action requires a two step process: (1) Eliminating and (2) proposing an approach for integrating what remains. In withdrawing portions of the NPRM, the FHWA and the FTA cannot complete both steps. Hence, the agencies see the current regulatory language as a place holder that can be utilized at the discretion of State and local agencies as they see the need until future action on a rule. Implementation of the provisions of this section by the FTA and the FHWA will be appropriately flexible.

Section 1410.320 Congestion Management System and Planning Process

The FHWA and the FTA received no adverse comment on this provision as discussed in the NPRM. A couple of commenters supported the change.

Section 1410.322 Transportation Plan Content

We received a significant number of comments on this section. Topics most frequently addressed were the twenty year planning horizon for plans, most recent planning assumptions, how to address operations and management, the treatment of illustrative projects, the ITS integration strategy, interim plans and TIPs, and point of conformity determination. Each of these topics provoked a variety of comments.

The twenty year planning horizon was both praised and criticized. The NPRM sought to provide clarification for a conundrum identified in the course of implementing the 1993 regulation. The TIPs must be updated on a two year cycle; plans on three and five year cycles.

A number of comments were received on various air quality related issues. One concern, voiced by State DOTs and MPOs, was the effective date of the plan, which was tied by the rule to the date of the Federal air quality conformity determination. Another set of observations questioned the need for utilizing latest planning assumptions. One commenter raised concerns about maintaining air quality rather than just achieving the air quality budget. Some commenters raised questions concerning air quality issues beyond the time frame for the SIP and finally, one commenter raised a concern regarding air toxics and fine particulate matter.

One comment requested that the EPA, the FHWA, and the FTA be required to adhere to a reasonable time frame for conformity review and determination. The April 19, 2000, National Memorandum of Understanding (MOU) between the U.S. DOT and the U.S. EPA [2] makes provisions for more efficient and timely review of conformity decisions, including the establishment of time frames for field office review, as well as a 30-day dispute resolution process.

Some comments were received on the mismatch of the transportation planning and air quality planning horizons.

[2] The memorandum, entitled ''National Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U. S. Department of Transportation,'' dated April 19, 2000, is available at the following URL: *http://www.fhwa.dot.gov/environment/cnfmou.htm.*

Two comments were received stating that there was no statutory basis for requiring the use of the most recent planning assumptions. There is a statutory basis for requiring the use of the most recent planning assumptions in the Clean Air Act (CAA) (42 U.S.C. 7506) which requires that the determination of conformity be based on the most recent estimates of emissions, and that such estimates be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

One commenter stated that in § 1410.322(b)(10) the last sentence should be revised to read ''* * * implementation of projects and programs to reach or maintain air quality compliance.''

Two comments were received regarding the role of the MPO in the air quality planning process. We received one comment requesting that the rules address health risks from air toxics and fine particulate matter.

One final air quality conformity issue of significance was the need for an interim plan. Many comments were received questioning the need for an interim planning process during a conformity lapse or requesting more flexibility in the process.

One comment requested that the rule allow new submitted, but not yet approved by the U.S. EPA, TCMs to proceed during a conformity lapse. The April 19, 2000, National Memorandum of Understanding between the U.S. DOT and the U.S. EPA details how new TCMs should advance during a conformity lapse. New TCMs must have identified emission reduction benefits, be included in an interim plan/TIP and the U.S. EPA approved SIP, and meet the definition of a TCM in order to advance during a conformity lapse.

Several commenters, MPOs and State DOTs, solicited additional clarification on how management and operations would be treated during the planning process.

The term ''illustrative project'' and its usage in the NPRM attracted considerable attention and comment. Most commenters wanted additional clarification of the term and how illustrative projects would be treated in a plan and TIP. The cooperative development of estimates of various funds to support plan and TIP development received several significant comments. Many writers wanted substantial additional guidance on how such estimates should be developed and the reconciliation of potential conflicts between the participating entities. One principal concern of some commenters was the fear that a single entity might be able to hold all other planning participants hostage over the development of these estimates.

The ITS integration strategy proposal attracted significant comment both in character and number. The concerns raised were varied. Some commenters wanted greater clarification and detail in the regulatory requirements. Others, often MPOs and State DOTs, thought they were too restrictive and burdensome. There was some concern about how the ITS architecture provision would relate to operations and management. A couple of commenters, associations and groups, expressed the desire to have the regulations identify the lead agency and many wanted additional funding to support the development of the ITS integration strategy. A common concern, expressed by DOTs and MPOs, was the need for a longer phase-in period for the requirement.

The need to identify ITS investments in TIPs and plans was questioned by ITS groups and interests.

Section 1410.324 Transportation Improvement Program Content

This section received the largest number of comments. The bulk of these comments focused on the exemption of 23 U.S.C. 402, Safety and Motor Carrier Safety Assistance Programs, from inclusion in the TIP, financial forecasts, air quality issues and the annual listing of projects. These comments typically came from law enforcement officials and safety groups.

The planning NPRM proposed to eliminate the exclusion for Section 402 Safety and Motor Carrier Safety Assistance Program (administered by the Federal Motor Carrier Safety Administration) grants from listing in the TIP/STIP. The rationale was that these funds could be used to fund ITS projects and such projects would need to be in TIPs/STIPs for the purposes of the ITS architecture consistency requirements. Numerous safety organizations observed that the bulk of the projects funded by these programs have nothing to do with ITS.

Some MPOs and State DOTs suggested that extensions be permitted for TIPs in both attainment and nonttainment areas.

A number of comments were received that requested more flexibility in the application of transportation conformity to TIP amendments. In accordance with the transportation conformity rule (40 CFR 93.104), a conformity determination must be made for a TIP amendment and/or a plan revision.

The provisions governing the financial forecasting requirements of the TEA–21 received numerous comments. Perspectives ranged from a request for far more detail in the process specified to far less. Concerns were raised about guarantees that estimated funds would be available and that the reliance on a process specification was inconsistent with the statute. Several commenters wanted the procedures and estimates governed by some form of documentation, *i.e.*, an MOU, specification in plan documents or some other means. Requests were made for additional guidance and some questions were raised as to why transit operators were accorded equal footing with MPOs and States.

The annual listing of projects provisions was the most heavily commented upon in this section. Again, the comments were diverse, split along the lines of whether additional specification of detail was needed. Most States and MPOs believed that the requirement was not easily implemented based on the lack of a centralized data base from which obligations could be identified. Many observed that the Federal agencies could obtain that information from the FHWA Fiscal Management Information System (FMIS). A large number of non-governmental organizations and citizen advocacy groups supported a very detailed and standardized data collection protocol that in their view would allow citizens greater access to information, more complete understanding of what was funded and the ability to do useful comparisons on a national basis. They also argued that their model would permit more effective documentation of compliance with environmental justice requirements.

Section 1410.326 Transportation Improvement Program Modification

Several comments were received regarding the need for a new conformity determination when a project is moved between the first three years of a TIP, or moved from year four or greater to the first three years.

Section 1410.328 Metropolitan Transportation Improvement Program Relationship to Statewide TIP

No comments were received on this section.

Section 1410.330 Transportation Improvement Program Action by FHWA/FTA

One comment was received requesting clarification as to who

should communicate with the Governor in the event that a conformity determination cannot be made. A couple of comments were received suggesting that ''illustrative projects'' should be able to complete the NEPA process before inclusion in a plan. Some comments were submitted on this section dealing with the issue of revenue estimation.

Section 1410.332 Selecting Projects From a TIP

No comments were received on this section.

Section 1410.334 Federal Certifications

The majority of comments, mostly from citizens and citizen groups, received on this section generally favored a more prescriptive approach to the involvement of the public during certification reviews. Their proposal included a requirement for a public hearing, sixty-day notice of when the review would be held, a forty-five day notice before the public meeting for the certification review, and the maintenance of a file of comments received by the MPO concerning its performance in the current and prior two years.

Several commenters raised concerns with the provisions of § 1410.334(a)(8) which directs that reviews be conducted consistent with all other applicable provisions of Federal law. They requested that such statutes be identified.

Conclusion

Given the diversity of comments and the disparity among them, the agencies have concluded that a workable compromise built upon the proposed planning rule is not identifiable at this time. Further, with the close proximity of the reauthorization of the surface transportation program, it is reasonable to wait for the outcome of the legislative process to see if any further changes are needed. We will review comments received on the SNPRM on the consultation with non-metropolitan local officials, published previously in the **Federal Register** and determine appropriate next steps on this matter. For these reasons, the FTA and the FHWA are withdrawing this rulemaking action except as it pertains to the consultation with non-metropolitan local officials.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: September 12, 2002

Jennifer L. Dorn,

Federal Transit Administrator.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–23699 Filed 9–19–02; 8:45 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125-AE64; FTA RIN 2132–AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking proceeding to update and revise our National Environmental Policy Act (NEPA) implementation regulation for projects funded or approved by the FHWA and the FTA. The agencies undertook this action to update and revise the NEPA and related procedures regulation which was last issued in 1987. The agencies intended to modify the regulation to reflect experience gained in administering these requirements and substantial changes in legislation that occurred during the time since 1987. The agencies have determined that the proposed changes generated such a diversity and disparity of comments that substantial further work is necessary to develop new proposals that accommodate these comments. However, with the close proximity of legislative reauthorization of the surface transportation program, the agencies believe that it would be prudent to wait for the outcome of the legislative process to see what further changes are needed. Accordingly, we are withdrawing the proposed rulemaking action and closing the docket.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fred Skaer, (202) 366–2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–40. For the FTA: Ms. Susan Borinsky (202) 366–8012, Office of Human and Natural Environment, TPL–30, or Mr. Scott Biehl, (202) 366–0952, Office of the Chief Counsel, TCC–30. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the URL: *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web site at: *http://www.access.gpo.gov.*

Background

A notice of proposed rulemaking (NPRM) published at 65 FR 33960 on May 25, 2000, with an extension of comment period published at 65 FR 41892 on July 7, 2000, proposed revising the current FHWA and FTA regulation on environmental impact and related procedures at 23 CFR part 771 by creating a new rule, NEPA and Related Procedures for Transportation Decisionmaking, 23 CFR part 1420, and by moving the regulations implementing Section 4(f) of the Department of Transportation Act of 1966, with minor revisions, to a new section entitled Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites, 23 CFR part 1430. The current rules implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) for transportation projects using Federal funds or requiring Federal approval were last revised in 1987.

Since the regulation was last issued, the nature of highway and transit programs has evolved, reflecting a change in national transportation needs and our understanding of the influences that the transportation network can have on a complex set of environmental, community, and economic

considerations. Section 1309 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 108; June 1998) called for a streamlined environmental review process that affects how the FHWA and the FTA carry out procedural responsibilities under NEPA. Therefore, in the NPRM, the FHWA and the FTA endeavored to clarify the role of the NEPA as an important tool for making transportation decisions and encouraged a more coordinated approach to transportation planning and project development as a means to more effective decisions regarding investment choices and trade-offs.

The environmental streamlining provision of the TEA–21, section 1309, clearly articulated Congress' intent that project delivery be improved with an environmental process that was more efficient, comprehensive, and streamlined, through negotiated time frames for concurrent reviews and national procedures for elevating disputes. The NPRM addressed streamlining by proposing a better managed NEPA process that included improved coordination, program and project flexibility, and overall process efficiency. It underscored the FHWA and FTA role as the lead Federal agency for transportation project review under NEPA and as facilitator of early involvement and participation of other Federal agencies in NEPA activities to identify and avoid redundant processes. In the NPRM negotiated project level timeframes were encouraged.

In response to section 1309 and Section 1308 (Major Investment Study Integration), of the TEA–21, the FHWA and the FTA promoted the integration of transportation decisionmaking in the NPRM, NEPA and Related Procedures for Transportation Decisionmaking, as well as in the NPRMs, Statewide Transportation Planning and Metropolitan Transportation Planning. The agencies published the NPRMs on statewide and metropolitan transportation planning on May 25, 2000, at 65 FR 33922. The FHWA and FTA observed that traditionally separate and distinct implementation requirements under NEPA and statewide and metropolitan planning created unintentional impediments to streamlining project delivery. Therefore, parallel concepts that proposed a fundamentally new approach to project development through integration and coordination of the transportation planning and NEPA decisionmaking processes were reflected in the NEPA and planning NPRMs. The concept encouraged a strong environmental policy and a collaborative problem solving approach involving all levels of government and the public early in the process. The NPRM, NEPA and Related Procedures for Transportation Decisionmaking, focused on a streamlined environmental review process that supported protection and enhancement of communities and the natural environment.

The U.S. DOT agencies are responsible for complying with of the requirements of 49 U.S.C. 303 and 23 U.S.C. 138, originally enacted as Section 4(f) of the Department of Transportation Act (Pub. L. 89–670, 80 Stat. 931 (1966)). Part 1430 of the NPRM, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites, proposed to redesignate the FHWA and FTA section 4(f) regulations (23 CFR 771.135) without substantive change. The FHWA and FTA declared their intent to address subsequent changes at a later date and specifically requested recommendations for changes that might be considered in future rulemaking.

Comments Received in Response to the NPRM

The agencies received 237 comments on the NPRM from transportation related and other organizations; State Departments of Transportation; private engineering and consulting firms; metropolitan planning organizations; advocacy and non-profit organizations; Federal agencies; State, regional and local governments, authorities and associations; tribal governments; and individual citizens.

Of these comments, 41 called for suspending the NPRM and 76 called for a comprehensive revision of the NPRM before proceeding. Another thirty-four commenters specifically suggested that the agencies include a major overhaul of the existing section 4(f) (23 CFR 771.135) regulations as part of this rulemaking. Major commenters included the American Association of State Highway and Transportation Officials (AASHTO), individual State DOTs (many of which supported or endorsed AASHTO's comments), the Association of Metropolitan Planning Organizations (AMPO), the American Public Transportation Association (APTA), the Environmental Defense Fund (EDF), the Surface Transportation Policy Project (STPP), the Coalition to Defend NEPA (CDN), the Natural Resources Defense Council (NRDC), the American Road and Transportation Builders Association (ARTBA), the Association of General Contractors (AGC), and the American Consulting Engineers Council (ACEC).

The most significant and controversial issues were identified in the following sections: Applicability (§ 1420.105); goals of the NEPA process (§ 1420.107); the NEPA umbrella (§ 1420.109); environmental justice (§ 1420.111); avoidance, minimization, mitigation, and enhancement responsibilities (§ 1420.113); the relationship of the planning and project development processes (§ 1420.201); environmental streamlining (§ 1420.203); categorical exclusions (§ 1420.311); and section 4(f) (§ 1430).

A number of commenters expressed concern about how and when the regulations would take effect and requested a reasonable transition period and/or a ''grandfather'' clause for projects that were already underway.

Section 1420.107 Goals of the NEPA Process

Some commenters were critical of the agencies' attempt to restate the philosophy and the basic intent of the policy underlying the NEPA by specifying seven distinct goals of the NEPA process, which included the following: environmental ethic, environmental justice, integrated decisionmaking; environmental streamlining; collaboration; transportation problem solving; and financial stewardship. Many of the commenters expressed concern over the statement that the U.S. DOT would manage the NEPA process to ''maximize the attainment'' of these goals. It was the opinion of some commenters that this section would permit a substantive, rather than procedural, interpretation of the NEPA process and could lead to additional litigation.

Section 1420.109 The NEPA Umbrella

Whereas the FHWA and FTA intended the discussion under this section to serve as a reminder of the full range of possible environmental considerations under NEPA, State DOTs, the AASHTO and some consulting firms expressed concern that the itemization of the NEPA ''umbrella'' considerations by the inclusion of a list of laws, regulations, and executive orders, could lead to a substantive rather than procedural, interpretation of the NEPA process and could pose an additional risk of litigation. However, there was general agreement of the basic NEPA umbrella concept and approach. Some Federal agencies and individual citizens provided suggestions for other considerations that they believe should be added to the list.

Section 1420.111 Environmental Justice

The inclusion of environmental justice analysis requirements in the NEPA regulation was a provision of the NPRM that received the most comments. A major concern stated by some State DOTs and others was that the regulation confused and ''intermingled'' the separate considerations and requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and the provisions of the Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. While it was recognized that these were important considerations, it was suggested that they be treated separately. Several State DOTs expressed their opinions that the statement of environmental justice objectives as an integral part of the NEPA process was inappropriate. They were concerned that this would add the additional burden for data analysis and the necessity to reach a conclusion on disproportionate impacts.

Some commenters expressed the concern that the inclusion of environmental justice requirements within the NEPA regulations would pose a greater risk of litigation and suggested replacing the entire section with a non-discrimination commitment. Advocacy and some special interest groups expressed their support of the environmental justice provisions that essentially served to clarify the project-level considerations required to meet Title VI provisions during the NEPA process.

Section 1420.113 Avoidance, Minimization, Mitigation, and Enhancement

Most of the comments received on this section from State DOTs and the AASHTO expressed the opinion that environmental ''enhancements'' should be optional and at the discretion of the State applicant to consider or implement. They believed that this language should be removed from the proposed regulation. Some individual citizens called for the U.S. DOT to do more to assure that the health effects of road expansions are accounted for, mitigated, and avoided during the NEPA process. They encouraged the strengthening of provisions regarding the dismissal of alternatives that would reduce health risks.

Section 1420.113 Relationship of Planning and Project Development Process

Most commenters supported the elimination of duplicative paperwork and the linkage of transportation planning and the NEPA processes but expressed doubts whether the regulations, as proposed, would actually accomplish these goals, especially if the NEPA process was not formally bound by planning-level decisions. It was generally recognized that the planning and NEPA linkage provisions of this section were an attempt to integrate the major investment study (MIS) objectives into the planning and NEPA processes as required by the TEA–21, section 1308. However, concern was expressed that the mechanisms employed would have the effect of extending MIS-type requirements to a larger community of projects, thus increasing the paperwork burden without eliminating duplicative processes in planning and the NEPA project development process.

Section 1420.203 Environmental Streamlining

A common sentiment, especially of the AASHTO and the State DOTs, was that the NPRM failed to streamline the environmental process.

Several commenters viewed the proposed NPRM as a missed opportunity to address the intent of the TEA–21 and actually represented an increased burden of paperwork, process requirements, and potential additional litigation.

Many comments noted a lack of specific provisions addressing timeframes, comment deadlines, dispute resolution, and ''closing the record'' on decisionmaking at an appropriate stage.

The NPRM was criticized for addressing large and small projects in very much the same way and, in terms of requirements, many commenters thought the proposed changes would result in the delay of some routine minor actions processed with environmental assessments or categorical exclusions.

The proposed coordinated review procedures were criticized for being too complex and time consuming. Some commenters suggested that we should seek the comments of other Federal and State agencies, rather than their ''concurrence'' on project decisions.

Section 1420.311 Categorical Exclusions (CEs)

Some commenters were concerned over the scope and number of the categorical exclusions (CEs), while others thought the list was not exhaustive or inclusive enough.

Some commenters requested that the rule provide clarification of the fact that CEs were subject to environmental mandates and evaluation, while others requested the removal of any documentation requirements that would slow down the CE determination process.

Although not a part of the CE section, it was suggested that the provisions of § 1420.105(b) that proposed to establish the set of criteria for transportation alternatives (logical termini, independent utility, and restriction on the consideration of alternatives for other reasonably foreseeable transportation activities) were inappropriate for CE actions and would have the effect of requiring an alternatives analysis for a CE action, where it was previously not required.

Part 1430, Section 4(f) Provision

Thirty-four of the fifty-seven comments complained about the lack of substantive revision of 23 CFR 771.135 and requested a comprehensive overhaul of the section 4(f) regulations in this NPRM. There was a general sentiment regarding section 4(f) that a major reform was necessary to reduce the risk of litigation, reduce paperwork and cost, and increase the time it takes to deliver projects where section 4(f) is an issue.

Determination

We considered the comments to the docket and determined that we were unable to develop a satisfactory final rule based on the proposed rule that would respond to the diversity and disparity of comments received. We also determined that issuing a supplemental notice of proposed rulemaking would not be reasonable, given the close proximity of legislation to reauthorize the surface transportation program and the likelihood that this legislation would necessitate further regulatory changes. Instead of rulemaking at this time, we propose to continue implementing statutory responsibilities not reflected in the existing regulation through a combination of non-regulatory guidance and sharing of best practices. The existing regulation (23 CFR part 771) remains in effect. We will revisit the issue of whether rulemaking to change the existing regulation is necessary or appropriate following the reauthorization of the surface transportation program.

Conclusion

For the reasons stated above, the agencies are terminating this proposed rulemaking and closing the docket.

Authority: 23 U.S.C . 109, 128, 134, 138, and 315; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324(b) and (c); 49 CFR 1.48 and 1.51; 33 CFR 115.60(b); 40 CFR parts 1500–1508, Sections 1308 and 1309 of TEA–21 (Public Law 105–178, 112 Stat. 108 at 231–234).

Issued on: September 12, 2002.

Jennifer L. Dorn,

Federal Transit Administrator.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–23698 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–107]

RIN 2115–AA97

Safety Zone; Aggregate Industries Fireworks—Boston Harbor—Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Aggregate Industries Fireworks display on October 24, 2002, in Boston, MA. The safety zone would temporarily close all waters of the Boston Harbor within a four hundred (400) yard radius of the launch platform located in approximate position 42°21′73″ N, 071°02′73″ W. The safety zone would prohibit entry into or movement within this portion of the Boston Harbor during the fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This NPRM comment period will be less than 30 days due to the short notice received for this event. There was not sufficient time for a longer comment period, but we wanted to provide the public with the opportunity to comment on the proposed regulation. For the same reasons, we anticipate making the final rule effective less than 30 days after publication in the **Federal Register**.

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–107), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This regulation proposes to establish a safety zone within a 400-yard radius of the fireworks barge located at position 42°21′73″ N, 071°02′73″ W. The safety zone would be in effect from 8 p.m. until 11 p.m. on Thursday, October 24, 2002.

The zone would restrict movement within this portion of the Boston Harbor for the fireworks display and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Boston Harbor during the effective period, the effects of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, vessels may safely transit outside of the safety zone, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Boston Harbor between 8 p.m. and 11 p.m. on October 24, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective period, the safety zone is limited in duration, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery at the address listed under **ADDRESSES**.

Collection of Information

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

Federalism

The Coast Guard analyzed this proposed rule under E.O. 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T02–025 to read as follows:

§ 165.T01–107 Safety Zone; Aggregate Industries Fireworks—Boston, Massachusetts.

(a) *Location*. The following area is a safety zone: All waters of the Boston Harbor within a 400-yard radius of the fireworks launch platform located in approximate position 42°21′73″ N., 071°02′73″ W. All coordinates are NAD 1983.

(b) *Effective date*. This section is effective from 8 p.m. until 11 p.m. on October 24, 2002.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: August 29, 2002.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–23916 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 264–0370; FRL–7380–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified, Ventura County, and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified (SJVUAPCD), Ventura County (VCAPCD), and Santa Barbara County (SBCAPCD) Air Pollution Control Districts' portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing action on local rules that regulate these emission sources. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 21, 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 94105–3901.

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

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

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Dr. Suite B–23, Goleta, CA 93117.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4601	Architectural Coatings	10/31/01	03/15/02
VCAPCD	74.2	Architectural Coatings	11/13/01	03/15/02
SBCAPCD	323	Architectural Coatings	11/15/01	03/15/02

On May 7, 2002, these rule submittals were 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 These Rules?

There are no previous versions of SJVUAPCD Rule 4601 in the SIP, although the rule was previously approved into the SIP as SJVUAPCD Rule 460.1 on June 30, 1993. We approved versions of VCAPCD Rule 74.2 and SBCAPCD Rule 323 into the SIP on March 24, 2000. The SJVUAPCD, VCAPCD, and SBCAPCD adopted revisions to the SIP-approved versions of these rules on October 31, 2001, November 13, 2001, and November 15, 2001, respectively. CARB submitted all three rule revisions to us on March 15, 2002.

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

The rule revisions primarily modify the rules for consistency with the Suggested Control Measure for Architectural Coatings (SCM). The SCM is a model rule developed by CARB which seeks to provide statewide consistency for the regulation of architectural coatings. The CARB adopted the SCM on June 22, 2000. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), must not relax requirements adopted before the 1990 CAA amendments in nonattainment areas (section 193), and must not interfere with attainment, reasonable further progress or other applicable requirements of the CAA (section 110(1)). The SJVUAPCD, VCAPCD, and SBCAPCD regulate ozone nonattainment areas (see 40 CFR 81), however, because these rules regulate nonmajor area sources, they are not subject to CAA RACT requirements.

Guidance and policy documents that we used to help evaluate specific enforceability and other CAA requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, andDeviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other RuleDeficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. National Volatile Organic Compound Emission Standards for Architectural Coatings, September 11, 1998 (40 CFR Part 59 Subpart D).
5. ''Suggested Control Measure for Architectural Coatings,'' CARB, June 22, 2000.
6. ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, EPA, January 2001 (the EIP).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying labelling and reporting provisions. They are largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Provisions of the rules which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rules' Deficiencies?

These rules were all based on the same model—the SCM—and, as a result, contain many of the same rule deficiencies. The following provisions common to SJVUAPCD Rule 4601, VCAPCD Rule 74.2, and SBCAPCD Rule 323 conflict with section 110 of the Act and prevent full approval of the SIP revisions.

1. The rules allow the VOC content displayed on a coating to be calculated using product formulation data. A definition of the term formulation data must be added to ensure the regulation is clear and enforceable and to ensure that unreliable data is not used to determine compliance.

2. The rules allow for the sell-through of coatings included in approved averaging programs. Because emissions from coatings sold under the sell-through provision cannot be distinguished from emissions from coatings sold under an averaging program, the enforceability of the rules may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions.

3. The rules grant the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues which could create enforceability

problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

4. The provisions of the averaging compliance option which require manufacturers to describe the records being used to calculate emissions are not specific enough to verify compliance with the rules and represent executive officer discretion. More specificity as to the types of suitable records is needed to verify compliance with the averaging compliance option.

5. The rules' language regarding how violations of the averaging compliance option shall be determined is ambiguous. The language should be clarified to specify that ''an exceedance for each coating that is over the limit shall constitute a separate violation for each day of the compliance period.''

6. The rules contain typographical errors that make the rules confusing and less enforceable.

D. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rules' deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the districts and EPA's final limited disapproval would not prevent the local agencies from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agencies' VOC 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 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. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13211

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

C. Executive Order 13045

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

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

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

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

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Title I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and Title I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 3, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–23987 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0045b, UT–001–0046b; FRL–7378–1]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for Metropolitan Provo; State of Utah, and Approval of Revisions to the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would make a determination of attainment for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) for the metropolitan Provo CO nonattainment area (hereafter Provo area) which was classified as ''moderate''. The Provo area was required by the Clean Air Act Amendments of 1990 to attain the CO NAAQS by December 31, 1995. This determination would be based on complete, quality assured ambient air quality monitoring data for the years 1994 and 1995. In addition, on September 27, 2001, the Governor

submitted revisions to Utah's rule R307–301 ''Utah and Weber Counties: Oxygenated Gasoline Program''. EPA is also proposing approval of the revisions to rule R307–301.

In the Final Rules Section of this **Federal Register**, EPA is approving the determination of attainment for the CO NAAQS for the Provo CO nonattainment area and the revisions to R307–301 as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates 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 rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 21, 2002.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register**.

Dated: September 6, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–23817 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0031; FRL–7187–1]

RIN 2070–AB27

Proposed Revocation of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke significant new use rules (SNURs) for four substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders or premanufacture notices (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: Comments, identified by docket ID number OPPT–2002–0031, must be received on or before October 21, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0031 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed revocation. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 721 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPT–2002–0031. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment

period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0031 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0031. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** referenced for each substance, OPPTS–50577, June 26, 1990 (55 FR 26111), OPPTS–50588, November 6, 1990 (55 FR 46773), OPPTS–50622, August 30, 1995 (60 FR 45082) (FRL–4629–2), OPPTS–50632, August 20, 1998 (63 FR 44575) (FRL–5788–7), establishing significant new uses for the substances, EPA issued a SNUR. Because of additional data EPA has received for these substances, EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the TSCA section 5(e) consent order for the substance, and the CFR citation. Further background information for the substances is contained in Unit I.B.2 of this document.

PMN Number P–86–1491
Chemical name: 3-Hydroxy-1,1-dimethylbutyl derivative (generic).
CAS number: Not applicable.
Federal Register *publication date and reference:* August 30, 1995 (60 FR 45082).
Docket number: OPPTS–50622.
Basis for revocation of SNUR: EPA issued a TSCA section 5(e) consent order between EPA and the PMN submitter for this substance based on a potential unreasonable risk of cancer by analogy to structurally similar peroxides. Based on the results of test data developed by an industry consortium to address potential toxicity of peroxides, EPA has concluded that available information does not support identification of peroxides as potential carcinogens. Therefore, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–86–1491 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–86–1491. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.
CFR citation: 40 CFR 721.4466.

PMN Number P–86–1492
Chemical name: Alkyl peroxy-2-ethyl hexanoate (generic).
CAS number: Not applicable.
Federal Register *publication date and reference:* November 6, 1990 (55 FR 46773).

Docket number: OPPTS–50588.
Basis for revocation of SNUR: EPA issued a TSCA section 5(e) consent order between EPA and the PMN submitter for this substance based on a potential unreasonable risk of cancer by analogy to structurally similar peroxides. Based on the results of test data developed by an industry consortium to address potential toxicity of peroxides, EPA has concluded that available information does not support identification of peroxides as potential carcinogens. Therefore, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–86–1492 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–86–1492. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.
CFR citation: 40 CFR 721.4240 (Formerly 40 CFR 721.1208).

PMN Number P–86–1493
Chemical name: Substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic).
CAS number: Not applicable.
Federal Register *publication date and reference:* June 26, 1990 (55 FR 26111).
Docket number: OPPTS–50577.
Basis for revocation of SNUR: EPA issued a TSCA section 5(e) consent order between EPA and the PMN submitter for this substance based on a potential unreasonable risk of cancer by analogy to structurally similar peroxides. Based on the results of test data developed by an industry consortium to address potential toxicity of peroxides, EPA has concluded that available information does not support identification of peroxides as potential carcinogens. Therefore, EPA determined that it could no longer conclude that the manufacturing, processing, and use of P–86–1493 may present an unreasonable risk under section 5(e) of TSCA and has, therefore, revoked the consent order for P–86–1493. EPA can no longer make the finding that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.
CFR citation: 40 CFR 721.4200 (Formerly 40 CFR 721.1565).

PMN Number P–98–24
Chemical name: Methoxy benzoic acid derivative (generic).
CAS number: Not applicable.
Federal Register *publication date and reference:* August 20, 1998 (63 FR 44575).
Docket number: OPPTS–50632.
Basis for revocation of SNUR: EPA issued a SNUR for this substance based on the concern criteria at § 721.170(b)(4)(1). The PMN submitter petitioned EPA to revoke the SNUR based on existing toxicity, fate, and economic data. The results of acute fish, daphnia, and algae studies for the substance demonstrated acute LC_{50} values ranging from 60–90 parts per million (ppm). EPA's concern concentration of 40 parts per billion (ppb) for the substance is based on potential chronic toxicity. A biodegradation study for the PMN substance measured 90% degradation in 28 days. Commercial use of the PMN substance is limited to use as a mediator in enzyme catalyzed reactions. In addition, EPA expects that most of the PMN substance is destroyed when used in this manner resulting in little or no release of the substance. EPA could not identify additional uses of the PMN substance. Based on this data EPA can no longer make the finding that reasonably anticipated conditions of release may result in significant releases above 40 ppb. Therefore, EPA has concluded that based on available information, the substance does not meet the concern criteria at § 721.170(b)(4)(1).
CFR citation: 40 CFR 721.1710.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

During review of the PMNs submitted for the chemical substances that are the subject of this proposed revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order or PMN might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent orders that are the basis for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders or PMN may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is proposing to revoke the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Statutory and Executive Order Reviews

This proposed rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

Since this proposed rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones have no adverse economic impacts.

Since this proposed rule does not impose any requirements it does not require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR

67249, November 6, 2000), do not apply to this proposed rule.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 5, 2002.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.1710, 721.4200, 721.4240, and 721.4466 [Removed]

2. By removing §§ 721.1710, 721.4200, 721.4240, and 721.4466.

[FR Doc. 02–23749 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–115, 96–149, FCC 02–214]

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to refresh the record on two issues raised in the *CPNI Order Further NPRM* (63 FR 45140, August 24, 1998) and requests comment on customer proprietary network information (CPNI) implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection.

DATES: Comments are due October 21, 2002, and Reply Comments are due November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marcy Greene, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *mgreene@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking (Third Further NPRM) in CC Docket Nos. 96–115, 96–149 and 00–257, adopted July 16, 2002, and released July 25, 2002. The complete text of this Third Further NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of Third Further NPRM

1. The *Third Further Notice of Proposed Rulemaking* (Third Further NPRM) seeks to refresh the record on regulation of foreign storage of and access to domestic CPNI, and the need for additional enforcement mechanisms or protections for carrier proprietary information. Finally, the *Third Further NPRM* seeks comment on the implications of the Commission's CPNI regulations when carriers leave the market.

Initial Regulatory Flexibility Act Analysis

2. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rulemaking* (Third Further NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third Further NPRM* provided herein. The Commission will send a copy of the *Third Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Third Further NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

3. The Commission is issuing the *Third Further NPRM* to refresh the record on two issues raised in the *CPNI Order Further NPRM*, and to seek comment on the CPNI implications when a carrier goes out of business, sells all or part of its customer base, or seeks bankruptcy protection. Specifically, the *Third Further NPRM* seeks comment on: (1) Foreign storage of and access to domestic CPNI; (2) CPNI safeguards and enforcements mechanisms; and (3) appropriate regulations governing the CPNI held by carriers that go out of business, sell all or part of their

customer base, or seek bankruptcy protection.

4. In a July 8, 1997 *Ex Parte* letter, the FBI requested that the Commission regulate the foreign storage of and foreign-based access to CPNI of U.S. customers who use domestic telecommunications services. The Commission requested comment on this proposal in its *CPNI Order Further NPRM*. As an alternative, the FBI suggested that foreign storage or access to domestic CPNI be permitted only upon informed written customer approval. To the degree that CPNI is stored in a foreign country, the FBI asked that the Commission require carriers to keep a copy of customers' CPNI records within the U.S. for public safety, law enforcement, and national security reasons. The FBI also requested that we require carriers to maintain copies of the CPNI of all U.S.-based customers because of the need for prompt and secure law enforcement purposes. The Commission now requests that commenters refresh the record on this topic. Specifically, it requests that commenters consider the FBI proposal in light of heightened national security concerns. In addition, the Commission requests input as to whether any of the concerns raised by the FBI have been illustrated by actual incidents during the period since comments were received on this topic. Finally, it asks commenters to provide estimates of the costs that would be incurred if we were to mandate carriers to maintain the domestic storage of, and access to, domestic CPNI.

5. In the *CPNI Order Further NPRM*, the Commission sought comment on what safeguards in addition to those adopted in the *CPNI Order* (63 FR 20326, April 24, 1998), if any, are needed to protect the confidentiality of carrier proprietary information, including that of resellers and ISPs. The *CPNI Order Further NPRM* also sought comment on what, if any, further enforcement mechanisms the Commission should adopt to ensure carrier compliance with our CPNI policies and rules. The Commission seeks to refresh the record on this topic. Specifically, it requests that carriers and other interested parties describe any actual experience with problems since we originally issued the *CPNI Order Further NPRM*.

6. Finally, in light of inquiries the Commission has received in the face of recent carrier bankruptcies, mergers, and asset sales, the Commission seeks comment on carrier use and disclosure of CPNI when it sells its assets or goes out of business. It seeks comment on whether an exiting carrier should be able to use CPNI for transition of its customers to another carrier. If commenters believe that an exiting carrier should be able to disclose CPNI to the acquiring carrier, we seek comment on whether we should require the exiting carrier to state that fact in advance notice provided to customers acquired by the sale or transfer from another carrier in compliance with our authorization and verification (slamming) rules. Further, the Commission asks, to the degree that the exiting carrier has obtained CPNI approvals from its customer, whether the new carrier should be deemed to have received such approvals, or whether it should be required to provide notice and obtain approval for CPNI use and disclosure from the acquired customers. Further, it seeks comment on whether the Commission should recognize a difference between service types. The Commission also seeks comment on whether carriers can sell CPNI as an asset and on whether such regulations would go beyond the scope of section 222 or the Commission's authority.

Legal Basis

7. The *Third Further NPRM* is adopted pursuant to sections 1, 4(i), 222, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 222, and 303(r).

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

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

10. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. It has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected*. The U.S. Bureau of Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by these rules.

12. *Wireline Carriers and Service Providers*. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than

1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities that may be affected by these rules.

13. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, there are 1,329 local exchange carriers, including incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that they are fewer than 1, 329 small entity LECs that may be affected by the proposals in the *Second Further Notice* (66 FR 50140, October 2, 2001).

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 229 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 229 small entity IXCs that may be affected by this order.

15. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 532 companies reported that they were engaged in the provision of either competitive access services or competitive local exchange service. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 532 small entity CAPs that may be affected by this order.

16. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 22 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 22 small entity operator service providers that may be affected by this order.

17. *Pay Telephone Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone providers. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 936 small entity pay telephone operators that may be affected by this order.

18. *Wireless Carriers.* Wireless telephony includes cellular, personal communications services (PCS) or specialized mobile radio (SMR) service providers. The SBA has developed a definition of small entities for radiotelephone (wireless) companies; however, neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. Though categorized under the same size standard as the other wireless services discussed in this paragraph, paging is now considered a separate industry. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. According to the most recent Provider Locator data, 858 carriers reported that they were engaged in the provision of wireless telephony and 576 companies reported that they were engaged in the provision of paging and messaging services. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 858 small carriers providing wireless telephony services and fewer than 576 small companies providing paging and

messaging services that may be affected by these rules.

19. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of toll resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 710 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 710 small entity resellers that may be affected by this order.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

20. The Commission has discussed generally in the *Third Further NPRM, supra* paras. 143–147, the possibility that its tentative policies and rules, if adopted, might entail additional obligations for carriers. The Commission asks for comment on any reporting, record keeping, or compliance requirements that might arise that could impact any entities, large and small, affected by such requirements.

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

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. Section 222 applies to all telecommunications carriers, and therefore, any rules that we adopt will be applicable to all carriers. Accordingly, the Commission cannot exempt small entities from complying with any rules that we adopt. It has, however, taken the limited resources of small entities into account in promulgating certain existing CPNI rules, and intend to do so again in addressing the issues that are addressed in the *Third Further NPRM*. In response to the IRFA issued in connection with the *Clarification Order and Second Further Notice of Proposed Rulemaking* (66 FR 53545, October 23, 2001 and 66 FR 50140, October 2, 2001), the Commission notes that some commenters asserted that, because the statute requires a universal standard, it had not adequately taken notice of the issues of small entities in this area. That is untrue; it is of particular concern to the Commission that the interests of small entities be addressed.

23. In this *Third Further NPRM*, the Commission seeks comment on whether it should regulate the foreign storage or foreign-based access to the CPNI of U.S. customers who use domestic telecommunications services. Specifically, it seeks comment on whether foreign storage or foreign access to domestic CPNI should be permitted only upon informed customer approval. The Commission also requests comment upon whether it should require that copies of domestic CPNI should be maintained within the United States. If it adopts rules governing foreign storage of and access to CPNI, all telecommunications carriers, including small entities, must comply with such rules. While additional rules could place a burden upon small entities in terms of developing, tracking and maintaining customer consent or in terms of creating copies of customer CPNI, such actions would only be required to the extent carriers choose to store domestic CPNI outside of the United States. Carriers could decide whether the burdens of any such regulations outweigh the benefit to the carrier of foreign storage of or access to domestic CPNI.

24. The Commission also seeks to refresh the record on what, if any, additional safeguards may be needed to protect the confidentiality of carrier proprietary information, as well as what further enforcement mechanisms, if any, may be necessary. In addition, it seeks comment on the use and disclosure of CPNI in the event a carrier goes out of business or sells its assets. Because the Commission has not proposed any rules at this time, it is unable to forecast the economic impact on small entities. Overall, comments are requested in response to this IRFA on what competitive or economic impact any proposed rules in these areas would have on small entities and on whether there is any alternative form or proposals that we should consider to minimize the economic impact on them. Further, while the Commission does not anticipate that any adopted rules will have a different impact upon small entities, it seeks comment in particular from small entities that have concerns about the affect the proposed policies or rules, if adopted, might have on them if they later go out of business or sell their assets.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

25. Accordingly, pursuant to the authority contained in sections 2, 4(i)–4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this Third Further Notice of Proposed Rulemaking *is adopted*.

26. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Third Further NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–23200 Filed 9–19–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI27

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for five carbonate plants from the San Bernardino Mountains in Southern California: *Astragalus albens* (Cushenbury milk-vetch), *Erigeron parishii* (Parish's daisy), *Eriogonum*

ovalifolium var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and Oxytheca parishii var. goodmaniana (Cushenbury oxytheca) (hereafter: ''carbonate plants''); and the availability of the draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period on the critical habitat for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they have been incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until 5 p.m. on October 21, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Daniel R. Brown, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The carbonate plants addressed in this notice are restricted primarily to carbonate derived soils in the San Bernardino Mountains of San Bernardino County, California (59 FR 43652). The carbonate plants are found along a 56 kilometer (km) (35 mile (mi)) portion of the San Bernardino Mountains between 1,171 and 2,682 meters (m) (3,842 and 8,800 feet (ft)) in elevation. All of the carbonate plants are endemic to California.

On June 15, 2000, the California Native Plant Society filed a lawsuit in Federal District Court for the Southern District of California for our failure to designate critical habitat for the five carbonate plants (*California Native Plant Society* v. *Berg, et al.*, 00CV1207-L (LSP)). On April 27, 2001, the Court vacated our August 24, 1994, ''not prudent'' determination for critical habitat and ordered us to reevaluate its prudency, and if prudent, to publish a final critical habitat designation on or before September 30, 2002. On February 12, 2002, we published a proposed rule in the **Federal Register** (67 FR 6578) proposing to designate approximately 5,335 hectares (13,180 acres) of land in San Bernardino County, California, as critical habitat for the carbonate plants pursuant to the Act. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposed rule to designate critical habitat for the carbonate plants, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address and phone number given above.

Public Comments Solicited

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, at the address given above.

(2) You may send comments by electronic mail (e-mail) to: *carbplants@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI27'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at telephone number 760/431–9440.

(3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office at the address given above.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Assumptions reflected in the Carbonate Habitat Management Strategy and the draft economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(2) Land use practices and current, planned, or foreseeable activities in the subject areas and their possible impacts on proposed critical habitats;

(3) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, including impacts that may not have been addressed in the draft economic analysis and, in particular, any impacts on small entities or families;

(4) Economic and other values associated with designating critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana*, such as those derived from non-consumptive uses (*e.g.*, hiking, camping, plant-watching/botanizing, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. Copies of the draft economic analysis are available on the Internet at *http://carlsbad.fws.gov* or by writing to the Field Supervisor at the address given above.

Author

The primary author of this notice is Daniel R. Brown (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23942 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the California Golden Trout as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the California golden trout (*Oncorhynchus mykiss aguabonita*) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that the listing of the California golden trout may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this subspecies.

DATES: The finding announced in this document was made September 12, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by November 19, 2002.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor (Attn: California golden trout), Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Moore or Jennifer Bain at the Sacramento Fish and Wildlife Office (see **ADDRESSES** above), or at 916/414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated, under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On October 23, 2000, we received a petition dated October 13, 2000, to list the California golden trout (*Oncorhynchus mykiss aguabonita*) as endangered. The petition was submitted by Trout Unlimited. The letter clearly identified itself as a petition, and contained the name, signature, and address of the party submitting the petition. The petition requested that we list the California golden trout as an endangered species on an emergency basis, and that critical habitat be designated concurrent with listing. Included in the petition was supporting information relating to the subspecies' taxonomy and ecology, adequacy of existing regulatory mechanisms for the subspecies, historic and current distribution, present status, and potential causes of decline.

On February 8, 2001, Trout Unlimited sent a Notice of Intent to sue the Service for violating the Act by failing to make a 90-day finding as to whether the petition to list the California golden trout presents substantial information indicating that listing may be warranted. On November 29, 2001, Trout Unlimited filed a complaint in Federal District Court alleging we had violated the Act by failing to make a 90-day finding for their petition to list the California golden trout. On June 21, 2002, the court ruled in favor of the plaintiffs and ordered us to complete the 90-day finding by September 19, 2002.

The common name golden trout is due to its brilliant gold color on the lower sides and red orange coloring on the belly, cheeks, and central lateral band. Behnke (1992) describes the California golden trout as a subspecies of the rainbow trout (*Oncorhynchus mykiss*), though it is more closely related to the interior redband subspecies of *O. mykiss* than the coastal rainbow subspecies that now dominates most drainages in the southern Sierra. It is believed that the California golden trout and Little Kern golden trout (*O.m. whitei*) evolved from an invasion of sea-run rainbow trout 20,000 years ago (Stephens 2001). Isolations between drainages resulted in the independent evolution of the subspecies (Behnke 1992).

California golden trout have historically been found in the southern Sierra Nevada in Golden Trout Creek, its tributaries, and the upper reach and tributaries of the South Fork of the Kern River. The Golden Trout Creek watershed is 155 square kilometers (60 square miles). Golden Trout Creek drainage begins around elevation 3,292 meters (m) (10,800 feet (ft)) and extends to 2,134 m (7,000 ft) elevation at the confluence of Golden Trout Creek and the Kern River. Volcano Falls, just upstream of the confluence of Golden Trout Creek and the Kern River, acts as a barrier to upstream migrating fish. The South Fork of the Kern River begins around elevation 3,170 m (10,400 ft) at Mulkey Meadows and continues until it reaches Isabella Reservoir at elevation 794 m (2,605 ft). The petition states that the historic downstream limit of California golden trout was probably the gorge section of the river close to the present day Dome Land Wilderness. Currently, California golden trout on the South Fork of the Kern River are limited to the reach above the lowest artificial fish barrier, the Schaeffer barrier. However, this barrier has proven to be ineffective, and hybrid and non-native brown trout (*Salmo trutta*) have been found upstream of this barrier. California golden trout have been widely transplanted outside of their historic range. However, the petition states that the only area where non-hybridized California golden trout occur is within the Golden Trout Creek and the South Fork of the Kern River.

The petitioners cited four threats to the California golden trout. The three major threats include: (1) Hybridization with stocked rainbow trout (*Oncorhynchus mykiss*); (2) competition with non-native brown trout; and (3) habitat degradation from cattle (*Bos*

taurus) grazing. The fourth threat identified by the petitioners was inadequacy of existing regulatory mechanisms. Although the petitioners acknowledge that Federal and State agencies have made some attempts to address the problem of California golden trout declines, such measures and strategies have yet to improve overall subspecies survival.

The petition states that hybridization with rainbow trout is the most immediate and destructive threat that the California golden trout faces today. In Golden Trout Creek watershed, fish stocking has occurred in the historically fishless headwater lakes. These lakes were stocked with what has recently been determined as hybrid California golden trout broodstock from Cottonwood Lakes. Historically, the South Fork Kern River, or general vicinity, has been stocked with rainbow trout, hybridized golden trout, brown trout, and brook trout (*Salvelinus fontinalis*). The petition cites that in the Golden Trout Creek watershed, hybridized fish were present in some of the headwater lakes and had moved into Stokes Stringer, a tributary of Golden Trout Creek. The petition assumed that hybridized California golden trout also had moved into some of the other tributaries of Golden Trout Creek. A report by Cordes *et al.* (2001) examined the genetics of California golden trout populations in the headwaters of Golden Trout Creek. Trout with what are presumed to be rainbow trout alleles (genes) were found at low frequencies in two tributaries and five different locations of Golden Trout Creek. Prior to this study, hybridized California golden trout had not been found in Golden Trout Creek. In the South Fork Kern River watershed, the petition states that hybrid California golden trout were present between Schaeffer Barrier and Templeton Barrier and in Movie Stringer. The reach of the South Fork Kern River above Ramshaw Barrier was believed to contain pure California golden trout. However, the Cordes *et al.* (2001) report found that low frequencies of what are assumed to be rainbow trout alleles occurred in fish collected from the South Fork Kern River above the Ramshaw Barrier. Currently, the only known pure California golden trout inhabit a tributary to Golden Trout Creek, headwater streams of the South Fork Kern River (S. Stephens, California Department of Fish and Game (CDFG), pers. comm., 2002). Given this genetic data, it appears that only a small amount of California golden trout are genetically pure. The degree of hybridization in the current range of the California golden trout is not yet fully understood. However, recent data suggest it is more widespread than stated in the petition.

The petition suggests that competition for resources with non-native brown trout and rainbow trout, and predation by brown trout, is a threat to the California golden trout. Brown trout prey on all life stages of the California golden trout and can be found in about 230 kilometers (143 miles) of historic California golden trout habitat including the area between Templeton Barrier and Schaeffer Barrier (Stephens 2001). The CDFG and Inyo National Forest have made repeated efforts to eradicate brown trout from the California golden trout range by using piscicides (pesticide that is specific for fish) and then restocking the areas with California golden trout. They are continuing to investigate the current distribution of brown trout in the watershed (United States Forest Service (USFS) 2002a).

The petition lists habitat degradation due to livestock grazing as a threat to the California golden trout. Grazing along stream channels affects aquatic habitat by reducing vegetation, changing the width/depth ratio, adding sediment to the channel, and lowering the water table (Armour *et al.* 1991). Over time, the USFS has limited the number of cattle and duration of time on allotments in the current range of the California golden trout, but even with fewer cattle, degradation to the riparian zone continues (Knapp and Matthews 1996). In a study done by Knapp and Matthews (1996), livestock grazing was found to have negative effects on California golden trout populations. Livestock grazing can change and reduce vegetation, and widen and collapse banks (Armour *et al.* 1991). California golden trout prefer undercut banks and aquatic vegetation (Knapp and Dudley 1990; Mathews 1996a) and tend to avoid bare and collapsed banks (Matthews 1996b).

Four allotments are present in the range of the California golden trout. Beginning in the summer of 2001, the USFS decided to rest the Templeton and Whitney allotments from grazing for a period of 10 years. At the end of the 10-year period, an analysis will be completed to determine if grazing should be resumed, eliminated from the allotments, or if resting the allotments should continue (USFS 2001). A monitoring strategy is being developed by the Inyo National Forest to determine the rate of recovery of the watershed (USFS 2002b). The area will be allowed to naturally restore itself with some small amount of active restoration by the USFS (D. Hubbs, USFS, pers. comm., 2002). Portions of the other allotments, Monache and Mulkey, are still being actively grazed. These allotments also will be monitored under the monitoring strategy being developed by the USFS and compared to the Templeton and Whitney allotments.

The petition states there are inadequate regulatory mechanisms to protect the California golden trout. It also notes that there is an interagency Conservation Strategy for the Volcano Creek Golden Trout signed by CDFG, the Service, and USFS (USFS 1999). However, the Conservation Strategy does not meet the requirements set forth in our Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE Policy) (65 FR 37102). Since we received the petition, a draft Implementation Plan for the California Golden Trout Conservation Strategy (Implementation Plan) dated May 15, 2002, has been prepared by USFS, CDFG, Trout Unlimited, and California Trout. The Implementation Plan has addressed many of the concerns with the Conservation Strategy identified in the petition, but still does not address all of the criteria identified in our PECE Policy. It is unclear from the Implementation Plan how many of the tasks have a high level of certainty that necessary funding is provided. Also, while monitoring is a part of all tasks, the Implementation Plan does not have quantifiable, scientifically valid parameters to demonstrate achievement of objectives and effectiveness of the conservation tasks.

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of best scientific and commercial information, we find the petition presents substantial information that listing this subspecies may be warranted. The main threat to the California golden trout is hybridization. Competition with non-native brown trout and habitat degradation due to cattle grazing, in combination with the threat of hybridization, place the California golden trout at risk. The current draft Implementation Plan is lacking the criteria necessary to improve the subspecies's status enough to make listing unnecessary.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We determined that an emergency listing is not warranted at this time. However, if at any time we determine that emergency listing of the California golden trout is warranted, we will seek to initiate an emergency listing. The petitioners also requested

that critical habitat be designated for this subspecies. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the California golden trout is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the California golden trout. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the California golden trout. We are seeking information regarding historic and current distribution, the subspecies' biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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United States Forest Service (USFS). 2001. Decision notice and finding of no significant impact, Templeton and Whitney grazing allotments. Inyo National Forest, Bishop, California. 10 pp. + appendices.

United States Forest Service (USFS). 2002a. Draft implementation plan for the California golden trout conservation strategy. Inyo National Forest, California Department of Fish and Game, and U.S. Fish and Wildlife Service. 23 pp. + appendices.

United States Forest Service (USFS). 2002b. Draft monitoring strategy Whitney and Templeton grazing allotments. Inyo National Forest, Bishop, California. 10 pp.

Author

The primary author of this document is Jennifer Bain, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–23941 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–2160–01; I.D. 061902C]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.)and west to the 120°W. long., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery is dependent on the area and season being fished during these oceanographic conditions. Time and area closures will result in a reduction in the amount of take of loggerheads by the fishery and are necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead population.

DATES: Comments on this proposed rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Daylight Time, on October 21, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send comments on this proposed rule to Tim Price, National Marine Fisheries Service, Protected Resources Division, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or by fax (562) 980–4027. Copies of the Environmental Assessment (EA) or biological opinion (BO) may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or are available on the internet at *http://swr.ucsd.edu/*.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The loggerhead (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations, taking sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA or an incidental take permit issued pursuant to section 10 of the ESA. In order for an incidental take statement to be issued, the incidental take must be not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

To authorize this incidental take of marine mammals listed under the ESA, NMFS completed a formal consultation as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerheads. On October 23, 2000, NMFS issued a Biological Opinion (BO) in which it determined that the current operations of the CA/OR drift gillnet fishery are jeopardizing the continued existence of loggerheads.

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerheads, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of time and area closures of the CA/OR drift gillnet fishery during a forecasted, or occurring, El Ni~o event. This proposed rule addresses this RPA to protect loggerheads.

Reduction of Loggerhead Entanglements

The RPA identified in the BO to address the incidental take of loggerheads by the CA/OR drift gillnet fishery consists of a time and area closure during El Nino conditions that would prohibit drift gillnet fishing in U.S. ocean waters off of southern California south of Point Conception (34°27′N.) and west to 120°W longitude, occurring from August 15 to August 31 and from January 1 to January 31. This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling loggerheads by at least 65 percent. The Assistant Administrator for Fisheries (AA) will publish a notice announcing that El Nino conditions are present off the coast of southern California and that the time and area closure will be in effect. In determining whether to announce that an El Nino event affecting southern California waters is forecast or occurring, the AA will rely on information made public by NOAA offices that monitor the El Nino event, including information from the Climate Prediction Center, at *http://cwatchc.ucsd.edu*, and from NOAA's West Coast Office of Coast Watch, at *http://cwatchwc.ucsd.edu*, and also from the State of California.

Loggerhead Entanglement Data

Based on NMFS observer data from July 1990 through January 2001, there have been a total of 18 loggerheads (3 were unidentified turtles that are assumed to be loggerheads based on carapace length and the area in which they were caught) taken by the CA/OR drift gillnet fishery. All of these entanglements occurred during El Nino years and all occurred in the proposed closure area. Sixty-five percent of these entanglements occurred from August 15 to August 31 and from January 1 through January 31. There have also been 4 loggerheads observed taken during the month of July and 1 entanglement observed during the month of June. These entanglements occurred at a time when the fishery was significantly more active (e.g. beginning in 1992 the State of California prohibited drift gillnet vessels from fishing inside 75 nautical miles (136.9 kilometers) from May 1 through August 14). However, now there is minimal fishing effort during the months of June, July, and the first 2 weeks of August, because most of the larger vessels have switched to targeting albacore tuna during this time period. In addition, there was one loggerhead observed taken during the month of October.

In August 2001, NMFS observed one loggerhead taken in ocean waters off of San Diego, CA. This entanglement occurred outside of an El Ni~o event. Although there have been reports of loggerheads occasionally stranding and of sightings of loggerheads off of southern California during years when there is not an El Nino event, this was the first loggerhead entanglement that NMFS has observed outside of an El Nino event. Loggerheads and their prey are more abundant off of southern California during El Nino events when water temperatures are generally warmer. Thus, there is a significant increase in the likelihood of a loggerhead entanglement during El Nino events. Because loggerheads are less likely to be off the coast of southern California outside El Nino years and because NMFS has only observed one loggerhead entanglement outside of an El Nino year, NMFS believes that an entanglement of a loggerhead outside of an El Nino event is a rare occurrence.

Classification

NMFS prepared an EA (August 13, 2001) and a draft supplement (June 27, 2002) to the EA for this proposed rule and concluded these regulations would pose no significant adverse environmental impact.

The actions implemented by this proposed rule are expected to impact approximately 81 CA/OR drift gillnet vessel owners and operators, representing approximately 500 fishing sets annually. For a description and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for this proposed rule which incorporates the initial regulatory flexibility analysis. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this proposed rule is expected to be $440,000 for an El Nino year. This revenue loss to the fishery is a worst-case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Loggerhead time and area closures during the month of January are expected to have the greatest impact on the fishery because the oceanographic conditions that favor swordfish during January are generally located along the coast. In this scenario, the reduction in total gross revenues is not expected to exceed $5,400 per vessel per El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period between August 15 through August 31, and January 1 through January 31, using data from 1997 to 2000. On average, during these time periods, approximately $6,300 of louvar, $17,700 of mako shark, $20,300 of opah, $345,300 of swordfish, and $49,100 of thresher shark are landed.

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerheads. This proposed rule implements the RPA to protect loggerheads. NMFS has determined that the time and area closure identified in the BO is expected to avoid the likelihood of jeopardizing the continued existence of the loggerhead species.

In keeping with the intent of the Executive Order 12612 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: September 13, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraphs (d)(6)(ii) and (iii) are added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(6) * * *

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34°27′N. (Point Conception, California) and west to 120° W. from January 1 through January 31 and from August 15 through August 31 during a forecasted, or occurring, El Nino event.

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish a notification that an El Nino event is occurring off of or is forecast for the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone in the **Federal Register** and will announce the notification in summary form by other methods as the Assistant Administrator determines are necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, and by the State of California, in order to determine whether to publish such a notice. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

* * * * *

[FR Doc. 02–23841 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 183
Friday, September 20, 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

Forest Service

Approval of New Information Collection for Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to seek approval of a new information collection to implement the recently enacted Forest Land Enhancement Program. This information collection consists of 7 components: (1) Forest Land Enhancement Program State priority plans; (2) State program accomplishment reports; (3) landowner management plans; (4) applications for cost-share payments; (5) program assignment of payment, (6) IRS income reporting requirements for participants; and (7) Power of Attorney forms.

DATES: Comments must be received in writing on or before November 19, 2002.

ADDRESSES: All comments should be addressed to: Cooperative Forestry Staff, Forest Service, USDA, Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123.

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Cooperative Forestry Staff at (202) 205–1694, or Susan Stein, Cooperative Forestry Staff at (202) 205–0837.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking approval for a new information collection to implement a new landowner assistance program recently authorized through the Farm Security and Rural Investment Act of 2002. The first two collections (State Priority Plans and State Accomplishments Reports) are necessary for the Forest Service to manage the Forest Land Enhancement Program (also referred to as the Program), which, by law, is implemented through State forestry agencies. The third collection (Management Plans) will be used by State forestry agencies to assure landowner eligibility for the Program.

The remainder of the information (Application for Cost-Share Payments, Assignment of Payment, Power of Attorney 1, Power of Attorney 2, and Payment Limitation Requirements) will be collected from landowners requesting cost-share funds. Only the first form is mandatory for all applicants. In some States, this information may be collected by the Farm Services Agency. In other States, this information or similar information may be collected through State-managed or State-contracted services.

For the purposes of the Program, the term ''State'' includes any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Data gathered in this information collection is not available from other sources.

Description of Information Collections

1. *Title:* State Priority Plan.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: The State priority plan will describe how the Program will be implemented in each State. Plans describe (1) how this program complements other USDA programs; (2) the distribution of available funding for administration, resource management expertise/technical assistance, education, and cost-share; (3) how cost-share funds shall be made available to eligible participants; (4) ownership and acreage limitations; (5) what constitutes a management plan (which is required if a landowner is to receive cost-share assistance for practice implementation); (6) landowner cost-share payment limitations; (7) elegible cost-share practices; (8) how funds may be distributed to participants; and (9) program application and reimbursement processes.

Estimate of burden: 284 hours.

Type of respondents: Plans are prepared by State forestry staff with input from members of State Forest Stewardship Coordination Committees (which include representatives of Federal and State agencies, private landowners, and forestry/conservation organizations).

Estimated number of responses per respondent: 1 plan per State.

Estimated total burden on respondents: 16,756 hours.

2. *Title:* State Accomplishment Reports.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: State Program accomplishment reports will provide statistics on various aspects of program implementation such as the number of acres and ownerships treated, numbers of technical site visits provided, and numbers of workshops held.

Estimate of burden: 40.6 hours.

Type of respondents: Accomplishments reports are prepared by State forestry staff.

Estimated annual number of responses per respondent: 2 per State.

Estimated total burden on respondents: 4,791 hours.

3. *Title:* Landowner Management Plan.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: The landowner management plan is typically prepared by a State forestry agency (or a certified forestry consultant hired by a State forestry agency), with input from the forest owner. The plan lays out management objectives for the forest or stand in question.

Estimate of burden: 4 hours.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1 per plan.

Estimated total annual burden on respondents: 33,200 hours.

4. *Title:* Application for Cost-share Payments.

OMB Number: 0596–New.

Type of Request: Approval of a new information collection.

Abstract: This information is collected from landowners applying for cost-share payments as well as from State forestry personnel and is used to track the implementation of cost-share practices. The information is used to describe the practice to be cost-shared,

record the estimated timing of practice completion, verify practice completion, determine landowner eligibility, identify the location of the property, record the cost-share amount approved, and several other administrative aspects of program management. Landowners also provide signatures to verify that they have covered a specified cost of the practice. The landowner also signs a statement agreeing to refund all or part of the cost-share assistance received if, before the specified practice lifespan, the landowner destroys the approved practice, or voluntarily relinquishes control over the land and the new owner or operator of the land does not agree in writing to properly maintain the practice for the remainder of the lifespan.

Estimate of burden: 15 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1.5 per form.

Estimated total annual burden on respondents: 3113 hours.

5. *Title:* Assignment of Payment.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: This information is collected to assign cost-share payment to a third party at the request of a program participant. Information includes the payment amount assigned, and the names, addresses, and signatures of assignor and assignee.

Estimate of burden: 10 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1 per form.

Estimated total annual burden on respondents: 1383 hours.

6. *Title:* Power of Attorney, Form 1.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: This information is used to appoint power of attorney for the landowner. The landowner indicates whether power of attorney is being granted for (1) all actions; (2) the signing of an application; (3) the receiving of payments; (4) pledge of agreements; (5) the making of reports; or (6) ''other''. It includes a signature by the landowner and witnesses.

Estimate of burden: 5 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1 per form.

Estimated total annual burden on respondents: 692 hours.

7. *Title:* Power of Attorney, Form 2.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: This information is provided by participants who are husband and wife and who wish to assign each other power of attorney. It includes signatures by the husband and wife.

Estimate of burden: 5 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1 per form.

Estimated total annual burden on respondents: 692 hours.

8. *Title:* Payment Limitation Requirements.

OMB Number: 0596–New.

Type of request: Approval of a new information collection.

Abstract: This information is used to review payment limitation requirements and assure that landowners do not exceed any annual or life-of-program caps. It is also used to meet IRS income reporting requirements. Program participants provide their names and addresses, entity identification numbers, and date the entity formed. They also indicate the type of entity (*e.g.* whether an individual, irrevocable trust, revocable trust, corporation, limited partnership, general partnership, joint venture, estate, or ''other''). Participants also list all stockholders, members, heirs, or beneficiaries having an interest in the entity.

Estimate of burden: 25 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 8,300.

Estimated number of responses per respondent: 1 per form.

Estimated total annual burden on respondents: 3,458 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and addresses when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request to Office of Management and Budget for approval.

Dated: September 12, 2002.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 02–23858 Filed 9–19–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Friday, October 18, 2002, at Redding, California. This meeting will be a field trip to Iron Canyon to discuss issues relating to implementing the Northwest Forest Plan.

DATES: Friday, October 18, 2002.

LOCATION: The field trip will begin at the Shasta-Trinity National Forest Headquarters building at 2400 Washington Ave. Redding, CA.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA, 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: All PAC meetings and field trips are open to the public. Interested citizens are encouraged to attend. Opportunity will be provided for public input and individuals attending the meetings have the opportunity to address the Committee.

Dated: September 13, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–23924 Filed 9–19–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Solicitation of nominations for Advisory Committee on Agriculture Statistics membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

On January 2, 2001, the Secretary of Agriculture renewed the Advisory Committee charter for another two years. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc. of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agriculture reports and presents the views and needs for data of major suppliers and users of agriculture statistics.

DATES: Nominations must be received by October 21, 2002 to be assured of consideration.

ADDRESSES: Nominations should be mailed to Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4117 South Building, Washington, DC 20250–2000. In addition, nominations may be mailed electronically to *hq_aa@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, (202) 720–4333.

SUPPLEMENTARY INFORMATION: Nominations should include the following information: name, title, organization, address, telephone number, and e-mail address. In addition to mailed correspondence to the addresses listed above, nominations may also be faxed to (202) 720–9013, OR telephoned to Rich Allen, Associate Administrator, NASS, at (202) 720–4333. Each person nominated is required to complete an Advisory Committee Membership Background Information form. This form may be requested by telephone, fax, or e-mail using the information above. Forms will also be available from the NASS Home Page *http://www.usda.gov/nass* by selecting ''Agency Information,'' ''Advisory Committee on Agriculture Statistics.'' Completed forms may be faxed to the number above, mailed, or completed and e-mailed directly from the Internet site.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging issues in the agriculture community that can affect agriculture statistics activities.

The Committee, appointed by the Secretary of Agriculture, consists of 25 members representing a broad range of disciplines and interests, including, but not limited to, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for 12 open Committee seats. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected by members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members are reimbursed for official travel expenses only.

Send questions, comments, and requests for additional information to the e-mail address, fax number, or address listed above.

Signed at Washington, DC, September 4, 2002.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 02–23888 Filed 9–19–02; 8:45 am]

BILLING CODE 3410–20–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: October 20, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Binder, Award, Certificate 7510–01–390–0712.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: General Services Administration, Single Award Schedule.
Product/NSN: Braided Nylon, Type II Parachute Cord 4020–00–262–2019.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Dog Collar and Leash
M.R. 1975 (Collar Small).
M.R. 1976 (Collar Medium).
M.R. 1977 (Collar Large).
M.R. 1978 (Leash).
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Flashlight, Aluminum
6230–00–NIB–0004 (2AA, Black).
6230–00–NIB–0005 (2AA, Blue).
6230–00–NIB–0006 (2AA, Red).
6230–00–NIB–0007 (2AA, Silver).
6230–00–NIB–0008 (2D, Black).
6230–00–NIB–0009 (2D, Blue).
6230–00–NIB–0010 (2D, Red).
6230–00–NIB–0011 (2D, Silver).
6230–00–NIB–0012 (3D, Black).
6230–00–NIB–0013 (3D, Blue).
6230–00–NIB–0014 (3D, Red).
6230–00–NIB–0015 (3D, Silver).
6230–00–NIB–0016 (4D, Black).
6230–00–NIB–0017 (4D, Blue).
6230–00–NIB–0018 (4D, Red).
6230–00–NIB–0019 (4D, Silver).
6230–00–NIB–0020 (5D, Black).
6230–00–NIB–0021 (5D, Blue).
6230–00–NIB–0022 (5D, Red).
6230–00–NIB–0023 (5D, Silver).
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contract Activity: General Services Administration, Single Award Schedule.
Product/NSN: Kit, Troop Seat 2540–01–185–3216.
NPA: Tuscola County Community Mental Health Services, Caro, Michigan.
Contract Activity: U.S. Army Tank-Automotive & Armaments Command, Warren, Michigan.
Product/NSN: Paper, Xerographic 7530–01–454–8006.
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: General Services Administration, Single Award Schedule.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–23966 Filed 9–19–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: October 20, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION

Additions

On August 2, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 50416) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

Accordingly, the following product and service are added to the Procurement List:

Product

Product/NSN: Lewis & Clark Discovery Box 7125–00–R10–0001 (Lightweight Box).
7125–00–R10–0002 (Cabbage Box).
NPA: Development Workshop, Inc., Idaho Falls, Idaho.
Contract Activity: U.S. Army Corps of Engineers, Omaha, Nebraska.

Service

Service Type/Location: Vehicle Maintenance, Basewide, Fort Lewis, Washington.
NPA: Skookum Educational Programs, Port Townsend, Washington.
Contract Activity: USA, Intermediate Brigade Combat Team, Fort Lewis, Washington.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Tape, Postage Meter 7530–00–912–3924.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York,

New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–23967 Filed 9–19–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee advises the Census Bureau Director on the full range of Census Bureau programs and activities in relation to its areas of expertise.

DATES: The meeting will convene on October 17–18, 2002. On October 17, the meeting will begin at 9 a.m. and adjourn at 5:30 p.m. On October 18, the meeting will begin at 9 a.m. and adjourn at 12 Noon.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Acting Chief, Conference and Travel Management Services Branch, Department of Commerce, U.S. Census Bureau, Room 2150, Federal Building 3, Washington, DC 20233. Her phone number is 301–457–2236, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on October 17, which will begin at 9 a.m. and adjourn at 5:30 p.m., is as follows:

- Introductory Remarks by the Director, Census Bureau
- Census Bureau Responses to Committee Recommendations/Report on the April 2002 Meeting
- 2010 Reengineered Decennial Census
- American Community Survey: Overview of Research and Evaluation Program
- Supply Chain Dynamics and Their Effects on Census Data
- Use of Premiums to Boost Response Rates
- The Four Principles of the North American Industry Classification System
- Print Products in an Electronic Age
- Measuring Key Economic Indicators in U.S. Government Establishment Surveys
- Promoting the 2002 Economic Census
- Measuring the Electronic Economy at the U.S. Census Bureau: Status and Outlook
- Marketing Services Office Update
- Economic Program Operating Plans and Challenges
- Develop Recommendations and Special Interest Activities
- Producing Small Area Estimates of Health Insurance Coverage
- Population Estimates: Evaluating Past Performance and Planning for the Future
- Plans for Qualitative Research on Response Burden, Respondent Selection and Mode Preference in Business Surveys
- Developing Recommendations and Special Interest Activities

The agenda for the meeting on October 18, which will begin at 9 a.m. and adjourn at 12 Noon, is as follows:

- Chief Economist Update
- 2010 Reengineering Within Household Coverage Research
- Developing Recommendations and Special Interest Activities

The meeting is open to the public, and a brief period will be set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Acting Chief, Conference and Travel Management Services Branch, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis. Individuals wishing additional information or minutes regarding this meeting may contact the Acting Chief, Conference and Travel Management Services Branch as well. Her address and phone number are identified above under this notice's **FOR FURTHER INFORMATION CONTACT** heading.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Acting Chief, Conference and Travel Management Services Branch.

Dated: September 16, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–23937 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2002]

Foreign-Trade Zone 84—Houston, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority to expand its zone in Houston, Texas, within the Houston-Galveston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 12, 2002.

FTZ 84 was approved on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/83), and the zone project currently consists of fourteen sites (1,498.92) at port facilities, industrial parks and warehouse facilities in Harris County.

The applicant is now requesting authority to expand the general-purpose zone to include the 72-acre Katoen Natie Gulf Coast (KTN) site in Harris County on a permanent basis (it currently has temporary authority) and to restore FTZ status to a 97-acre site at the Bulk Materials Handling Plant on the Houston Ship Channel, which was previously a designated zone site, but was deleted from the zone in a temporary modification last year. The KTN site would provide third party warehousing and logistics services to existing subzones and other exporting companies in the area. The KTN site is owned by Houston Polymers Terminal L.P., and would be designated as Site 15. The Bulk Materials Handling Plant site would be designated as Site 2 (which was its original zone designation). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is November 19, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 4, 2002).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce, Export Assistance Center, 500 Dallas, Suite 1160, Houston, TX 77002. The Export Assistance Center may be relocated later this year, and we suggest that you call ahead for an appointment (713/718–3062).

Dated: September 13, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–24008 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–024. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139–4307. *Instrument:* Universal 5 Axis High Speed Machining Center, Model UCP 600. *Manufacturer:* Mikron, Switzerland. *Intended Use: See* notice at 67 FR 45481, July 9, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Simultaneous 5-axis shaping with demonstrated software for turbine blades, (2) very high positioning accuracy (<0.0002 inch), (3) optical feedback positioning technology such as glass scales and (4) 5-axis shaping capability of a 6-inch cube or better. A domestic manufacturer of similar of equipment advised September 12, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–24005 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Thomas Jefferson University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–032. *Applicant:* Thomas Jefferson University, Philadelphia, PA 19107–5587. *Instrument:* Electron Microscope, Model Morgagni 268 Film version. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 52944, August 14, 2002. *Order Date:* June 4, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–24007 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–028. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* High-Pressure/High-Temperature Materials Testing Apparatus with Torsion Module. *Manufacturer:* Australian Scientific Instruments Pty Ltd, Australia. *Intended Use:* See notice at 67 FR 47524, July 19, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a unique combination of high pressure (700 MPa), high temperature (1650° K) and both compressive and torsional deformation with high stress and displacement resolution for geophysical study of rocks. A university research laboratory advised September 10, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–24006 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Expedited Reviews.

SUMMARY: On July 17, 2002, the Department of Commerce (the Department) published in the **Federal Register** its initiation of expedited reviews of the countervailing duty order covering certain softwood lumber products (subject merchandise) from Canada (67 FR 46955). In that notice, the Department initiated reviews of 73 exporters that filed timely and complete requests for expedited review. The purpose of such reviews is the calculation of company-specific cash deposit rates and the exclusion from the order of companies that received zero or *de minimis* subsidies during the period of investigation (April 1, 2000 to March 31, 2001).

By this notice, the Department is initiating expedited reviews of 31 additional companies. Twenty-three of these companies submitted timely but incomplete applications which were subsequently perfected. We also are initiating reviews on eight companies whose requests were received beyond the deadline for reasons outside the requester's control.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Gayle Longest at (202) 482–3338, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

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 (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

Background

On May 22, 2002, the Department published the countervailing duty order on softwood lumber from Canada. See 67 FR 36070. In that **Federal Register** notice, we indicated that Canadian exporters of subject merchandise could request expedited reviews for the purpose of establishing individual cash deposit rates. We posted, on the Internet at *ia.ita.doc.gov*, an electronic application form and requested that all applicants submit their review requests in electronic format. All such requests were to be filed with the Department by June 21, 2002.

In response, the Department received a total of 100 timely requests for expedited review. A total of 73 of these requests were timely and complete. The Department initiated reviews of the exporters that filed timely and complete requests for expedited review on July 17, 2002 (67 FR 46955, July 17, 2002).

For those requests that were timely but incomplete, we provided each applicant with an opportunity to file an amended request for expedited review. We notified these applicants of the deficiencies in their submissions on July 15, 2002. The Department received properly amended requests for 23 of these applicants. Accordingly, we are initiating expedited reviews of these companies (see listing below) in this notice.

In addition, nine companies' requests for expedited reviews were received after the June 21, 2002 deadline. We notified these companies that their requests were untimely filed. We received responses from several parties explaining the circumstances of their submissions. *See Memorandum to the File* from Gayle Longest through Melissa G. Skinner dated August 2, 2002, concerning Reconsideration of Timeliness of Certain Applications - Expedited Reviews of the Countervailing Duty Order on Softwood Lumber from Canada (C–122–839). After reviewing the information received, we concluded that each of these parties made a good faith effort to submit a timely application and that each application was mailed or delivered to the courier in time to be delivered to the Department by the deadline. Accordingly, we are treating these applications as having been timely filed.

Petitioner's Comments

On August 28, 2002, petitioners submitted comments on procedural deficiencies. Petitioners contend that the Department did not follow its normal practice of rejecting improperly filed and untimely submissions for companies requesting expedited reviews. Petitioners maintain that the Department provided 36 requesters, who had submitted incomplete or incorrect submissions, an opportunity to correct their filings after the June 21, 2002, deadline. Petitioners argue that 14 of these companies still have failed to meet the procedural requirements.

According to petitioners, the Department should have rejected the 36 requests because they were improperly submitted. Petitioners assert that the Department should now reject any company's application that was not perfected by the Department's announced deadline. Furthermore, petitioners contend that the Department should not initiate on any of these 36 requests until after the final determination for all requesters in Round 1.

Department's Response: Because this is the first time that the Department has conducted expedited reviews in a countervailing duty proceeding, there may well have been some uncertainty regarding what needed to be filed with the Department. After examining the requests for expedited review from the 36 companies whose submissions were improperly filed, we found that they had made a good faith effort to file a complete submission by the June 21, 2002 deadline. We therefore provided them with an opportunity to correct the deficiencies in their requests for expedited review by filing amendments to their requests. Five companies (Jazz Forest Products Ltd., Langley Timber Company Ltd, Mirax Lumber Products Ltd., Scierie A& M St. Pierre Inc., and Trans North Timber) did not perfect their applications by the Department's deadline for amended applications. Accordingly, those five companies' submissions are improperly filed and cannot be considered for expedited review. The remaining 31 companies have provided complete and timely requests for expedited review.

With respect to petitioners' assertion that the Department should reject all 36 requests for expedited review, we do not agree. As we have explained in the Notice of Preliminary Results of Expedited Reviews published on August 14, 2002, this is the first time we have conducted expedited countervailing duty reviews, and the Department's regulations do not include procedures for the conduct of expedited countervailing duty reviews in aggregate cases. Thus, the uncertainty we noted above is, to some extent, understandable. Further, after an extensive review of the applications of these 36 companies, we determined that they made a good faith effort, in the first

instance, to comply with the Department's filing requirements. Consequently, we are not rejecting these companies' requests solely on the basis that they did not properly file their submissions by the June 21, 2002, deadline. Moreover, we disagree with petitioners' contention that the Department should not initiate any additional reviews until the final determinations regarding all requests in Round 1 are issued. In order to reach our dual goals of providing company-specific rates and excluding from the order companies that receive zero or de minimis subsidies during the period of investigation and completing these reviews in the most expeditious manner possible, it is necessary to initiate expedited reviews on the 31 companies that have perfected their submissions at this time.

Initiation

At this time, we are initiating expedited reviews of the following companies:

2859–8936 Quebec Inc. Les Cedre Basques
9027–7971 Quebec Inc.
Antrim Cedar Corporation
Bridgeside Higa Forest Industries Ltd.
Carson Lake Lumber Ltd.
Central Cedar Ltd.
Doman Forest Products Limited
Forstex Industries Inc.
Goldwood Industries Ltd.
Hollcan Millworks Ltd.
Hudson Mitchell & Sons Lumber Inc.
Indian River Lumber
Les Scieries Jocelyn Lavoie Inc.
Leslie Forest Products Ltd.
Lukwa Mills Ltd.
Lyle Forest Products Ltd.
Power Wood Corp.
Precision Moulding Products
Ram. Co. Lumber Ltd.
Rielly Industrial Lumber Inc.
Shawood Lumber Inc.
South East Forest Products Ltd.
St. Jean Lumber (1984) Ltd.
Sylvanex Lumber Products Inc.
Teal Cedar Products Ltd.
United Wood Frames Inc.
W.I. Woodtone Industries
Westwood Wholesale Lumber Ltd.
Williamsburg Woods & Garden Inc.
Winnipeg Forest Products, Inc.
Wynndel Box & Lumber Co. Ltd.

Request for Pass-Through Analysis

Under the Department's proposed methodology for these expedited reviews, all Crown inputs (logs and lumber) into subject merchandise are included in the subsidy calculations. Because of the expedited nature of these reviews, we originally proposed not to consider whether subsidies pass through in the context of alleged arm's-length transactions. In comments on the methodology, parties requested and proposed several alternative methodologies to measure whether or not subsidies to crown inputs pass through as a result of an arm's-length transaction. *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945, 52948–52949, August 14, 2002). Petitioners also commented that the proposed methodology underestimates the benefits for entities that are highly subsidized. *See id.* at 52947. After consideration of the comments received on the Department's proposed methodology, in the notice of preliminary results of countervailing duty expedited reviews we noted that the complexities of the pass-through analysis that were brought to light by parties' proposed methodologies did not lend themselves to an expeditious analysis in the context of these reviews. We invited those companies that nonetheless wished the Department to conduct a pass-through analysis, to advise the Department in writing. Companies whose expedited reviews are initiated in this notice may thus also request in writing that the Department conduct a pass-through analysis. Such requests must be received by the Department within 14 days from the date of publication of this notice.

We will determine, based on the total number of pass-through requests received, how many companies it is practicable to consider for such an analysis, as well as the amount of time that will be necessary for this aspect of the reviews. If a company requests a pass-through analysis and the Department determines that it is not practicable to conduct that analysis, the Department will conduct an expedited review of the company using the streamlined methodology outlined in the notices of initiation and preliminary results, either with Group 1 or with Group 2, based on the Group that was previously identified for the company. (*See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada* (67 FR 46955, 46956–46957, July 17, 2002) and *Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945, 52947–52950, August 14, 2002).

Procedure to withdraw requests for expedited review

As indicated in the notice of preliminary results of expedited reviews (67 FR 52950), requests for recission of a respondent's expedited review must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review. If a company requests a pass-through analysis and the request is accepted, the company will have 30 days after the publication of the preliminary results of the relevant pass-through analysis in which to withdraw its request.

Notice of Appearance

The Expedited Reviews/Round 2 is a separate segment of the proceeding. All parties wishing to participate in this segment of the proceeding, must file a letter of appearance. Those parties wishing to receive access to business proprietary information subject to Administrative Protective Order (APO) must file an APO application for this segment.

This notice is in accordance with section 751(a) of the Tariff Act of 1930.

Dated: September 13, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–24003 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of the less-than-fair-value investigation of silicon metal from the Russian Federation and postponement of the final determination.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that imports of silicon metal from the Russian Federation (''Russia'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV'').

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Cheryl Werner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482–0409 and (202) 482–2667, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2002).

Background

On March 27, 2002, the Department initiated an antidumping duty investigation to determine whether imports of silicon metal from Russia are being, or are likely to be, sold in the United States at LTFV. *See Notice of Initiation of Antidumping Duty Investigation: Silicon Metal from the Russian Federation,* 67 FR 15791 (April 3, 2002) (''*Notice of Initiation*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation.* The Department received no comments on product coverage from interested parties.

On April 16, 2002, the Department requested information from the U.S. Embassy in Russia to identify producers/exporters of the subject merchandise.

On April 18, 2002, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the Russian Federation. *See Silicon Metal from Russia,* 67 FR 20993 (April 29, 2002) (''ITC Preliminary Determination'').

On April 23, 2002, the Department issued its antidumping questionnaire to the Trade Representative of the Russian Federation to the USA with a letter requesting that it forward the questionnaire to all manufacturers and exporters in Russia of silicon metal, and stated that complete questionnaire responses were required from producers/exporters who had sales, shipments, or entries of the subject merchandise into the United States during the period of investigation (''POI''). We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise: SUAL Holding, ZAO Kremny, SUAL-Kremny-Ural Ltd (''SKU''), and Pultwen Limited (''Pultwen Ltd.'') as well as Bratsk Aluminum Smelter (''BAS''). We received Section A responses from ZAO Kremny/SKU and Pultwen Ltd. as well as BAS and Rual Trade Limited (''RTL'') on May 29, 2002. On June 11, 2002, we received comments from petitioners [1] on BAS and RTL's Section A response. On June 12, 2002, we received comments from petitioners on ZAO Kremny/SKU and Pultwen Ltd's Section A response. On June 17, 2002, we received Sections C and D responses from ZAO Kremny/SKU and Pultwen Ltd. and from BAS and RTL.

On June 18, 2002, we issued supplemental Section A questionnaires to ZAO Kremny/ SKU and Pultwen Ltd. and to BAS and RTL. On June 21, 2002, and June 27, 2002, we received comments from petitioners on BAS and RTL's Sections C and D responses and ZAO Kremny/SKU and Pultwen Ltd's Sections C and D responses, respectively. On June 28, 2002, we issued supplemental Sections C and D questionnaires to ZAO Kremny/SKU and Pultwen Ltd. and to BAS and RTL. On July 3, 2002, we received supplemental Section A responses from ZAO Kremny/SKU and Pultwen Ltd. and from BAS and RTL. On July 3, 2002, we issued a second supplemental Sections A and C questionnaire to ZAO Kremny/SKU and Pultwen Ltd., including a request that they report their sales through a U.S. trading company. On July 15, 2002, we received comments from petitioners on BAS and RTL's supplemental Section A response. On July 16, 2002, we issued a second supplemental Section A questionnaire to BAS and RTL. On July 19, 2002, we received supplemental Sections C and D responses from BAS and RTL and from ZAO Kremny/SKU and Pultwen Ltd. Also, on July 19, 2002, we received second supplemental Sections A and C responses from ZAO Kremny/SKU and Pultwen Ltd. On July 26, 2002, we received a section A questionnaire response from a U.S. trading company that purchased Russian silicon metal from Pultwen Ltd. during the POI.

On July 26, 2002, we received comments from petitioners on ZAO Kremny/SKU and Pultwen Ltd's responses for Sections C and D and supplemental Sections A and C. On July 29, 2002, ZAO Kremny/SKU and Pultwen Ltd. submitted a revised U.S. sales listing. On July 29, 2002, we received comments from petitioners on BAS and RTL's joint supplemental Sections C and D responses. On July 30, 2002, we issued a fourth supplemental questionnaire to ZAO Kremny/SKU and Pultwen Ltd, again requesting that they report sales through the U.S. trading company. On July 31, 2002, we received the second supplemental Section A response from BAS and RTL. On August 13, 2002, we received ZAO Kremny/ SKU and Pultwen Ltd's second supplemental Sections C and D response and on August 20, 2002, we received the second supplemental Sections C and D responses from BAS and RTL. On August 20, 2002, we issued a fifth supplemental questionnaire to ZAO Kremny/SKU and Pultwen Ltd., again requesting the U.S. trading company's sales information, and received their response on August 27, 2002. On August 22, 2002, petitioners submitted comments concerning the relationship between ZAO Kremny/SKU, Pultwen Ltd. and a U.S. trading company. On August 27, 2002, the Department determined that Pultwen Ltd. and a U.S. trading company were affiliated through a principal/agent relationship. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and U.S. Trading Company,* dated August 27, 2002 (''*Affiliation Memo for Pultwen and U.S. Trading Company*''). On August 28, 2002, we again requested that ZAO Kremny/SKU and Pultwen Ltd. provide their affiliated U.S. trading company's sales and received their response on September 4, 2002. Also, on August 28, 2002, we issued a third supplemental questionnaire to BAS and RTL and received their response on September 4, 2002. On August 29, 2002, petitioners submitted comments concerning the application of adverse facts available for ZAO Kremny/SKU, Pultwen, and the affiliated U.S. trading company.

On August 2, 2002, the Department determined the investigation was extraordinarily complicated and postponed the preliminary determination by 30 days, until September 13, 2002. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Silicon Metal from the Russian Federation,* 67 FR 51834 (August 9, 2002).

[1] Globe Metallurgical Inc., Simcala Inc., the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.–C.W.A., AFL–CIO, C.L.C., Local 693, The Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–89, and the United Steel Workers of America, AFL–CIO, Local 9436, hereinafter referred to as ''petitioners.''

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on September 6, 2002, ZAO Kremny/SKU and Pultwen Ltd. requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. On September 10, 2002, BAS and RTL also requested that the Department fully postpone its final determination, in accordance with section 735(a)(2) of the Act, and agreed to the extension of provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) ZAO Kremny/SKU and Pultwen Ltd. and BAS and RTL account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is July 1, 2001, through December 1, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 7, 2001). See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

Critical Circumstances

According to section 733(e)(1) of the Act, if critical circumstances are alleged under section 733(e) of the Act, the Department must examine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the ''relatively short period'' described in section 351.206(i) of over 15 percent may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

On July 31, 2002, petitioners submitted an allegation of critical circumstances with respect to imports of silicon metal from Russia. On August 2, 2002, the Department requested shipment information from ZAO Kremny/SKU, and Pultwen Ltd.[2] and BAS and RTL.[3] On August 12, 2002, ZAO Kremny/SKU and Pultwen Ltd. and BAS and RTL each submitted shipment information and commented on the allegation that critical circumstances exist with respect to imports of silicon metal from Russia. On August 29, 2002, petitioners submitted additional comments on the critical circumstances determination. On September 10, 2002, BAS and RTL submitted additional shipment information for August 2002, and commented on petitioners' August 29, 2002, comments. However, because of the lateness of the September 10, 2002, submission, we are not able to analyze the data for the preliminary determination and will consider it for the final.

In their August 12, 2002, submission, BAS and RTL make several arguments as to why the criteria for a finding that critical circumstances exist are not satisfied in this case. First, BAS and RTL argue that the margin alleged in the petition cannot be considered a reliable source of information from which to impute knowledge of dumping to importers of silicon metal from Russia. BAS and RTL note that it is the Department's normal practice to rely on its own estimated dumping margins in determining whether to impute knowledge of dumping in the absence of a history of dumping and material injury with respect to silicon metal from Russia in the United States and other countries. BAS and RTL assert that the petition was filed over five months ago (on March 7, 2002), and that the initiation margin is based on aberrational surrogate values from Egypt, including the value for quartzite. BAS and RTL submit that respondents have provided information demonstrating that Egypt is not an appropriate surrogate country for Russia.

BAS and RTL also argue in their August 12, 2002, submission that since the filing of the petition imports of silicon metal from Russia have not been massive considering high market volatility and seasonality. Citing the Antidumping Manual, Chapter 10, page 4, and *Sulfanilic Acid from the People's Republic of China,* 57 FR 29705, 29708 (July 6, 1992), BAS and RTL claim that the Department's practice indicates that a six-month period from March 2002 to August 2002 should be examined in comparison to the prior six month period, rather than the three-month period proposed by petitioners. BAS and RTL provide a graph showing the average change in the level of silicon metal imports from month to month for the period 1998 to 2001, which they assert shows that the average percent change in the level of silicon metal imports from month to month was plus or minus forty-one percent. BAS and RTL conclude that based on these ''dramatic'' changes in silicon metal import levels, an unrepresentative comparison may result if the base period and comparison period chosen are too short. They claim that to avoid these distortions, the Department should examine the full period from the petition to the preliminary determination in comparison to an equal period prior to the petition.

[2] The Department has determined that ZAO Kremny and SKU, which are parts of SUAL-Holding Group, are affiliated with Pultwen Ltd. *See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and ZAO Kremny and SUAL-Kremny-Ural* (''Affiliation Memo''), dated September 11, 2002.

[3] RTL is the exporter of BAS's subject merchandise.

BAS and RTL also contend in their August 12, 2002, submission that the Department should consider that imports of silicon metal from Russia have maintained a stable proportion of total silicon metal imports. Moreover, citing shipment data provided by BAS and RTL, they contend that frozen conditions at the port of St. Petersburg may cause a drop in import levels from Russia during January, February, and March, and then cause apparent surges in Russian imports in the early spring.

Respondents ZAO Kremny/SKU and Pultwen Ltd. maintain that based on a five-month comparison period, the monthly shipment data they provided shows that there has been no post-petition surge in the quantity of silicon metal shipped to the United States after the filing of the petition.

In their August 29, 2002, submission, petitioners allege that BAS and RTL and ZAO Kremny/SKU and Pultwen improperly reported their shipment data, and suggest that the Department should rely on the official import data in examining critical circumstances. Citing *Notice of Preliminary Determination of Critical Circumstances: Silicomanganese From India*, 66 FR 53207, 53208 (''October 19, 2001'') (*''Silicomanganese from India''*); *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43190 (August 17, 2001); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars from Latvia*, 66 FR 8323, 8325 (January 30, 2001) (*''Rebars from Latvia''*), petitioners maintain that the Department has used a three-month pre-filing and post-filing period in numerous instances, and there is no reason to deviate from this practice in this investigation. They argue that BAS and RTL have not provided evidence to demonstrate that their seasonality argument is valid.

In determining whether the statutory criteria have been satisfied, we examined: (1) The evidence presented in petitioners' July 31, 2002, allegation of critical circumstances; (2) new evidence obtained since the initiation of the LTFV investigation (*i.e.*, additional import statistics released by the Census Bureau and company-specific shipment information); and (3) the ITC preliminary injury determination.

Because we are not aware of and there is no record evidence of any antidumping order in any country on silicon metal from Russia, we find that there is no reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to whether there was importer knowledge under section 733(e)(1)(A)(ii). In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling silicon metal at less than fair value, the Department normally considers margins of 25 percent or more for export price (''EP'') sales and 15 percent or more for constructed export price (''CEP'') sales sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). As noted by BAS and RTL, the Department generally bases its decision, with respect to knowledge, on the margins calculated in the preliminary determination. As indicated above, all sales by BAS and RTL are properly classified as EP sales. All sales from ZAO Kremny, SKU, and Pultwen Ltd. through the U.S. trading company are properly classified as CEP sales, all other sales from ZAO Kremny, SKU, and Pultwen Ltd. are properly classified as EP sales. The margins for BAS and RTL and ZAO Kremny, SKU, and Pultwen are in excess of 25 percent. Therefore, we impute knowledge of dumping in regard to exports by these companies.

Moreover, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department may look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department normally determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *Id.* The ITC has found that a reasonable indication of present material injury exists in regard to Russia. *See ITC Preliminary Determination.* As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports in this case.

In determining whether there are ''massive imports'' over a ''relatively short period,'' the Department ordinarily bases its analysis on import data for at least the three months preceding (the base period) and following (the comparison period) the filing of the petition. *See* 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* 19 CFR 351.206(h). We agree with respondents that it is our normal practice to include in our analysis data concerning the respondents' imports of subject merchandise up to the date of the preliminary determination, where such data are available. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada,* 67 FR 15539, 15540 (April 2, 2002) (*''Lumber from Canada''*); *Aramid Fiber of Poly-Phenylene Terephthalamide From the Netherlands,* 59 FR 23684, 23687 (May 6, 1994) and *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710, 30729 (June 8, 1999). Of the cases cited by petitioners, we note that in *Silicomananese from India,* we used all the company-specific shipment information available at the time of the preliminary determination, which resulted in a five-month comparison period, and in *Rebars from Latvia,* it is unclear what time period was used by the Department, although in the other rebar investigations we used an eight-month comparison period, which incorporated all of the information available at the time of the preliminary determination (*see Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova,* 65 FR 70696 (November 27, 2000)). Although we used a three-month comparison period in the preliminary determination in the countervailing duty investigation of lumber from Canada, in the final determination the Department did not address whether it should use additional data because the first prong of the test was not met. In the antidumping investigation of lumber from Canada, we used a six-month period. *See Lumber from Canada.* Because we agree with BAS and RTL that a longer period is appropriate, we have not considered the other arguments presented by BAS and RTL against a finding of ''massive imports'' (*e.g.*, volatility in silicon metal imports and seasonality) and petitioners' counter-arguments.

In this instance, both respondents have submitted shipment data through July 2002. BAS and RTL reported its shipments data based on the ''bill of lading'' month, and ZAO Kremny/SKU and Pultwen Ltd. reported shipments data using two different methodologies: The first data based on the date of invoice to the U.S. customer for all sales and the second based on different shipment methodologies for the two plants. In their original Section C Response, BAS and RTL explained that the date of shipment reported in the U.S. sales listing was the date on which the merchandise was loaded onto the ocean vessel at the port. *See* June 17, 2002, submission at 5. In describing its sales process, BAS and RTL noted that after production BAS informs RTL of the amount of silicon metal produced and available for sale and then loads the silicon metal onto railcars for shipment to a bonded warehouse in St. Petersburg, where it is stored for a certain length of time until shipment. *See* May 29, 2002, submission at 15 and 18. Because BAS and RTL invoice their sales of silicon metal to the United States while the material is stored at a bonded warehouse, we disagree with petitioners that the date of shipment from BAS's plant would be the appropriate date on which to base shipment data for purposes of our critical circumstances analysis. Moreover, based on an analysis of BAS and RTL's questionnaire responses, we find that the bill of lading date is an appropriate proxy for the date of shipment of the silicon metal from the bonded warehouse. *See* June 17, 2002, submission at 9. Therefore, for BAS and RTL we determine that it is appropriate to rely on the shipment date provided. With respect to ZAO Kremny/SKU and Pultwen Ltd., petitioners specifically challenge the methodology used to report SKU's shipments. ZAO Kremny/SKU and Pultwen defined date of shipment for ZAO Kremny as the date of shipment from the plant, and defined date of shipment for SKU as the date of shipment from the port. *See* July 2, 2002, submission at 18. ZAO Kremny/SKU,and Pultwen Ltd. explained that the date of shipment was defined differently because of differences in the sales process. *See* August 13, 2002, submission at 2. Based on the information provided by ZAO Kremny/SKU and Pultwen, we determine that given the different sales processes for sales produced by the ZAO Kremny plant and the SKU plant, ZAO Kremny/SKU and Pultwen Ltd. have properly defined date of shipment for both SKU and ZAO Kremny. *See* July 2, 2002, submission at Exhibit A–9. Consequently, for purposes of our critical circumstances analysis, we have relied on the shipment data prepared by ZAO Kremny/SKU and Pultwen Ltd. based on their defined date of shipment for each plant.

Accordingly, for both respondents we have based our analysis on shipment data for the five months preceding (the base period) and following (the comparison period) the filing of the petition. Pursuant to 19 CFR 351.206(h), we analyzed respondents' shipment data and found that imports were not massive as imports in the comparison period did not increase by at least 15 percent over imports in the base period. We therefore preliminarily find that critical circumstances do not exist with respect to BAS and RTL and ZAO Kremny/SKU and Pultwen Ltd.

With respect to exporters subject to the ''Russia-wide'' rate, the Department has considered the traditional critical circumstances criteria to determine whether critical circumstances exist. First, the dumping margin for the Russia-wide entity, 123.62 percent, exceeds the 25 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from sales of the dumped merchandise by respondents other than BAS and RTL and ZAO Kremny/SKU and Pultwen. With respect to massive imports for the Russia-wide entity, U.S. Customs data do not permit the Department to analyze imports from the Russia-wide entity of the product at issue, because it is not possible to link (and therefore subtract out) individual exporter's reported shipment data with U.S. Customs import data (*e.g.*, due to time differentials between export from Russia and import into the United States, the involvement of resellers, and split shipments). Because the U.S. Customs data include imports from companies who have cooperated in this investigation, we are therefore unable to analyze whether there have been massive imports from the single Russia-wide entity using information specific to the Russia-wide entity. In addition, we found no other independent sources of information covering all exports from the Russia-wide entity. Because we have no independent means by which to determine import levels for the Russia-wide entity, we have determined, as adverse facts available, that because this entity did not provide an adequate response to our questionnaire, there were massive imports of subject merchandise. This is consistent with past Department practice. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 48233, 48239 (September 19, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72263 (December 31, 1998). We further note that in the instant case, aggregate imports of silicon metal from Russia during the comparison period increased by 19 percent. Therefore, because all of the necessary criteria have been met, in accordance with section 733(e)(1) of the Act, the Department preliminarily finds that critical circumstances do exist with respect to the Russia-wide entity.

Non-Market Economy Country Status

On June 6, 2002, the Department revoked Russia's status as a non-market economy (''NME''), effective April 1, 2002. *See Memorandum from Albert Hsu, Barbara Mayer, and Christopher Smith through Jeffrey May, Director, Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration: Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping Law,* dated June 6, 2002. On June 20, 2002, BAS and RTL requested the Department analyze the transactions of these companies for this investigation in accordance with the antidumping rules applicable to market economies. BAS and RTL stated that the Department's analysis of Russia's economy ''was based on a review of historic data that applies to the investigation period in this case, July 1 through December 31.'' *See* Letter from BAS and RTL, dated June 20, 2002. Because the period of investigation pre-dates the effective date of the Department's determination, we are continuing to utilize our methodology in this investigation. Should an antidumping order be issued in this case, the NME antidumping duty rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. BAS and RTL (the exporter of BAS's subject

merchandise) and ZAO Kremny/SKU have submitted separate rates information in their section A responses, have stated that there is no element of government control, and have requested a separate, company-specific rate.

The Department's separate rates test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995). To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''Sparklers''), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*''Silicon Carbide''*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508. Respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including: (1) The Federal Law on Joint Stock Companies (November 24, 1995); (2) the Russian Federation Federal Act on State Regulation of Foreign Trade Activity (July 7, 1995) (amended as Federal Law No. 32–FZ (February 10, 1999)); (3) the President of the Russian Federation's Decree No. 721 (July 1, 1992); and (4) the Russian Federation Civil Code (October 21, 1994) at Articles 49 and 50. In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 61261, 61268 (November 10, 1999); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 1139, 1142 (January 7, 2000).[4] We have no new information in this proceeding which would cause us to reconsider this determination. According to BAS and RTL and ZAO Kremny/SKU, silicon metal exports are not affected by export licensing provisions or export quotas. Based on the assertions of BAS and RTL and ZAO Kremny/SKU, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of BAS and RTL and ZAO Kremny/SKU with respect to these companies' silicon metal export sales.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. BAS and RTL and ZAO Kremny/SKU have each asserted the following: Each company

(1) establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; and (4) retains the proceeds of its export sales and uses profits according to its business needs although in accordance with the Law on Hard Currency Regulation and Control, they are obligated to sell 50 percent of all foreign currency earned. Additionally, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that BAS and RTL and ZAO Kremny and SKU have met the criteria for the application of separate rates.

Russia-Wide Rate

In NME cases, it is the Department's policy to assume that all exporters located in the NME comprise a single exporter under common control, the ''NME entity.'' This presumption can be rebutted. The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely Section A responses from ZAO Kremny/SKU and Pultwen Ltd., and BAS and RTL. Our review of U.S. import statistics, however, reveals that these companies did not account for all imports of subject merchandise into the United States from Russia. We received no responses from other exporters. Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire constitute a single enterprise under common control by the Russian government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (*''Bicycles''*). The Russia-wide rate applies to all entries of subject merchandise except for entries from ZAO Kremny/SKU and BAS.

[4] The Department's findings in the preliminary determinations of these proceedings were unchanged in the final determinations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000) (*''Russian Cold-Rolled Final Determination''*) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 42669, 42671 (July 11, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Facts Available

Russia-Wide Entity

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. As explained above, certain exporters of the subject merchandise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the Russia-wide rate because these entities did not respond.

ZAO Kremny/SKU

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. As indicated in the ''Background'' section above, on August 27, 2002, the Department determined that Pultwen Ltd. is affiliated with a U.S. trading company through a principal/agent relationship. *See Affiliation Memo for Pultwen and U.S. Trading Company.* Consequently, for purposes of our margin analysis for ZAO Kremny/SKU and Pultwen Ltd., it is necessary for the Department to examine the affiliated U.S. trading company's sales of Russian silicon metal rather than Pultwen's sales to the affiliated U.S. trading company. On July 3, July 30, August 20, and August 28, 2002, the Department requested that ZAO Kremny/SKU and Pultwen Ltd. report the U.S. trading company's resales of silicon metal purchased from Pultwen to unaffiliated parties during the POI and that they provide a complete Section C questionnaire response for the U.S. trading company. In the Department's July 3, 2002, questionnaire, the Department also requested that ZAO Kremny/SKU and Pultwen Ltd. provide a Section A questionnaire response for the U.S. trading company, which was submitted on July 26, 2002. However, ZAO Kremny/SKU and Pultwen Ltd. did not provide the U.S. trading company's U.S. sales of silicon metal. In their August 27, 2002, submission, ZAO Kremny/SKU and Pultwen Ltd. explained that ''despite repeated requests, {the U.S. trading company□ has declined to provide this information'' and thus ''it is regrettably impossible to comply with the Department's request.'' *See* August 27, 2002, submission at 4–5; and *see also* August 13, 2002, submission at 4–5. ZAO Kremny/SKU and Pultwen Ltd. provided copies of correspondence with the U.S. trading company. As the correspondence is proprietary, the summary of this correspondence can be found in the business proprietary version of the *ZAO Kremny/SKU Analysis Memorandum for the Preliminary Determination,* dated September 13, 2002. In their July 26, August 13, and August 27, 2002, submissions, ZAO Kremny/SKU and Pultwen Ltd. argue that this data is not necessary for the Department's analysis as there can be no finding of an agency relationship based on the facts in this case and the Department's practice in other cases. In their August 29, 2002, submission, petitioners argue that the Department should apply total facts available to ZAO Kremny/SKU and Pultwen Ltd., and the affiliated trading company. Moreover, they claim that the Department should apply an adverse inference.

The Department has determined that the U.S. trading company is affiliated with Pultwen. *See Affiliation Memo.* Interested parties will have a chance to comment on this determination according to the briefing schedule outlined below. However, for purposes of the preliminary determination, the Department is required to base its analysis on the affiliated U.S. trading company's U.S. sales of silicon metal. Because these sales were not reported, we must use the facts available. Silicon metal sales by ZAO Kremny/SKU and Pultwen Ltd. to the affiliated U.S. trading company constitute a significant proportion of their total sales of silicon metal to the United States during the POI. We cannot determine the volume of U.S. sales made by the affiliated U.S. trading company because of the failure of respondents to submit the requested sales data. Therefore, based on the significant proportion of sales to the affiliated U.S. trading company, we must presume that sales of the subject merchandise by the affiliated trading company are also significant. However, we do not find that the application of total facts available is appropriate in this case. Therefore, we are only applying facts available to that quantity of U.S. sales sold to the affiliated U.S. trading company during the POI. We disagree with ZAO Kremny/SKU and Pultwen Ltd.'s argument that the Department could use the sales information on the record from the affiliated U.S. trading company. The Department does not have the starting price or quantity for the CEP sales from the affiliated U.S. trading company during the POI, and there is not complete and verifiable information for the affiliated U.S. trading company's expenses. Therefore, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used partial facts available for ZAO Kremny/SKU.

Adverse Facts Available

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

Russia-Wide Rate

The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. Therefore, pursuant

to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

ZAO Kremny/SKU

ZAO Kremny/SKU and Pultwen Ltd. have explained that they repeatedly requested that the U.S. trading company submit its sales of silicon metal, but that they were unable to compel the U.S. trading company to provide this information. Nevertheless, it was also the responsibility of the affiliated U.S. trading company to provide its sales information. The sales of ZAO Kremny/SKU and Pultwen Ltd. through their affiliated U.S. trading company are CEP sales (*see* below). For purposes of the CEP transaction, in essence, ''the statute treats the exporter and the U.S. affiliate collectively, rather than independently, regardless of whether the exporter controls the affiliate.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 24329, 24367–68 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''). Thus, because the statute requires that the Department base its margin calculations for the affiliated U.S. trading company's sales on record information, the Department required that ZAO Kremny/SKU, Pultwen Ltd., and the affiliated U.S. trading company, *collectively,* provide the necessary price data for ZAO Kremny/SKU and Pultwen Ltd.'s U.S. sales through the affiliated U.S. trading company. *See id.* It is undisputed that ZAO Kremny/SKU and Pultwen Ltd. and the affiliated U.S. trading company failed to provide this information as requested by the Department. Moreover, ZAO Kremny/SKU, Pultwen Ltd., and the affiliated U.S. trading company have not demonstrated to the Department's satisfaction that the affiliated U.S. trading company is unable to provide the necessary sales data. Therefore, we find that the failure to report these sales constitutes a failure of respondents to cooperate to the best of their ability. Pursuant to section 776(b) of the Act, the Department preliminarily finds that with respect to ZAO Kremny and SKU, in selecting from among the facts available, an adverse inference is appropriate. However, we have not used total facts available in this case given the circumstances at hand. ZAO Kremny/SKU and Pultwen Ltd. have explained that they have made ''every effort to secure the cooperation of {the affiliated U.S. trading company} in this investigation * * *'' (*see* September 4, 2002, submission at 2), and have provided on the record a statement from the affiliated U.S. trading company that it is not in the company's best interests to cooperate with ZAO Kremny/SKU and Pultwen Ltd. by completing a response (*see* August 28, 2002, submission at Exhibit 2). Given these claims and the fact that ZAO Kremny/SKU and Pultwen have provided complete and verifiable U.S. sales data for their U.S. sales which were not made through the affiliated U.S. trading company as well as complete and verifiable factors of production data, we applied adverse facts available to the sales made through the affiliated U.S. trading company.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available for both the Russia-wide entity and the quantity of unreported U.S. sales by ZAO Kremny/SKU through the affiliated U.S. trading company, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for BAS. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that BAS's calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the Russia-wide rate is 123.62 percent. For the preliminary determination, the margin applied to the unreported sales by ZAO Kremny/SKU is 123.62 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final Russia-wide margin and the final margin to apply to the unreported U.S. sales by ZAO Kremny/SKU.

Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that the Philippines, Egypt, Thailand, Colombia, and Tunisia are countries comparable to Russia in terms of economic development. *See Memorandum from Jeffrey May, Director, to James C. Doyle, Program Manager: Antidumping Duty Investigation on Silicon Metal from the Russian Federation,* dated April 30, 2002 (''*Policy Memo*'').

On May 2, 2002, we requested comments on surrogate country selection, significant production in the

potential counties, and surrogate values for the factors of production. On June 6, 2002, we received comments from petitioners and a joint submission from ZAO Kremny/SKU, Pultwen Ltd., BAS and RTL. On July 8, 2002, petitioners submitted comments and data to be used to value the factors of production. On July 24, 2002, we received a joint submission from ZAO Kremny/SKU, Pultwen Ltd., BAS and RTL providing comments and surrogate country factor values to be used to value the factors of production. On August 23, 2002, petitioners submitted comments on respondents' joint July 24, 2002 submission of South African surrogate data and comments. For purposes of the preliminary determination, the Department has selected Egypt as the primary surrogate country for Russia to value the factors of production for this investigation. *See Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary: Selection of a Surrogate Country: Preliminary Determination: Antidumping Investigation on Silicon Metal from the Russian Federation* (September 13, 2002).

Therefore, we have relied, where possible, on Egyptian information in calculating NV by using Egyptian prices to value the factors of production, when available and where appropriate. We have obtained and relied upon public information wherever possible. For certain factors of production values, where we could not locate usable Egyptian prices, we used Thai import prices (for charcoal) or domestic South African prices (for quartzite and quartzite fines). *See* Memorandum from Cheryl Werner on Factors of Production Valuation for the Preliminary Determination: *Preliminary Determination of Sales at Less Than Fair Value: Silicon Metal from the Russian Federation* (September 13, 2002) (''*Factor Valuation Memorandum*'').

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Fair Value Comparisons

BAS

To determine whether sales of silicon metal to the United States by RTL were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

ZAO Kremny/SKU

To determine whether sales of silicon metal to the United States by ZAO Kremny/SKU and Pultwen Ltd. were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Transactions Investigated

As stated at 19 CFR 351.401(i), the Department normally will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale.

BAS

For all U.S. sales, BAS and RTL reported the date of invoice issued by RTL to the final customer as date of sale. BAS and RTL stated that there were no changes to the unit price between the sales contract date and invoice date of RTL's U.S. sales of subject merchandise during the POI and none of the contract quantities changed in excess of the tolerance specified in the contract during the POI. However, BAS and RTL explained that a significant percentage of contract quantities of subject merchandise changed during the POI. Therefore, the Department is using RTL's invoice date as the date of sale for the preliminary determination.

ZAO Kremny/SKU

For all U.S. sales, ZAO Kremny/SKU and Pultwen Ltd. reported date of sale as the earlier of date of shipment or the date of invoice issued by Pultwen Ltd. to the final customer. ZAO Kremny, SKU, and Pultwen Ltd. explained that in accordance with the Department's normal practice, date of sale cannot be later than date of shipment. All sales to one customer were based on long-term contracts for chemical grade silicon metal from ZAO Kremny. All other U.S. sales were made pursuant to short-term contracts.[5] In their July 26, 2002, submission, petitioners argue that for the sales made pursuant to long-term contracts, the appropriate date of sale is the date of contract. *See* July 26, 2002, submission at 6–8.

Although ''the Department prefers to use invoice date as the date of sale, we are mindful that this preference does not require the use of invoice date if the facts of a case indicate a different date better reflects the time at which the material terms of sale were established.'' *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, 32835–36 (June 16, 1998) (''*Pipe from Korea*''). For the sales made pursuant to long-term contracts, the record evidence indicates that the quantity and price were set at the time Pultwen issued its Sales Note. *See* July 22, 2002, submission at 4; *see* also August 13, 2002, submission at 1. For the preliminary determination, we find that for the sales made pursuant to long-term contracts, the date of contract is the proper date of sale in accordance with the Department's regulations at 19 CFR 351.401(i). For the U.S. sales made pursuant to short-term contracts, we have used respondents' reported date of sale (*i.e.*, the earlier of date of shipment or the date of invoice issued by Pultwen Ltd.).

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

BAS

In its May 29, 2002, Section A response, BAS and RTL classified the reported sales as EP. We are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by RTL to an unaffiliated purchaser in the United States. We calculated weighted-average EPs for RTL's U.S. sales. We based EP on prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign

[5] The Department has not considered the proper date of sale for the sales by the affiliated U.S. trading company since these sales were not reported.

inland freight from the plant to the port of exportation. RTL reported that it used a non-market economy carrier for foreign inland freight; therefore, we valued foreign inland freight using an appropriate surrogate value for rail transportation costs. *See Factor Valuation Memorandum.*

ZAO Kremny/SKU

In its June 17, 2002, Section C response, ZAO Kremny/SKU and Pultwen Ltd. classified the reported sales as EP. However, as explained above, the Department has determined that during the POI, Pultwen Ltd. was affiliated with a U.S. based trading company. In its July 26, 2002, Section A questionnaire response, the affiliated U.S. trading company explained that it is an importer, and that it sells to its customers in the United States after the importation of the merchandise. *See* July 26, 2002, submission at 11–12. Therefore, sales by the affiliated U.S. trading company would be properly classified as CEP sales; however, as explained above, since the U.S. sales by the affiliated U.S. trading company were not reported, the Department has applied adverse facts available.

For the U.S. sales by ZAO Kremny/SKU and Pultwen Ltd. that did not go through the affiliated U.S. trading company, we are using EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by Pultwen Ltd. to unaffiliated purchasers in the United States. We calculated weighted-average EPs for Pultwen Ltd.'s U.S. sales. We based EP on prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of exportation, brokerage and handling expenses, ocean freight charges, and U.S. inland freight charges. ZAO Kremny/SKU and Pultwen Ltd. reported that they used a non-market economy carrier for foreign inland freight; therefore, we valued foreign inland freight using an appropriate surrogate value for rail transportation costs. *See Factor Valuation Memorandum.* ZAO Kremny/SKU and Pultwen Ltd. reported that they used market economy carriers for U.S. inland freight charges, and reported that they used both market and non-market economy carriers for brokerage and handling expenses and ocean freight charges. In accordance with 19 CFR 351.408(c)(1) and consistent with the Department's practice (*Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000) and accompanying Issues and Decision Memorandum (Changes from the Preliminary Determination)), we have used the weighted-average amount paid to market economy freight carriers as the basis for the adjustment for freight expenses paid to NME carriers. *See Factor Valuation Memorandum.*

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by each producer for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See also Lasko Metal Products* v. *United States,* 437 F. 3d 1442, 1445–1446 (Fed. Cir. 1994) (''*Lasko*''). In this case, BAS and RTL did not report any market economy purchases. ZAO Kremny/SKU reported market economy purchases of certain inputs. *See* ''Factor Valuation'' section below.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV for BAS and RTL based on factors of production reported by the Russian producer BAS for the POI, and calculated NV for ZAO Kremny/SKU and Pultwen Ltd. based on factors of production reported by the Russian producer: ZAO Kremny/SKU for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For a detailed description of all surrogate values used for each producer, *see Factor Valuation Memorandum.*

As explained above, ZAO Kremny/SKU sourced certain raw material inputs from market economy suppliers and paid for them in market economy currencies. The evidence provided by ZAO Kremny/SKU and Pultwen Ltd. indicated that its market economy purchases were significant. *See* August 28, 2002, submission at Exhibits 11 and 12. Thus, the Department has determined to use the market economy prices as reported, in accordance with 19 CFR 351.408(c)(1). Where the terms of delivery were not to the producers' plants, we have added to the market economy price, a freight cost, by applying a surrogate freight value to the reported distance from the place of shipment to the plant. *See Factor Valuation Memorandum.*

As appropriate, we adjusted input prices by including freight costs to derive delivered prices. We added to the surrogate values based on import statistics a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997). For domestic values (*i.e.*, quartzite), we calculated a surrogate freight cost using the distance from the Russian domestic supplier to the factory.

For the raw material surrogate values, except for the surrogate values for quartzite, quartzite fines and wood charcoal, we used values for Egypt as reported in the United Nations Statistical Division CommodityTrade Database System (''UNCTS'') for 1998 or 1999, deducting those values from countries previously determined by the Department to be NME countries, or aberrational data. We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 6482 (February 12, 2002). As the UNCTS data are reported in U.S. dollars, we did not need to convert these values. Since the data from this publication were not contemporaneous with the POI, we adjusted material values for inflation by using the Producer Price Index (''PPI'') rate for the United States, as discussed in the ''Inflation/Deflation Factor'' section of the *Factor Valuation Memorandum.* Because Egypt had small

import quantities at high prices of quartzite, quartzite fines, and wood charcoal and therefore appeared aberrational relative to other information available to the Department, we used South African domestic prices for quartzite and quartzite fines, and an import value for Thailand, as reported in the UNCTS for 1998, for wood charcoal. *See Factor Valuation Memorandum.*

To value electricity, we have accepted petitioners' submitted rate of $0.0177/kWh for Egypt, which was from the Department's Trade Information Center (''TIC'') website (http://www.trade.gov/td/tic). *See Factor Valuation Memorandum.*

Both of the producers reported byproducts. BAS reported silicon fines as a byproduct and provided documentation showing it reused the fines in the production process or sold them during the POI. ZAO Kremny/SKU reported gas scrubbing slurry, cyclone separator dust, refining slag, and quartzite screens as byproducts at the ZAO Kremny plant, and provided evidence that cyclone separated dust, refining slag, and quartzite screens are sold. It reported silicon fines, silicon dust, and slag as byproducts at the SKU plant, and provided documentation showing it sold them during the POI. As explained in *Bulk Aspirin,* it is the Department's practice to offset production costs with the sales revenue of the recoveries/byproducts. *See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China,* 65 FR 33805 (May 25, 2000) and accompanying *Issues and Decision Memorandum* at Comment 13. It is also the Department's practice to grant offsets for recoveries/byproducts which are re-entered into the production process. *See Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Steel Concrete Reinforcing Bars From The People's Republic of China,* 66 FR 33522 (June 22, 2001) and accompanying *Issues and Decision Memorandum* at Comment 5. Therefore, we have granted an offset only for the amount of the byproduct/recovery actually sold or reused during the POI. We valued all byproducts using South African domestic prices for quartzite fines. *See Factor Valuation Memorandum.*

To determine appropriate overhead, financial expense, selling, general and administrative (''SG&A'') expense, and profit percentages to be applied to the NV calculation, we used relevant data from a 1999–2000 financial statements of Sinai Manganese Company (''Sinai''), an Egyptian ferro-manganese alloys producer.

Labor was valued using the regression-based wage rate for Russia provided by the Department, which is available on the Import Administration's website, in accordance with 19 CFR 351.408(c)(3).

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise from ZAO Kremny/SKU and BAS entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the Russia-wide entity, as indicated above, we have made a preliminary affirmative critical circumstances finding. Therefore, for imports of Russian silicon metal from other than ZAO Kremny/SKU or BAS, we are directing the U.S. Customs Service to suspend liquidation of such shipments entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

SILICON METAL

Exporter	Weighted-average margin percent)
ZAO Kremny/SKU	91.06
BAS	123.62
Russia-Wide Rate	123.62

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

We will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 13, 2002.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–24004 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

International Code Council: The Update Process for the International Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The International Code Council (ICC), promulgator of the International Codes and Standards, maintains a process for updating the entire family of International Codes based on receipt of proposals from interested individuals and organizations involved in the construction industry as well as the general public. The codes are updated every three years (2000—current edition, 2003, 2006 editions, etc.) with an intervening Supplement published every 18 months. There are two hearings for each code development cycle; the first where a committee considers the proposals and recommends an action on each proposal and the second to consider comments submitted in response to the committee action on proposals. The schedule is printed below.

The purpose of this request is to increase public participation in the system used by ICC to develop and maintain its codes and standards. In accordance with responsibilities assigned to NIST by the National Technology Transfer and Advancement Act of 1995, NIST is publishing this notice as a public service in behalf of ICC. NIST does not necessarily endorse, approve, or recommend any of the codes or standards referenced in the notice.

DATES: The date of next code hearings is September 29—October 4, 2002 at the Fort Worth Convention Center, Fort Worth, TX.

Completion of this cycle results in the 2003 edition of the International Codes.

Updates to the schedule are posted on the ICC website at: *http://www.intlcode.org.*

FOR FURTHER INFORMATION CONTACT: Mike Pfeiffer, PE, Secretary, Code Development, 4051 West Flossmoor Road, Country Club Hills, IL 60478. Telephone: 708/799–2300 Extension 338.

SUPPLEMENTARY INFORMATION:

Background

ICC produces the only family of Codes and Standards that are comprehensive, coordinated and necessary to regulate the built environment. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning new and existing construction.

The Code Development Process is initiated when proposals from interested persons, supported by written data, views, or arguments are solicited and published in the Proposed Changes document. This document is distributed a minimum of 30 days in advance of the first hearing and serves as the agenda.

At the first hearing, the ICC Code Development Committee considers testimony on every proposal and acts on each one individually (Approval, Disapproval, or Approval as Modified). The results are published in a report entitled the Report of the Public Hearing, which identifies the disposition of each proposal and the reason for the committee's action. Anyone wishing to submit a comment on the committee's action, expressing support or opposition to the action, is provided the opportunity to do so. Comments received are published and distributed in a document called the Final Action Agenda which serves as the agenda for the second hearing. Proposals which are approved at the second hearing are incorporated in either the Supplement or Edition, as applicable, with the next cycle starting with the submittal deadline for proposals.

Proponents of proposals automatically receive a copy of all documents (Proposed Changes, Report of the Public Hearing and Final Action Agenda). Interested parties may also request a copy, free of charge, from ICC headquarters at: International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041–3401; or download a copy from the ICC web site at *http://www.intlcode.org.*

The International Codes and Standards consist of the following:

International Building Code
ICC Electrical Code
International Energy Conservation Code
International Existing Building Code
International Fire Code
International Fuel Gas Code
International Mechanical Code
ICC Performance Code for Buildings and Facilities
International Plumbing Code
International Private Sewage Disposal Code
International Property Maintenance Code
International Residential Code
International Urban-Wildland Interface Code
International Zoning Code
ICC/ANSI A 117.1 Accessible and Usable Buildings and Facilities
ICC Standard on Bleachers, Folding and Telescopic Seating and Grandstands

The maintenance process for ICC Standards such as ICC/ANSI A 117.1 and the ICC Standard on Bleachers, Folding and Telescopic Seating and Grandstands follows a similar process of soliciting proposals, committee action, public comment and ultimately the update and publication of the standard.

Dated: September 16, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–24002 Filed 9–19–02; 8:45 am]

BILLING CODE 1310–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020821203–2203–01]

RIN 0648–ZB24

Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models

ACTION: Notice of availability of financial assistance.

SUMMARY: The recently established NOAA/NASA Joint Center for Satellite Data Assimilation (JCSDA) announces the availability of financial assistance for research in the area of satellite data assimilation in numerical weather and climate prediction models. The goal of the JCSDA is to accelerate the use of observations from earth-orbiting satellites in operational numerical prediction models for the purpose of improving weather forecasts, improving seasonal to interannual climate forecasts, and increasing the physical accuracy of climate data sets. The advanced instruments of current and planned NOAA, NASA, DoD, and international agency satellite missions will provide large volumes of data on atmospheric, oceanic, and land surface conditions with accuracies and spatial resolutions never before achieved. The JCSDA will ensure that the nation realizes the maximum benefit of its investment in space as part of an advanced global observing system. Funded proposals will help accelerate the use of satellite data from both operational and experimental spacecraft in operational and product driven weather and climate prediction environments, develop community radiative transfer models, develop improved surface emissivity models, and advance data assimilation science.

This notice of availability of financial assistance is being managed by NOAA on behalf of the JCSDA.

DATES: Proposals must be received by the National Environmental Satellite, Data, and Information Service (NESDIS) at the address identified in the **ADDRESSES** section of this notice no later than 5 p.m. EST on November 15, 2002. Facsimile transmissions and electronic mail submissions will not be accepted. Late applications will not be considered and will be returned to the applicant.

ADDRESSES: Send proposals to the NOAA/NASA Joint Center for Satellite Data Assimilation, 5200 Auth Road, Room 701, Camp Springs, MD 20746–4304. Proposals should cite this Notice and be sent to the attention of Kathy LeFevre.

FOR FURTHER INFORMATION: Regarding administrative questions, Kathy LeFevre, (301) 763–8127, *Kathy.Lefevre@noaa.gov.* Technical points of contact are Richard Rood, Acting Director of the JCSDA, (301) 286–8834, *rrood@doa.gsfc.nasa.gov* or Steve Lord, Acting Deputy Director, JCSDA, (301) 763–8000 ext. 7200, *Stephen.Lord@noaa.gov.*

SUPPLEMENTARY INFORMATION: *Authority:* Statutory authority for this program is provided under 49 U.S.C. 44720 and 15 U.S.C. 5631.

Catalog of Federal Domestic Assistance (CFDA): This program is listed in the Catalog of Federal Domestic Assistance under Number 11.440, Environmental Sciences, Applications, Data, and Education (previously titled Research in Remote Sensing of the Earth and Environment).

Funding Availability

Total funding available for this Notice is anticipated to be approximately $2,000,000. Individual annual awards in the form of grants or cooperative agreements are expected to range from $50,000 to $150,000, although successful proposals that are deemed by the Selection Panel to be exceptionally meritorious may be larger.

Award Period

Project duration will be 1–3 years, with funding for multi-year projects contingent on satisfactory progress in prior years and funding availability. There is no guarantee that sufficient funds will be available to make awards for all projects, nor that all research areas of interest will be supported. Publication of this Notice does not obligate NOAA toward any specific grant or cooperative agreement or to obligate all or any part of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement.

Eligibility

Eligible applicants are institutions of higher education, other non profits, commercial organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other. Joint proposals involving Federal and external investigators are encouraged. Proposals selected for funding from non-Federal applicants will be funded through a grant or cooperative agreement depending upon the amount of collaboration, participation, or intervention by NOAA in the management of the project. Proposals selected for funding from NOAA scientists shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer.

Please Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720. Funding for contractual arrangements for services or products for delivery to NOAA is not available under this notice. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Program Description

The NOAA/NASA Joint Center for Satellite Data Assimilation is a distributed center that engages units of the NASA Goddard Space Flight Center (GSFC), Data Assimilation Office (DAO), NASA's Seasonal-to-Interannual Prediction Project (NSIPP), the NOAA/NESDIS Office of Research and Applications (ORA), the NOAA/National Weather Service (NWS)/National Centers for Environmental Prediction (NCEP)/Environmental Modeling Center (EMC), and the NOAA/Office of Oceanic and Atmospheric Research (OAR). The Joint Center's goal is to accelerate the abilities of NOAA and NASA to ingest and effectively use the large volumes of data from current satellite-based instruments and planned satellite missions over the next 10 years. JCSDA activities are divided into infrastructure development and proposal-driven scientific projects. Infrastructure activities will focus initially on the development and maintenance of a scientific backbone for the JCSDA, including a community-based fast radiative transfer model, a community-based surface emissivity model, and numerical prediction systems for performing assimilation experiments with real and simulated observations from new and future satellite instruments. The proposal-driven scientific projects are the primary mechanism for accelerating the transition of research and technological advances in remote sensing and data assimilation into the operational and product driven weather and climate prediction environment.

This research is to accelerate the science of satellite data assimilation in numerical weather forecast models. A primary measure of impact in this solicitation will be improvement of numerical weather prediction models and forecast accuracy. For numerical weather prediction applications, research can be performed NWP models and assimilation systems similar to the NOAA or NASA systems.

Research supporting development of the radiative transfer models used in assimilation applications should be in fast radiative transfer codes such as those used in real-time NWP.

Broader research topics in data assimilation, data impact, and improvement of radiative schemes for data assimilation applications that do not have the potential for direct application to real-time NWP systems are of less interest for this announcement.

System Documentation

Prospective applicants should review JCSDA documentation at:

NOAA/NCEP data assimilation system: *http://sgi62.wwb.noaa.gov:8080/RTPUB/index.html*

NASA/DAO data assimilation system: *http://dao.gsfc.nasa.gov/Intranet/GEOS4*

NASA/NSIPP data assimilation system: *http://nsipp.gsfc.nasa.gov/research/research_main.html*

OPTRAN: http://airs3.ssec.wisc.edu/~paulv/#F90 RTM

Project Priority Areas of Investigation

This announcement calls for proposals for scientific projects in the high-priority project areas described below. If investigators are uncertain about the applicability of their proposed research to the priorities of the JCSDA, they should discuss their ideas with the appropriate technical point of contact listed below, prior to submitting their proposals.

Radiative Transfer Models (Technical Point of Contact: Al Gasiewski, 303–497–7275; Al.Gasiewski@noaa.gov): Precise and fast means of calculating observed satellite radiances and their parametric derivatives for specific bands are essential for satellite data assimilation. Algorithms are sought for both microwave and infrared satellite bands. Proposals are encouraged that focus on (1) fundamental issues in atmospheric absorption by gases and/or absorption and scattering by aerosols, cloud particles, and/or precipitating hydrometeors; and (2) innovative radiative transfer solutions applicable to direct radiance assimilation. In the first case, an emphasis is placed on improved dielectric, spectral line, and/or continuum models and size/shape distributions that will decrease current errors in the calculation of satellite observed radiances. In the latter case, the emphasis is on fundamental improvements to existing radiative transfer models which extend the capability to assimilate IR and/or microwave radiances within cloudy and/or precipitating regions. For example, proposals could focus on:

1. Continuum and/or spectral line transmittance models,
2. Aerosol, cloud, and precipitation size/shape distribution models,
3. Mixed-phase dielectric models,
4. Hydrometeor absorption and/or scattering models,
5. Microwave and IR surface emission models,
6. Surface reflectance models including bidirectional properties,
7. Algorithms for performing fast forward calculations,
8. Development and application of tangent linear models,
9. Application of advanced radiative transfer models in radiance assimilation, or
10. Incorporation of all four Stokes' parameters.

Note: This priority area is intended for fundamental improvements in radiative transfer that are not related to specific satellite instruments. The proposed research should advance the state of the art leading to improved assimilation of satellite observations in general. The radiative transfer topics in the other sections are intended to advance the use of current or planned instruments, *i.e.*, they are more instrument specific.

Atmospheric soundings (Technical Point of Contact: Lars-Peter Riishojgaard, 301–614–6245; *Larspr@dao.gsfc.nasa.gov*): Several new high-resolution infrared sounding instruments (*e.g.*, AIRS, CrIS, IASI) will be launched over the course of the next 5–6 years, and maximizing the impact on numerical weather prediction and data assimilation systems of these new instruments has a high priority in the community. Likewise, several different areas of improvement in the use of the currently available data from satellite sounders have been identified.

1. Improvement and/or enhancement to the JCSDA radiative transfer models for advanced sounding instruments, incorporating cloud and aerosol effects, with the aim of working toward (a) assimilation of cloudy data, (b) aerosol correction of retrieved quantities, and (c) improved surface emissivity for use of data over land and ice (see Radiative Transfer Models, above).
2. Studies addressing the use of sounder data above cloudy areas; estimation of cloud-top height for the purpose of channel selection.
3. Observation System Simulation Experiments (OSSEs) using the JCSDA OSSE systems for high-resolution infrared sounders (*e.g.*, AIRS, CrIS, IASI) aimed at examining the trade-off between the size of the instrument field of view and the noise characteristics.
4. Data selection and thinning methods aimed at reducing the number of horizontal locations for which data are assimilated in a manner that preserves as much information as possible.
5. Channel selection and/or data compression methods aimed at reducing the number of data points reported per profile at a minimum loss of profile information.

Clouds and Precipitation (Technical Point of Contact: John Derber, 301–763–8000, X7230; *John.Derber@noaa.gov*): The proper inclusion of clouds and precipitation observations is one of the most difficult problems in data assimilation. However, the benefits of incorporating this data are expected to be significant for directly enhancing the predictive skill of moist components (*e.g.*, clouds, precipitation, convection, icing, etc.) of the short and long-term forecasts and indirectly enhancing all other components of the models.

The incorporation of cloud and precipitation data will require development of many components of the data assimilation system. These developments may include not only appropriate forward models, error statistics, bias correction and quality control, but also development of appropriate moist balances, new techniques for handling non-linearities in the balance equations or forward models, and modification of the model's parameterizations to increase compatibility with the observations and to eliminate inappropriate discontinuities. The incorporation of precipitation and clouds in the assimilation systems will require addressing a broad range of problems, individual proposals directed towards components of the problem will be expected to be closely coordinated with NOAA/NCEP and/or NASA/DAO to be compatible and consistent with proposals addressing other components. For example, proposals could focus on:

1. Forward models for cloud and precipitation observations from specific instruments.
2. Bias correction and quality control procedures for specific instruments.
3. Specification of observation error statistics for specific instruments and forward models.
4. Moist balance constraints to minimize cloud/precipitation spin-up/spin-down in data assimilation systems.
5. Definition of background error statistics for moisture variables in assimilation systems.
6. Efficient minimization algorithms for nonlinear functions resulting from cloud/precipitation assimilation.

Land Surface (Technical Point of Contact: Dan Tarpley, 301–763–8042 X117; *Dan.Tarpley@noaa.gov)*: Satellite data contains much information about the land surface that is not now utilized in NWP and climate models. There are several reasons for this. One is the difficulty in deriving physical quantities that can be used in land surface physics packages from common remote sensing quantities. Examples are: (1) Derivation of leaf area index or vegetation fraction from NDVI or basic window channel reflectances, (2) the estimation of snow fraction and snow albedo from satellite brightness measurements, and (3) estimation of surface thermal emissivity from multispectral window channel data. Another difficulty is the complexity of assimilation of satellite window band observations into complex surface models. Forward models and adjoint formulations are very difficult in the atmospheric window regions of the spectrum. For example, proposals could focus on:

1. Timely (for operational weather prediction) retrieval of snowpack properties from satellite observations including snow fraction, snow albedo, snow depth, snow water content, and snow cover temperature.
2. Timely retrieval of vegetation properties from satellite observations including green vegetation fraction, leaf area index, canopy temperature, soil surface temperature, and canopy roughness.
3. Development of forward models for reflected solar radiation in atmospheric window bands for specific instruments (see Radiative Transfer Models, above).

Should include bidirectional properties of the land surface.

4. Development and demonstration in variational land data assimilation of adjoint models for land physics models and treatments for background error covariances for use with NWP models.

5. Intercomparison of land assimilation techniques such as adjoint models/variational methods, Kalman filters, neural networks, nudging, and direct insertion for use with NWP models.

Oceans (Technical Point of Contact: Michele Rienecker, 301–614–5642; *Michele.Rienecker@gsfc.nasa.gov*) Ocean data assimilation is an emerging technology with applications that span timescales from weather (hurricane forecasting, marine safety) to seasonal-to-interannual climate forecasts to longer-term climate analyses. The challenges confronting ocean data assimilation stem from the paucity of observational data to constrain the models and to provide estimates of errors and from the strong negative influence of atmospheric forcing errors on estimates of the ocean state from numerical models. It is often difficult to distinguish errors and biases in a model from those associated with external forcing.

Successful proposals will require close coordination with NOAA/NCEP and/or NASA/NSIPP. For example, proposals could focus on:

1. Estimation of errors and error covariance in both satellite-derived and NWP analyses of surface winds, surface stresses and surface fluxes of sensible and latent heat and fresh water;

2. Improvement of surface winds, surface stresses and surface fluxes of sensible and latent heat and fresh water from satellite observations and NWP analyses for use in forcing ocean models, with a priority on surface winds;

3. Establishing observational error covariances for surface altimeter measurements for climate applications;

4. Establishing observational errors for Argo temperature-salinity profiles for climate applications;

5. Optimal merger of information from satellite altimetry and Argo temperature-salinity profiles in data assimilation for large scale ocean circulation analyses;

6. Ocean model bias correction during assimilation;

7. Improved estimates of ocean model background error covariances;

8. Improved estimates of mixed layer depth for utilization in hurricane forecasts;

9. Observing system experiments to help define the requirements for remotely sensed surface salinity; or

10. Improved (multi-sensor) SST retrievals with corrections for aerosol effects.

Application Procedures

All non-Federal applicants are required to submit a complete NOAA Grant Application Package and proposal. The standard forms and additional information are available on the DOC Grants Management Web site at *http://www.doc.gov/oebam/grants.htm.* If Internet access is not available, forms can be obtained by mail by contacting the NOAA/NESDIS/ORA at (301)763–8127. The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917; DOCID:fr01oc01–39) are applicable to this solicitation. However, please note that the Department will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See Building and Construction Trades *Department* v. *Allbaugh,* 172 F. Supp. 2d 138, (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Proposals Preparation

Proposals must include the signed original and two unbound copies and must be received at the NOAA/NASA Joint Center for Satellite Data Assimilation (address above) by the date indicated in the **DATES** section of this Notice. Investigators are required to submit 3 copies of the proposal, however, the normal review process requires 10 copies. For an optimal review, investigators are encouraged to submit sufficient proposal copies, especially color or unusually sized (not 8.5″ × 11″), or otherwise unusual materials submitted as part of the proposal. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

In addition to the information requested below, all proposals should include curriculum vitae (CV) for the principal investigator(s). The proposals must include the sections identified below and total no more than 10 pages in double-spaced, 12-point font format. The title page, detailed budget, investigator(s) vitae, any appendices, and grants application package forms are not included in the 10 page limit. Multi-year proposals up to a maximum of three years will be considered; however, funding beyond the first year will be dependent upon satisfactory performance and the continued availability of funds.

1. Title Page. The title page shall provide the project title, the name(s) of the lead Principal Investigator (PI), Co-investigator name(s) if any, the respective affiliations, complete addresses, telephone, FAX, and e-mail information. The title page will also present the total amount of Federal funds requested for each budget period. The title page shall also identify the specific research area of interest (the one most relevant area from those listed by number in the ''Program Description'' in this Notice), and clearly identify that the proposal is in response to this Notice. The title page should be signed by the PI(s) and the institutional representative of the PI's organization.

2. Abstract Page. The abstract page should be headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. The abstract should contain an introduction of the problem, proposed approach, expected outcome, and relevance to the goals of the JCSDA.

3. Goals and Objectives. Identify broad project goals and quantifiable objectives.

4. Background/Introduction. State the problem and summarize existing efforts in the context of present knowledge and/or capabilities.

5. Project Description/Methodology. Describe the specifics of the proposed approach to solving the problem and methodology to be used.

6. Relevance. Summarize the relevance of the proposed work to the goals of NWP, the priority areas listed above, and the potential improvements to data assimilation systems.

7. Project Co-investigators. Identify any project Co-investigators, their respective roles, and their contributions/relationships to the proposed effort.

8. Milestones and Time Lines. List target milestones and time lines (in multi-year proposed efforts, by year).

9. Project Budget. Provide a detailed budget breakdown by category (and in multi-year proposed efforts, by year) and a brief narrative to provide the basis for the budget. Joint proposals by Federal and non-Federal applicants must include separate budget breakdowns for the Federal and non-Federal funding portions. Non-Federal applicants must submit their budget information using the forms in the

NOAA Grants Application Package referenced above.

Selection Criteria (With Weights)

All proposals will be scored according to the following criteria:

1. Importance and Relevance of Research to the Assimilation of Satellite Data in NWP Models (25 Points)

Will the proposed work advance the goal of the JCSDA? Will the proposed project make a significant contribution to the high priority research and technical areas listed above?

2. Technical Merit (25 Points)

Is the approach technically sound? Does the proposed project build on existing knowledge? Is the approach innovative?

3. Applicability and Effectiveness (25 Points)

Does the proposed work have the potential to significantly advance the use of satellite observations in numerical weather and short-term climate prediction models? Does the proposed work provide for flexible, early and effective opportunities for evaluation at the JCSDA (*e.g.*, through cooperative experiments, demonstrations, or JCSDA evaluations)? Does the proposed work have the potential for long-term (lasting) value and widespread applicability? Does the proposed work include an effective mechanism by which the project's progress can be evaluated?

4. Cost Efficiency (10 Points)

Is the budget realistic and commensurate with the project needs? Does the budget narrative justify the proposed expenditures?

5. Meaningful Participation of Minority Serving (MSI) Institution(s) (5 Points)

Is there meaningful participation by an MSI in the proposed work? Are there subgrants, subcontracts or other partnership arrangements proposed with MSIs?

6. Overall Qualifications (10 Points)

Are the proposers capable of conducting a project of the scope and scale proposed (*i.e.*, scientific, professional, facility, and administrative resources/capabilities)? Are appropriate partnerships going to be employed to achieve the highest quality content and maximal efficiency?

Selection Process

A selection panel will be convened to review and to provide recommendations on selection using the criteria published in these guidelines. The panel may include both Federal and non-Federal individuals. Each member of the review panel will review each proposal and assign the proposal a score. No consensus advice will be given by the panel. Proposals will be ranked and presented to the Selecting Official for final selection. In addition to the individual proposal rankings assigned by the panel, the Selecting Official may consider the following programmatic factors: balance among the prioritized research areas of programmatic interest described in the ''Program Description'' section of this Notice, extent of collaboration between non-Federal and Federal investigators, and duplication of existing supported research.

Disposition of Unsuccessful Proposals. Proposals will be held in the Program Office until awards are made to the selected applicants and then destroyed.

Project Management

All projects will be reviewed at an annual meeting of all grantees and JCSDA staff. Semi-annual progress reports will be required of all grantees.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

This document contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: September 13, 2002.

Mary M. Glackin,

Deputy Assistant Administrator for Satellite and Information Services, NOAA.

[FR Doc. 02–23926 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Dates and Locations for Public Scoping Meetings on the Review of the Gerry E. Studds Stellwagen Bank National Marine Sanctuary Management Plan

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS) was designated in 1992. Encompassing an 842-square mile area off the coast of Massachusetts, SBNMS protects one of the most biologically diverse areas along the eastern seaboard. It is one of the primary feeding grounds of the highly migratory humpback whale, the part-time home of the endangered northern right whale, and has a highly varied seafloor that supports a wide variety of demersal fish species and invertebrate species.

In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the NMSP has re-initiated a review of the SBNMS management plan to evaluate the substantive progress toward implementing the management plan and goals of the Sanctuary and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. NOAA is currently seeking comments on the scope, types, and significance of issues related to the Sanctuary management plan and regulations.

Background

The current management plan for the Sanctuary was originally published in July 1993. In December 1998 and January 1999, the NMSP initiated a review of this plan by holding scoping meetings to solicit public comments on the status of site management. Scoping participants commented on a variety of issues, which were then characterized by Sanctuary staff and drafted into a

''State of the Sanctuary Report'' during Winter 2001/2002 (a change in Sanctuary administration delayed the management plan review process for approximately one year).

The State of the Sanctuary Report, which also contains current background information on the Sanctuary's administrative capacities, its environmental features and human uses, and its going activities, has been released to familiarize the public with the current status of Sanctuary management and the range of issues identified during the initial scoping period of 1998/1999. The report can be obtained by contacting the SBNMS Management Plan Review Coordinator at the address below or by downloading it from the SBNMS website at *http://stellwagen.nos.noaa.gov.* Interested parties should refer to this report when submitting comments on the Sanctuary's management plan during this re-initiation of the scoping period.

Comments on the Sanctuary management plan or regulations may be submitted in three ways: (1) In writing to SBNMS Management Plan Review Coordinator at the address or fax number below; (2) via email to *sbnmsplan@noaa.gov;* or (3) in writing or orally at one of the public meetings.

The public meetings will begin on September 24, 2002. A complete list of dates and address for these meetings is an follows:

Meeting 1—6:30 p.m. Tuesday, September 24, 2002 at the Mystic Aquarium in Mystic, CT; *htt://www.mysticaquarium. org.*

Meeting 2—6:30 p.m. Wednesday, September 25, 2002 at the New Bedford Whaling Museum in New Bedford, MA (18 Johnny Cake Hill Rd); *http://whalingmuseum.org.*

Meeting 3—6:30 p.m. Thursday, September 26, 2002 at the Provincetown Town Hall Auditorium in Provincetown, MA (260 Commercial St.); *http://www.provincetowngov.org.*

Meeting 4—10 a.m. Saturday, September 28, 2002 at the Sea Education Association in Falmouth, MA (177 Woods Hole Rd.); *http://www.sea.edu.*

Meeting 5—6:30 p.m. Monday, September 30, 2002 at the Gloucester City Hall Council Chamber in Gloucester, MA (9 Dale Ave.); *htt://www.ci.gloucester.ma.us.*

Meeting 6—6:30 p.m. Tuesday, October 1, 2002 at the University of Maine School of Law in Portland, ME (246 Deering Ave.); *http://www.law.usm.maine.edu/about-dir.htm.*

Meeting 7—6:30 p.m. Wednesday, October 2, 2002 at Yokens Restaurant and Conference Center in Portsmouth, NH (Rte. 1, So. 1390 Lafayette Rd.); *http://www.yokens.com.*

Meeting 8—6:30 p.m. Thursday, October 3, 2002 at the New England Aquarium in Boston, MA (Central Wharf); *http://www.neaq.org.*

Meeting 9—11 a.m. Saturday, October 5, 2002 at the Plymouth Public Library in Plymouth, MA (132 South St.); *http://www.gis.net/~ppl/.*

DATES: The public meetings begin on September 24, 2002 and end on October 5, 2002; comments on the management planor regulations should be received on or before October 18, 2002.

ADDRESSES: Addresses for the upcoming public meetings are detailed in the Background section above. For a copy of the State of the Sanctuary Report, contact the Management Plan Review Coordinator, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Rd. Scituate, MA 02066. Copies can also be downloaded from the SBNMS website at *http://stellwagen.nos.noaa.gov.*

To submit comments, you may (1) mail them to the address above; (2) fax them to (781) 545–8036; (3) email them to *sbnmsplan@noaa.gov;* or (4) attend one of the upcoming public meetings. Comments should be addressed to the attention of the Management Plan Review Coordinator.

FOR FURTHER INFORMATION CONTACT: Katrina VanDine at (781) 545–8026 X203 or via e-mail at *sbnmsplan@noaa.gov.*

Dated: September 17, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–23980 Filed 9–19–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice of Board of Visitors meeting.

SUMMARY: The September 18, 2002 meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) announced in the **Federal Register** on August 20, 2002 (67 FR 53916) has been canceled. The meeting has been rescheduled for October 22, 2002. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: October 22, 2002 from 0900–1500.

ADDRESSES: Packard Conference Center, Building 184, Fort Belvoir, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Reid at 703–805–5133.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Diane Reid at 703–805–5133.

Dated: September 12, 2002.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–23855 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of scientific research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: October 28 to November 1, 2002.

ADDRESSES: Wright-Patterson Air Force Base.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23972 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the

forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of scientific research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: October 14–18, 2002.

ADDRESSES: Wright-Patterson Air Force Base.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23973 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of scientific research. Because contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: October 21–25, 2002.

ADDRESSES: Holiday Inn, Palmdale, CA.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23974 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of scientific research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: November 18–22, 2002.

ADDRESSES: Hanscom and Kirtland Air Force Bases.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23975 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance of scientific research. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: December 2–6, 2002.

ADDRESSES: Kirtland Air Force Base.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–23976 Filed 9–19–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 19, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Office of the Assistant G–1 (Civilian Personnel Policy), Plans and Strategies Division, Hoffman I, Attn: DAPE–CP–PL (Murray J. Mack), 2661 Eisenhower Avenue, Hoffman I, Room 400, Alexandria, VA 22332–0300. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title: Evaluation of the Army Benefits Center—Civilian (ABC–C) Retirement System.

Needs and Uses: To assess the utility and efficiency of the Army Benefits Center—Civilian (ABC–C) retirement system. To this end, recently retired Army civilian employees whose retirements were processed by the Army Benefits Centers will be surveyed. The purpose of the survey is to determine the degree of customer satisfaction with the current system and to make recommendations for improvements.

Affected Public: Individuals or household.

Annual Burden Hours: 375.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION: The Army Benefit Center—Civilian replaces the old way of doing business and is a major change for management, supervisors, employees, CPOC, and Civilian Personnel Advisory Center (CPAC) staff. The ABC–C services include information and assistance regarding the Federal Employee's Health Benefits (FEHB) Program, the Federal Employees' Group Life Insurance (FEGLI) Program, the thrift Savings Plan (TSP) Program, Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS), and survivor benefits (death and dismemberment claims).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–23851 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Detecting Clostridium Botulinum Neurotoxin Serotypes, A, B, E and F in a Sample

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/952,078 entitled ''Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample,'' filed September 14, 2001. Foreign rights (PCT/US01/28641) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Sensitive and specific enzyme-linked immunosorbent assays which detect Clostridium botulinum neurotoxins serotypes A, B, E, and F in a sample are described. The assay is based upon affinity-purified antibodies directed against the C-fragments of each toxin. These assays demonstrate sensitivity close to that of the mouse bioassay without the use of animals and in a much simpler format than other assays of similar sensitivity.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–23853 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Compositions for Treatment of Hemorrhaging With Activated Factor VIIa in Combination With Fibrinogen and Methods of Using Same

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/756,907 entitled ''Compositions for Treatment of Hemorrhaging with Activated Factor VIIa in Combination with Fibrinogen and Methods of Using Same,'' filed January 10, 2001. Foreign rights (PCT/US01/00725) are also available. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The combination of recombinant factor VIIa and fibrinogen is effective in treatment for bleeding where direct pressure, tourniquets, indirect pressure, surgical ligation, bandaging, and transfusion of blood or plasma products are typically used. The combination of factor VIIa and fibrinogen is administered intravenously, either sequentially or simultaneously. The compositions may be safely circulated in the blood vessels to sites of injury. This is effective for single or multiple external or internal wounds.

Luz D. Ortiz,

Army Federal Liaison Officer.

[FR Doc. 02–23852 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Easy Access Dental Field Operating and Treatment System Having Over-the-Patient Delivery

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/828,601 entitled ''Easy Access Dental Field Operating and Treatment System Having Over-the-Patient Delivery,'' filed April 6, 2001. Foreign rights are also available IPCT/US02/01283). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patient issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Dental treatment systems are systems which facilitate the delivery of dental services to patients. The application relates, in general, to portable dental treatment systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–23849 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Large-Scale Production of Polyphenols or Polyaromatic Amines Using Enzyme-Mediated Reactions

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,444,450 B2 entitled ''Large-Scale Production of Polyphenols or Polyaromatic Amines Enzyme-Mediated Reactions'' issued September 3, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Oritz,

Army Federal Register Liaison Officer.

[FR Doc. 02–23850 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Supplemental Environmental Impact Statement for the Missouri River Fish and Wildlife Mitigation Project Located on the Missouri River From Sioux City, Iowa to the Mouth Near St. Louis, MO in the States of Iowa, Nebraska, Kansas, and Missouri

AGENCY: Department of the Army. U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Draft Supplemental Environmental Impact Statement (DSEIS) for the Missouri River Fish and Wildlife Mitigation Project located on the Missouri River in the States of Iowa, Nebraska, Kansas, and Missouri. The Mitigation Project was first authorized by the Water Resources Development Act (WRDA) OF 1986, which included the development of 48,100 acres of aquatic and terrestrial habitat for fish and wildlife along the 735 miles of the Missouri River between Sioux City, IA and St. Louis, MO. The WRDA of 1999 modified the Mitigation Project by increasing the amount of habitat development by 118,650 acres to a total of 166,750 acres. The DSEIS assesses the potential environmental impacts of the modified Mitigation Project, which includes the development, restoration, or enhancement of fish and wildlife habitat on an additional 118,650 acres on individual sites purchased from willing sellers and through easements. The purpose of the Mitigation Project is to restore fish and wildlife habitat losses resulting from the construction and development of the Missouri River Bank Stabilization and Navigation Project (BSNP). Seven alternatives are considered in the DSEIS and three alternatives are analyzed in detail including a Preferred Action, No Development alternative, and No Action alternative.

DATES: The public comment period for the DSEIS will end 45 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency. Comments on the DSEIS should be received no later than November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Kelly Ryan, US Army Corps of Engineers, Kansas City District, Attn: CENWK–PM–CJ, 601 East 12th Street, Kansas City, MO, 64106–2896, Phone: 816–983–3324.

SUPPLEMENTARY INFORMATION: 1. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Iowa Department of Natural Resources, Kansas Department of Wildlife and Parks, Nebraska Game and Parks Commission, and the Missouri Department of Conservation are serving as cooperating agencies on the preparation of the DSEIS.

2. Three alternatives are considered in detail in the DSEIS:

a. The Preferred Action alternative includes the development, restoration, or enhancement of fish and wildlife habitat on an additional 118,650 acres on individual sites purchased from willing sellers and through easements. Included in the 118,650 acres would be the construction or restoration of approximately 7,000 to 20,000 acres of shallow water habitat to achieve a goal of 20–30 acres per mile along the 735-mile BSNP.

b. The No Development alternative includes the acquisition of 118,650 acres on individual sites purchased from willing sellers or through easements, however, there would be no subsequent habitat development or construction activities.

c. The No Action alternative would not develop, restore, or enhance any additional acres for fish and wildlife habitat except for that previously authorized under WRDA of 1986 or that of other state or Federal programs.

3. Open house public meetings on this DSEIS will be held from 4:30 p.m. to 6 p.m. and formal public hearings for the purpose of receiving comments will begin at 7 p.m. at the following locations:

a. October 8, 2002—Lange Middle School, 2201 E. Smiley Lane, Columbia, MO.

b. October 9, 2002—Washington Middle School, 401 E. 14th Street, Washington, MO.

c. October 10, 2002—Lexington Middle School, 1111 S. 24th Street, Lexington, MO.

d. October 15, 2002—Sidney Elementary School, 1004 Illinois Street, Sidney, IA.

e. October 16, 2002—Atchison Heritage Convention Center, 710 S. 9th Street, Atchison, KS.

f. October 17, 2002—Arbor Park Elementary School, 1717 Adams Street, Blair, NE.

4. Copies of the DSEIS are available for review in the following libraries:

a. Atchison Library, 401 Kansas Avenue, Atchison, KS 66002.

b. Atchison County Library, 200 S. Main St., Rock Port, MO 64482–1532.

c. Blair Public Library, 210 S. 17th Street, Blair, NE 68008.

d. Boonslick Regional Library, 618 Main Street, Boonville, MO 65233–1572.

e. Callaway County Public Library, 710 Court Street, Fulton, MO 65251.

f. Carrollton Public Library, 206 W. Washington, Carrollton, MO 64633.

g. Council Bluffs Public Library, 400 Willow Ave., Council Bluffs, IA 51503–4269.

h. Daniel Boone Regional Library, 100 W. Broadway, Columbia, MO 65201.

i. Dakota City Public Library, 1708 Broadway, Dakota City, NE 68731.

j. Fayette Public Library, 201 South Main Street, Fayette, MO 65248.

k. Keytesville Library, 406 W. Bridge Street, Keytesville, MO 65261–1016.

l. Leavenworth Public Library, 417 Spruce, Leavenworth, KS 66048.

m. Lewis Library of Glasgow, 315 Market Street, Glasgow, MO 65254–2395.

n. Lexington Library, 1008 Main Street, Lexington, MO 64067–1345.

o. Lydia Bruun Woods Memorial Library, 120 E. 18th Street, Falls City, NE 68355.

p. Mid-Continent Public Library, 100 Kent Street, Liberty, MO 64068–2256.

q. Morton—James Public Library, 923 First Corso, Nebraska City, NE 68410.

r. Onawa Public Library, 707 Iowa Avenue, Onawa, IA 51040.

s. Oregon Public Library, Washington Street, Oregon, MO 64473.

t. Plattsmouth Public Library, 4th & Avenue A, Plattsmouth, NE 68048.

u. River Bluffs Regional Library, 927 Felix St., St. Joseph, MO 64501.

v. St. Charles Library, 2323 Elm Street, St. Charles, MO 63301–1440.

w. St. Louis Public Library, 5850 N. Hanley Road, St. Louis, MO 63134.

x. Scenic Regional Library, 113 E. 4th Street, Hermann, MO 65041–1129.

y. Scenic Regional Library, 100–2 E. Main Street, Warrenton, MO 63383–2004.

z. Sidney Public Library, 604 Clay Street, Sidney, IA 51652.

aa. Sioux City Public Library, 529 Pierce Street, Sioux City, IA 51101–1203.

bb. Thomas Jefferson Library, 214 Adams St., Jefferson City, MO 65101.

cc. Washington Public Library, 415 Jefferson Street, Washington, MO 63090–2607.

dd. Walthill Public Library, Main Street, Walthill, NE 68067.

ee. W. Dale Clark Library, 215 S. 15th Street, Omaha, NE 68102–1004.

5. The DSEIS is also available for review on the Missouri River Fish and Wildlife Mitigation Project Web site at: *http://www.nwk.usace.army.mil/projects/mitigation/supplemental-eis.htm.*

Dated: September 11, 2002.

Kelly Ryan,

Project Manager, Kansas City District.

[FR Doc. 02–23854 Filed 9–19–02; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the e-mail address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 17, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Report on Appeals Process.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 80. *Burden Hours:* 160.

Abstract: Form RSA–722 is needed to meet specific data collection requirements in Subsections 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2082. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information 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 *vivan.reese@ed.gov.* Requests may also be electronically mailed to the e-mail 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 Sheila Carey at her e-mail address *Sheila.Carey@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. 02–23944 Filed 9–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.021A]

Office of Postsecondary Education; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003.

Purpose of Program: The Fulbright-Hays Group Projects Abroad Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development or group research or study. This competition will not support advanced overseas intensive language projects.

Eligible Applicants: (1) Institutions of higher education, (2) State departments of education, (3) nonprofit private educational organizations, and (4) consortia of these entities.

Applications Available: September 27, 2002.

Deadline for Transmittal of Applications: October 28, 2002.

Deadline for Intergovernmental Review: December 27, 2002.

Estimated Available Funds: The Administration has requested $4,415,000 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$70,000 per year.

Estimated Average Size of Awards: $68,000 per year.

Estimated Number of Awards: 43.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. i Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract or the appendices. The complete response to the selection criterion must be included in the application narrative.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR part 664.

Priorities

Absolute Priority: This competition focuses on projects designed to meet the priority in the regulations for this program (34 CFR 664.32(a)(2)).

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Competitive Priority: Within the absolute priority specified in this application notice we will focus on projects that meet the following competitive priority.

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools. Under 34 CFR 75.105(c)(2)(i), 664.30(b), and 664.31(g) we award up to five (5) points to an application, depending upon how well the application meets the priority.

Invitational Priority: Within the absolute priority specified in this application notice, we are particularly interested in applications that meet the following invitational priority.

Group study projects that provide opportunities for nationally recruited undergraduate students to study in a foreign country for either a semester or a full academic year.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

For Applications and Further Information Contact: The applications for this program are available at: www.ed.gov/offices/HEP/iegps/. Lungching Chiao, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8521. Telephone: (202) 502–7624 or via Internet: *lungching.chiao@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 22 U.S.C. 2452.

Dated: September 16, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–23914 Filed 9–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.217A]

Office of Postsecondary Education; Ronald E. McNair Postbaccalaureate Achievement (McNair) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants for higher education institutions to prepare low-income, first generation college students, and students from groups underrepresented in graduate education, for doctoral study.

Eligible Applicants: Institutions of higher education and combinations of those institutions.

Applications Available: September 30, 2002.

Deadline for Transmittal of Applications: October 30, 2002.

Deadline for Intergovernmental Review: December 29, 2002.

Estimated Available Funds: The Administration has requested $36.9 million for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

SUPPLEMENTARY INFORMATION: Currently, there are McNair Program grantees with both four and five-year grant award

cycles that expire in FY 2003, FY 2004, and FY 2005, respectively. However, to compete for a new four or five-year grant award, all applicants, including those that have five-year grants that expire in FY 2004 and 2005 must submit an application under the FY 2003 competition.

Grantees whose grants expire in FY 2004 and FY 2005: If such a grantee is successful under this competition, its new award cycle will begin when its existing grant expires on either October 1, 2004 or October 1, 2005 subject to the availability of funds.

Estimated Range of Awards: $190,000–$316,000 per year.

Estimated Average Size of Awards: $236,000 per year.

Estimated Number of Awards: 156.

Note: The Department is not bound by any of the estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages using the following standards:

• A ''page'' is 8.5″ by 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point, or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 647.

For Applications and Further Information Contact: Eileen S. Bland or Reginald D. Williams, Office of Federal TRIO Programs, U.S. Department of Education, 1990 K Street, NW, Suite 7000, Washington, DC 20202–8510. Telephone: (202) 502–7600 or via Internet: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1070a–11 and 1070a–15.

Dated: September 17, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24009 Filed 9–19–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.047A and 84.047M]

Office of Postsecondary Education; Upward Bound Program and Upward Bound Math and Science Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Programs: The Upward Bound Program is designed to generate in students the skills and motivation necessary for success in education beyond secondary school. The Upward Bound Math and Science Program is designed to prepare high school students for postsecondary education programs that lead to careers in the fields of math and science.

Eligible Applicants: Institutions of higher education, public and private agencies and organizations, including community and faith-based organizations, and in exceptional cases, secondary schools if there are no other applicants capable of providing an Upward Bound project in the proposed target area.

Applications Available: September 27, 2002.

Deadline for Transmittal of Applications: November 22, 2002—Upward Bound Math and Science Program; December 13, 2002—Upward Bound Program.

Deadline for Intergovernmental Review: January 21, 2003—Upward Bound Math and Science Program; February 11, 2003—Upward Bound Program.

Estimated Available Funds: $264,841,000 for the Upward Bound Program, and $31,772,000 for the Upward Bound Math and Science Program. The estimated amount of funds available for awards is based on the Administration's request for these programs for FY 2003. The actual level of funding, if any, is contingent on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for these programs.

Estimated Range of Awards: $200,000—690,000 for year 1 of an Upward Bound project; $200,000—300,000 for year 1 of an Upward Bound Math and Science project.

Estimated Average Size of Awards: $311,000 for the Upward Bound Program; $258,000 for the Upward Bound Math and Science Program.

Estimated Number of Awards: 772 for the Upward Bound Program; 123 for the Upward Bound Math and Science Program.

Project Period: Up to 60 months for both the Upward Bound and the Upward Bound Math and Science Programs.

Note: The Department is not bound by any estimates in this notice.

Page Limit for Upward Bound and Upward Bound Math and Science Programs: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99; and (b) the regulations for these programs in 34 CFR part 645.

Priority

Invitational Priority

We are particularly interested in applications that meet the following priority.

Applications that propose projects that will serve higher risk students. The Administration is committed to making changes in programs that will improve their effectiveness. The ongoing evaluation of the Upward Bound program indicates that increasing the participation of higher risk students would increase its overall effectiveness. The evaluation has found that the majority of students served by the program are not higher risk students even though the program has a large impact on these students. Examples of higher risk students include, but are not limited to, (a) students with grade point averages in the C or D range as high school freshmen, (b) students with relatively few credits in the core academic subjects of English, math, science, social studies and foreign language, or (c) students who have the potential but do not plan to pursue a postsecondary education. Applicants should include their definitions of higher risk students and describe strategies for targeting services to higher risk students when addressing the selection criteria, particularly the need for the project, the objectives, the plan of operation and the budget.

Under 34 CFR 75.105(c)(1), we do not give an application that meets the invitational priority a competitive or absolute preference over other applications in making grant award decisions.

Applicants should be advised, however, that the Secretary intends to conduct a negotiated rulemaking process pursuant to Section 492 of the Higher Education Act with the intent of strengthening the ''need for academic support'' criteria used by grantees to select program participants to further focus the Upward Bound Program on serving higher risk students. This process, which will begin later this year, will be announced formally through a separate notice in the **Federal Register**. Applicants should be advised that regulatory changes negotiated through this process would apply to all projects funded in this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.047A (Upward Bound) or CFDA No. 84.047M (Upward Bound Math and Science).

Technical Assistance Workshops: We will conduct 10 technical assistance workshops for these programs. At these workshops, Department of Education staff will assist prospective applicants in developing proposals and will provide budget information regarding these programs. The dates and sites for the technical assistance workshops will be posted on the TRIO Web site in September. The TRIO Web site is: *http://www.ed.gov/offices/OPE/HEP/trio.*

The technical assistance workshops sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the workshops (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format), notify one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled workshop date.

For Further Information Contact: Upward Bound Program: Sheryl Wilson or Gaby Watts, Federal TRIO Programs, U.S. Department of Education, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or via Internet: *TRIO@ed.gov, Sheryl.Wilson@ed.gov, Gaby.Watts@ed.gov.*

Upward Bound Math and Science Program: Geraldine Smith, Federal TRIO Programs, U.S. Department of Education, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or via Internet: *TRIO@ed.gov, Geraldine.Smith@ed.gov.*

If you use telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting ED Pubs. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov//legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–13.

Dated: September 17, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–24010 Filed 9–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–434–000]

ANR Pipeline Company; Notice of Application

September 13, 2002.

Take notice that on September 6, 2002, ANR Pipeline Company (ANR), 9E Greenway Plaza, Houston, Texas 77046, filed in the above referenced docket, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations for a certificate of public convenience to construct and operate certain facilities in the states of Illinois and Wisconsin and authority to abandon certain facilities in the state of Wisconsin, all as more fully described in the application. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at*http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Specifically, ANR seeks authority to: (1) Construct and operate a total of approximately 26.3 miles of 30-inch diameter pipeline on its Madison Lateral in McHenry County, Illinois and Walworth and Rock Counties, Wisconsin (Madison Lateral Loop); (2) remove the existing 4-inch diameter and 6-inch diameter Beloit Lateral pipelines and replace them with approximately 6.5 miles of 20-inch diameter pipeline all in Rock County, Wisconsin (Beloit Lateral Replacement); (3) install a new meter station, the Tiffany East Meter Station, on and adjacent to ANR's existing Tiffany Meter Station site in Rock County, Wisconsin; and (4) upgrade its existing South Madison Meter Station in Rock County, Wisconsin. ANR estimates that the proposed facilities (WestLeg Project) will cost $42,087,000.

ANR states the purpose of the WestLeg Project is to serve new generation loads and meet the growth in demand of the local distribution company (LDC) sector in Rock and Dane Counties, Wisconsin. ANR states that it has entered into a precedent agreement with Wisconsin Power and Light Company (Wisconsin Power and Light) for 60,000 dth per day on ANR's system to the proposed Tiffany East Meter Station to meet the fuel requirements of the 600 megawatt Riverside Energy Center power plant. In addition, ANR states that is in negotiations with another customer for 34,000 Dth per day of capacity. Finally, ANR states that the capacity created by the WestLeg Project will allow ANR to terminate two transportation agreements with Northern Natural Gas Company (Northern Natural) that obligate ANR to pay Northern Natural for 86,500 Dth per day of capacity.

ANR requests a preliminary determination on the non-environmental issues by December 18, 2002 and a certificate of public convenience and necessity by July 1, 2002 in order to allow sufficient time for ANR to place the facilities into service by November 1, 2004.

Any questions regarding this application should be directed to Christopher Young, Senior Counsel, ANR Pipeline Company, 9 E Greenway Plaza, Suite 1882, Houston, Texas 77046, (832) 676–5593 or Thomas G. Joyce, Manager, (832) 676–3299.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23864 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–431–000]

Colorado Interstate Gas Company, RME Petroleum Company, and Chevron U.S.A. Inc.; Notice of Joint Petition of Colorado Interstate Gas Company, RME Petroleum Company and Chevron U.S.A. Inc. for a Declaratory Order Disclaiming Jurisdiction

September 13, 2002.

Take notice that on August 27, 2002, Colorado Interstate Gas Company (CIG), RME Petroleum Company (RME) and Chevron U.S.A. Inc. (Chevron) filed, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.207(a)(2)(2001), a joint petition for a declaratory order in Docket No. CP02–431–000, requesting the Commission declare that the acquisition by RME and Chevron of CIG's Table Rock Plant and their subsequent ownership and operation of these facilities in Sweetwater County, Wyoming, would have the primary function of gathering of natural gas and thereby be exempt from the Commission's jurisdiction pursuant to section 1(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

CIG states that it is currently the owner and operator of the Table Rock Plant (a natural gas sweetening plant) and a 1.82 mile, 12-inch diameter pipeline lateral connecting the plant to CIG's 22-inch Wyoming mainline. These facilities were constructed by CIG in 1976 and placed into operation on December 19, 1977 to connect, process, and market supplies of sour gas produced out of the deeper Madison and Weber formations underlying acreage previously committed to CIG in the Table Rock Area of southern Wyoming. CIG states that RME and Chevron own and operate the sour gas wells upstream of the Table Rock Plant.

According to CIG, based upon their natural gas production plans, RME and Chevron believe that expansion of the treating plant will be required in the near future, but the parties have been unable to agree upon any economic arrangement that would permit CIG to expand the plant to the capacity RME and Chevron will be needing. Accordingly, RME and Chevron have determined that it is in their best interest to own and operate the Table Rock Plant and related facilities and CIG has determined that it no longer needs to own and operate this facility. Consequently, CIG states that it has elected to sell the Table Rock Plant and related facilities, and that RME and Chevron have elected to purchase the plant and related facilities.

Specifically, CIG will sell to RME and Chevron all of CIG's rights, title, and interests in the Table Rock Plant and related facilities. Following the sale, CIG has stated that RME and Chevron will operate the wells, gathering facilities and the sour gas plant as an integrated production system, matching well development programs with gathering system and plant modifications to enhance the production of natural gas from the reserves.

It is stated by CIG that as a condition to the closing of the proposed transaction among the parties, CIG will be required to abandon the Table Rock Plant and related facilities under its blanket authorization in Docket No. CP83–21. CIG states that since there are no producers of sour gas upstream of the plant other than RME and Chevron, and since RME and Chevron are not otherwise engaged in the ownership and operation of facilities in interstate commerce subject to Commission jurisdiction, a declaratory order is requested disclaiming jurisdiction over RME's and Chevron's joint ownership and operation of the facilities purchased from CIG.

Any questions regarding this joint petition should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, CO 80944, at (719) 520–3788 or fax (719) 520–4697 or Mark R. Haskell or Christie L. Richart, Brunenkant & Haskell, LLP, 805 15th Street, N.W., Suite 1101, Washington, DC 20005, at (202) 408–0700 or fax (202) 408–5959.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of

the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23865 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–47–002]

Dominion Transmission, Inc., Tennessee Gas Pipeline Company; Notice of Amended Application

September 13, 2002.

Take notice that on August 22, 2002, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, and Tennessee Gas Pipeline Company (Tennessee), 9 E Greenway Plaza, Houston, Texas 77002, filed an abbreviated Joint Application to amend a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations. Applicants request certificate authorization to implement an Amended Lease previously authorized by the Commission in 99 FERC ¶ 61,367 (2002); Docket No. CP02–47–000, between DTI and Tennessee for 150,000 dekatherms per day of capacity on DTI's pipeline between Ellisburg, Pennsylvania and Leidy, Pennsylvania. Applicants propose a phasing in of the capacity that was not originally contemplated in their application in CP02–47–000. Specifically, Applicants are seeking Commission approval of an amended lease that will allow DTI to provide leased capacity to Tennessee at a level of 130,000 Dth/d until such time as the remaining 20,000 Dth/d becomes available. Applicants also request that intermediate decision procedures be omitted, pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8569.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before September 19, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the amendment for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23863 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–009]

Florida Gas Transmission Company; Notice of Amendment

September 13, 2002.

Take notice that on September 6, 2002, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP00–40–009 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations to amend FGT's certificate issued on July 27, 2001 authorizing the construction and operation of FGT's Phase V Expansion, all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Specifically, FGT is seeking to amend its certificate to modify

Compressor Unit 2601 at FGT's Compressor Station No. 26. FGT requests permission and approval to abandon the existing Cooper-Rolls RCB–14 compressor portion of Unit 2601, while keeping the same motor/driver, and install a Rolls Royce RFA–24 compressor. FGT states that the RFA–24 compressor will provide more efficient compression than the existing RCB–14 compressor, which will allow Station 26 to continue to operate even when there is an outage at the station's other Compressor Unit 2602. Because, under the proposal, the compressor portions of Units 2601 and 2602 will both consist of the RFA–24 compressor, FGT will have to keep only one set of spare parts. Thus, FGT concludes, the proposed replacement of the compressor portion of Unit 2601 will increase reliability and flexibility.

FGT states that, since the motor/driver for Unit 2601 will be unchanged, the horsepower will be unchanged, and that, given the current pipeline capacities, the installation of the RFA–24 compressor will not result in an increase in throughput. FGT also states that the cost of the compressor change-out will not affect the overall $451.9 million cost of the Phase V Expansion

because FGT has been able to achieve other cost savings.

FGT requests that this amendment be approved by February 14, 2003, so construction can commence around March 1, 2003. Any questions concerning this application may be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, TX 77002 or call (713) 853–6549.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before October 4, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23861 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–430–000]

Saltville Gas Storage Company L.L.C.; Notice of Application for a Limited Blanket Certificate for Gas Storage and Related Transportation

September 13, 2002.

Take notice that on August 23, 2002, Saltville Gas Storage Company L.L.C. (Saltville), a limited liability company with its principal place of business at 1096 Old Berry Drive, Abingdon, Virginia 24210, filed in Docket No. CP02–430–000 an application pursuant to section 7c of the Natural Gas Act, as amended, and Section 284.224 of the Commission's Rules and Regulations thereunder, for a limited jurisdiction blanket certificate authorizing it to engage in gas storage and related transportation activities.

Saltville states it is a Hinshaw company that is exempt from the Commission's general jurisdiction under section 1(c) of the Natural Gas Act. Saltville explains that it plans to develop natural gas storage caverns in underground salt formations in Smyth and Washington Counties, Virginia, and build seven miles of 24-inch diameter pipeline, pursuant to orders issued by the Commonwealth of Virginia State Corporation Commission (VSCC). The project will consist of four storage caverns with a total working gas capacity of 6.216 Bcf. Saltville requests a limited jurisdictional blanket certificate pursuant to Section 284.224 of the Commission's regulations authorizing it to provide certain non-exempt interstate services. Saltville proposes to charge VSCC approved rates for FERC jurisdictional service.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 4, 2002, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (Rules 210, 211 or 214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission Rules. 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.

Take further notice that, pursuant to the authority contained in and subject to

the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that an oral hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at hearing.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23862 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–183–000, et al.]

Spring Canyon Energy, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

September 13, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Spring Canyon Energy, L.L.C.

[Docket No. EG02–183–000]

On September 10, 2002, Spring Canyon Energy, L.L.C. (the Applicant) whose address is 10440 N. Central Expressway, No. 1400, Dallas, Texas 75231, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly or indirectly and exclusively in the business of owning and/or operating a 430 MW (up to 540 MW with duct burners) electric generating facility located near Mona, Utah and selling electric energy at wholesale. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: October 4, 2002.

2. City of Corona v. Southern California Edison Company

[Docket No. EL02–126–000]

Take notice that on September 11, 2002, the City of Corona, California (Corona) tendered for filing a Complaint and Request for Fast Track Processing, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission, against Southern California Edison (SCE) alleging violations of Sections 202, 210, and 212 of the Federal Power Act and the Commission's regulations implementing such sections.

Corona requests an order directing SCE to promptly process Corona's Wholesale Distribution Access Tariff application and interconnect Corona as requested in the application filed with SCE on December 20, 2001, as well as an order to show cause directed against SCE as to why it should not be found in violation of the Federal Power Act, SCE's own tariffs, and the Commission's regulations for the actions described in the Complaint. A copy of the filing was served upon the Parties.

Comment Date: October 3, 2002.

3. Avista Energy, Inc.

[Docket No. ER96–2408–018]

Take notice that on September 9, 2002, Avista Energy, Inc. filed with the Federal Energy Regulatory Commission its three-year updated market analysis. Avista Energy, Inc., an indirect, wholly-owned subsidiary of Avista Corporation, is an electricity and natural gas trading and marketing company headquartered in Spokane, Washington.

Copies of this filing have been served upon parties on the Commission's official service list for this docket.

Comment Date: September 30, 2002.

4. Foote Creek II and Foote Creek III

[Docket Nos. ER99–3450–002 and ER99–2769–003]

Take notice that on September 9, 2002, Foote Creek II and Foote Creek III., filed with the Federal Energy Regulatory Commission (Commission) their three-year updated market analysis. Foote Creek II and III has had no changes in ownership, generation capacity, transmission or market-based rates for this project.

Foote Creek III has changed the name of the utility purchasing the power the project produces from Public Service Company of Colorado to ExCel Energy.

Comment Date: September 30, 2002.

5. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–012, ER00–1969–014, ER00–3038–007, EL00–70–008, ER02–2081–001]

Take notice that on September 9, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's August 9, 2002 order in the above-captioned proceedings.

A copy of this filing was served upon all signatories to the OATT and Services Tariff and upon all persons designated on the official service lists compiled by the Secretary in the above-captioned proceedings.

Comment Date: September 30, 2002.

6. California Power Exchange Corporation

[Docket No. ER02–2234–003]

Take notice that on September 9, 2002, the California Power Exchange Corporation made a filing to comply with the Commission's August 8, 2002 order in this proceeding (100 FERC ¶ 61,178).

Comment Date: September 30, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER02–2419–000]

Take notice that on September 4, 2002, PPL Electric Utilities Corporation (PPL) submitted as a supplement to its initial filing in the captioned proceeding a one-line diagram of the interconnection facilities governed by the generator interconnection agreement between PPL and Bloomsburg Hospital.

Comment Date: September 25, 2002.

8. California Independent System Operator Corporation

[Docket No. ER02–2487–001]

Take notice that on September 10, 2002, the California Independent System Operator Corporation (ISO) tendered for filing Errata to the First Revised Service Agreement No. 381 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Metropolitan Water District of Southern California (MWD). The Errata corrects the requested effective date of the First Revised Service Agreement No. 381. The ISO filed First Revised Service Agreement No. 381on August 22, 2002 to update Schedule 1 of the PGA. The ISO requests that the revised PGA be made effective as of August 22, 2002.

The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER02–2487–000.

Comment Date: October 1, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23859 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

September 13, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Major License.

b. *Project No.*: 469-013.

c. *Date filed*: October 30, 2001.

d. *Applicant*: ALLETE, Inc., d.b.a. Minnesota Power Inc.

e. *Name of Project*: Winton Hydroelectric Project.

f. *Location*: On the Kawishiwi River, near the Town of Ely, in Lake and St. Louis Counties, Minnesota. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact*: John Paulson, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com*, 218–722–5642, ext. 3569.

i. *FERC Contact*: Tom Dean, *thomas.dean@ferc.gov*, 202–502–6041.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is now ready for environmental analysis at this time.

l. *Description of the Project*: The project consists of the following two developments:

The Winton Development consists of the following existing facilities: (1) The Winton Dam comprising: (a) a 227-foot-long earth dike; (b) a 29-foot-high, 176-foot-long spillway section; (c) an 84-foot-long Taintor gate and log sluice section; (d) an 80-foot-long stop-log gate section; (e) an 111-foot-long and a 120-foot-long non-over-flow section; (f) a 176-foot-long forebay; and (g) a 1,250-foot-long earth dike; (3) a 2,982-acre reservoir comprising the Garden, Farm, South Farm, and Friday Lakes at a normal water surface elevation of 1,385.67 feet USGS; (4) two 215-foot-long, 9-foot-diameter underground penstocks extending to; (5) a powerhouse containing two generating units with a total installed capacity of 4,000 kW; and (6) other appurtenances.

The Birch Lake Reservoir Development consists of: (1) A 7-foot high, 227-foot-long dam comprising; (a) a 72-foot-long Taintor gate section; and (b) an 85-foot-long sluice gate section; and (2) the 7,624-acre Birch Lake reservoir at normal water surface elevation of 1,420.5 feet USGS. This development provides water storage for the Winton Development.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of availability of the draft EA—March 2003

Notice of availability of the final EA—May 2003
Ready for Commission's decision on the application—May 2003

Magalie R. Salas,

Secretary.

[FR Doc. 02–23866 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD02–22–000]

Conference on Energy Infrastructure; Notice of Conference

September 13, 2002.

The Federal Energy Regulatory Commission (FERC) will hold a conference on energy infrastructure issues in the midwestern states on Wednesday, November 13, 2002 at the Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, Illinois.

The conference is for the purpose of discussing the adequacy of the electric, gas, and other energy infrastructure in the Midwest.

In addition to specialized panelists, the Governors and state utility commissioners of the midwestern states are being invited to participate. The goal is to identify the current state of infrastructure in the Midwest, present and future infrastructure needs, and the means and barriers to fulfilling those needs. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development and reliability for the midwestern states. It is our firm belief that an adequate, well-functioning energy infrastructure is necessary to realize workable, competitive markets.

The one-day meeting will begin at 1 p.m. and conclude at 6 p.m. All interested parties are invited to attend. Hotel rooms have been blocked at the Sheraton under the code NAK07 for any attending guests to reserve a one-or two-night stay but will be released by October 13. You can still reserve a room after that date, but on a room and rate availability basis. Reservations can be made by calling 312–329–7000, or their toll free number, 877–242–2558.

To attend, please register online on the Commission Web site at *http://www.ferc.gov/calendar/courses-outreach/coursesoutreach.htm*. Scroll down and click on ''Midwest Energy Infrastructure Conference''. There is no registration fee. We will issue further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Carol Connors in the Office of External Affairs at *carol.connors@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–23860 Filed 9–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Availability of the Final Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials

AGENCY: National Nuclear Security Administration, DOE.

ACTION: Notice of availability.

SUMMARY: The Department of Energy's (DOE) National Nuclear Security Administration (NNSA) announces the availability of the Final Environmental Impact Statement (EIS) for the Proposed Relocation of Technical Area 18 Capabilities and Materials (hereafter referred to as the TA–18 Relocation Final EIS). The TA–18 Relocation Final EIS evaluates the environmental impacts associated with relocating a portion of the TA–18 capabilities and materials to the following alternative locations: (1) A different site at Los Alamos National Laboratory (LANL) at Los Alamos, New Mexico; (2) the Nevada Test Site (NTS) near Las Vegas, Nevada (the preferred alternative); (3) the Sandia National Laboratory (SNL) at Albuquerque, New Mexico; and (4) the Argonne National Laboratory—West (ANL–W) near Idaho Falls, Idaho. The TA–18 Relocation Final EIS also evaluates the alternative of upgrading the existing facilities at TA–18, and the no-action alternative of maintaining the missions at the current TA–18 location.

DATES: The NNSA intends to issue a Record of Decision on the TA–18 Final EIS no sooner than 30 days after the Environmental Protection Agency publishes a notice of filing of the TA–18 Final EIS in the **Federal Register.**

ADDRESSES: A copy of the TA–18 Relocation Final EIS or its Summary may be obtained upon request in writing (DOE/NNSA, TA–18 Relocation Final EIS, Attn: Mr. Jay Rose, NA–53, 1000 Independence Avenue, SW., Washington, DC 20585); by fax (202–586–5324); by phone (1–800–832–0885, ext. 65484), or by E-mail (*James.Rose@ns.doe.gov*).

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Mr. James J. Mangeno, NNSA NEPA Compliance Officer, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585; or telephone 1–800–832–0885, ext. 68395. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), DOE, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The NNSA is responsible for providing the Nation with nuclear weapons, ensuring the safety and reliability of those nuclear weapons, and supporting programs that reduce global nuclear proliferation. These missions are accomplished through the use of a core team of highly trained nuclear experts. The TA–18 facilities at LANL are the Nation's only facilities capable of performing general-purpose nuclear materials handling and criticality experiments. These experiments provide unique training to a variety of federal agencies, including DOE, NNSA, and Nuclear Regulatory Commission personnel in areas such as nuclear materials safety, emergency response in support of counterterrorism activities, and safeguards and arms control in support of programs aimed at controlling excess nuclear materials.

The TA–18 buildings and infrastructure are near the end of their useful life, and action is required to assess alternatives for continuing these activities for the next 25 years. The TA–18 Relocation Final EIS identifies siting options to assist the NNSA in determining a long-range strategy for maintaining nuclear criticality missions, infrastructure, and expertise currently residing at TA–18.

The TA–18 Relocation Final EIS evaluates the potential direct, indirect, and cumulative environmental impacts associated with relocating the TA–18 mission to the the following DOE sites: (1) A different site at LANL; (2) NTS (the preferred alternative); (3) SNL; and (4) ANL–W. The TA–18 Relocation Final EIS also analyzes upgrading the TA–18 facilities at LANL and the no-action alternative of maintaining the operations at the current TA–18 location.

In the Final EIS, the acting Administrator of the NNSA designated the NTS alternative as the preferred

alternative for activities involving Security Category I/II materials, which constitute roughly half of the activities conducted at TA–18. The NTS alternative, which would house four of the five TA–18 experimental reactors in the existing Device Assembly Facility (DAF), was designated the preferred alternative based upon cost, technical, environmental, and mission factors. NNSA's preferred alternative also has the balance of the TA–18 missions, involving mostly Security Category III/IV materials and operations, remaining at LANL.

Signed in Washington, DC this 10th day of September, 2002.

Everet H. Beckner,

Deputy Administrator for Defense Programs.

[FR Doc. 02–23936 Filed 9–19–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002, (67 FR 17992).

Draft EISs

ERP No. D–BLM–K65241–CA Rating LO, Headwaters Forest Reserve, Implementation Resource Management Plan, Long-Term Management Plan and Planning Framework, Located in the northwestern Coast Ranges near Humboldt Bay in Humboldt County, CA.

Summary: EPA supports the plan to maintain the ecological integrity of the Reserve while assuring compatible and adequate public access and recreation opportunities. EPA recommend the Final EIS evaluate in more detail the environmental consequences of the no action alternative and provide a summary of the potential cumulative effects of the proposed management actions.

ERP No. D–BLM–L03012–AK Rating LO, Renewal of Federal Grant for the Trans-Alaska Pipeline System, Right-of-Way, Approval, AK.

Summary: EPA expressed lack of objections and suggested that the final EIS clarify whether existing stipulations and mitigation measures would be carried forward with renewal of the Federal Grant. EPA also identified additional treaties and law applicable to subsistence issues that should be integrated into the analyses of the final EIS.

ERP No. D–FHW–G50010–00 Rating LO, I–69 Mississippi River Crossing, Construction, from a western terminus at U.S. 65 near McGehee, AR to an eastern terminus at State Highway 1 near Benoit, MS, U.S. Coast Guard Bridge Permit, U.S. Army Corps Section 10 and 404 Permits, NPDES Permit, Desha County, AR and Bolivar County, MS.

Summary: EPA expressed no objections to the selection of the preferred alternative but has requested clarification and additional information to strengthen the Final EIS.

ERP No. D1–FHW–F40356–WI Rating EO2, U.S. 10 Highway Improvements between Marshfield and Appleton, Trestik Road—CTH ''K'' (Stevens Point Bypass), Funding and COE Section 404 Permit, Portage County, WI.

Summary: EPA expressed environmental objections as a result of wetland impacts associated with each build alternative, the lack of a complete conceptual wetland mitigation plan, concerns over cumulative impact analysis, and impacts to endangered species.

Final EISs

ERP No. F–AFS–J65313–CO, White River National Forest Land and Resource Management Plan 2002 Revision, Alternative K is the Selected Alternative, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt and Summit Counties, CO.

Summary: EPA continued to express environmental concerns about potentially adverse cumulative impacts to aquatic and alpine tundra habitat.

ERP No. F–FHW–F40393–MI, I–96/Airport Area Access Study, Transportation Improvements, Surrounding the Gerald R. Ford International Airport, Kent County, MI.

Summary: EPA expressed environmental concerns about woodland and stream impacts and the project's ability to satisfy mobility goals.

ERP No. F–NPS–G03019–TX, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument Oil and Gas Management Plan, Hutchinson, Moore and Potter Counties, TX.

Summary: EPA has no objections to the selection of the preferred alternative.

Dated: September 17, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–24000 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6633–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed September 9, 2002 through September 13, 2002.

Pursuant to 40 CFR 1506.9.

EIS No. 020385, Draft Supplement, UAF, CA, NM, Airborne Laser (ABL) Program, To Conduct Test Activities at Kirtland Air Force Base (AFB) and White Sands Missile Range/Holloman AFB, New Mexico, and Edwards AFB and Vandenberg AFS, CA, Comment Period Ends: November 5, 2002, Contact: Charles Brown (210) 536–4203. This document is available on the Internet at: ''*http://www.hqafcee.brooks.af.mil/ec/EIS/ABL/D–SEIS.pdf.*''

EIS No. 020386, Draft EIS, COE, PR, Port of The Americas Project, Development of a Deep-Draft Terminal at the Port of Ponce to Receive Post-Panamax Ships, COE Section 10n and 404 Permits, Municipalities of Guayanilla-Penuelas and Ponce, Puerto Rico, Comment Period Ends: November 19, 2002, Contact: Edwin E. Muniz (787) 289–7034.

EIS No. 020387, Final EIS, EDA, CT, Adriaen's Landing Project, Development from Columbus Boulevard south of the Founders Bridge and Riverfront Plaza, City of Hartford, CT, Wait Period Ends: October 21, 2002, Contact: Beatz C. Roman, (860) 522–4888.

EIS No. 020388, Final EIS, DOE, NM, ID, NV, Technical Area 18 (TA–18) Relocation of Capabilities and Materials at the Los Almos National Laboratory (LANL), Operational Activities Involve Research in and the Design, Development, Construction, and Application of Experiments on Nuclear Criticality, NM, NV and ID,

Wait Period Ends: October 21, 2002, Contact: James J. Rose (202) 586–5484.

EIS No. 020389, Draft EIS, DOE, WA, ID, Box Canyon (Hydroelectric) Project, (FERC Project No. 2042–013), Application for a New License for Existing 72-megawatt (MW) Hydroelectric Project, Public Utility District No. 1 (PUD), Pend Oreille River, Pend Oreille County, WA and Bonner County, ID, Comment Period Ends: November 19, 2002, Contact: Magalie R. Salas (202) 502–8760. This document is available on the Internet at: *http://www.sr25study.com.*

EIS No. 020390, Final EIS, FAA, LA, Adoption—I–49 Connector Project, FAA Decisions Relative to Preparing a Record of Decision for FHWA Project's Impact on the Lafayette Regional Airport, Implementation, Lafayette Parish, LA, Wait Period Ends: October 15, 2002, Contact: Joyce M. Porter (817) 222–5644. U.S. Department of Transportation's (USDOT's), Federal Aviation Administration (FAA) has adopted USDOT's, Federal Highway Administration FEIS #020380 filed, with U.S. Environmental Protection Agency on 9/6/2002. FAA was a cooperating agency on the above project, recirculation of the above project is not necessary under Section 1506.3(c) of the CEQ Regulations.

EIS No. 020391, Final EIS, APH, Regulation—Importation of Unmanufactured Wood Articles from Mexico, With Consideration for Cumulative Impacts of Methyl Bromide Use, Proposed Rule, Wait Period Ends: October 21, 2002, Contact: Raymond B. Nosbaum (301) 734–8790. This document is available on the Internet at: *http://www.aphis.usda.gov/ppddocs.html.*

EIS No. 020392, Draft EIS, FHW, UT, Reference Post (RP) 13 Interchange and City Road Project, Construction on New Interchange at RP 13 on to I–15 and City Road in Washington City, Funding, Washington County, UT, Comment Period Ends: November 11, 2002, Contact: Sandra Garcia (801) 281–8892.

EIS No. 020393, DRAFT EIS, COE, FL, Fort Pierce Shore Protection Project, Future Dredging of Capron Shoal, Implementation, St. Lucie County, FL, Comment Period Ends: November 4, 2002, Contact: William Lang (904) 232–2615.

EIS No. 020394, Draft Supplement, COE, Missouri River Fish and Wildlife Mitigation Project, To Restore Fish and Wildlife Habitat Losses Resulting from Construction, Operation, and Maintenance of the Missouri River Bank Stabilization and Navigation Project (BSNP), Missouri River, Sioux City, Iowa to the Mouth near St. Louis, NB, KS and MO, Comment Period Ends: November 4, 2002, Contact: Kelly Ryan, (816) 983–3324.

Amended Notices

EIS No. 020301, Draft EIS, AFS, AK, Kosciusko Island Timber Sale(s), Harvesting Timber, Tongass National Forest, Thorne Bay Ranger District, Kosciusko Island, AK, Comment Period Ends: September 27, 2002, Contact: Glenn Pierce (907) 826–1629. Revision of FR Notice Published on 7/19/2002: CEQ Wait Period Ending on 9/3/2002 has been Extended to 9/27/2002.

EIS No. 020314, Draft EIS, AFS, OR, Granite Area Mining Projects, Proposals to Approve Plans of Operation on 16 Mining Claims within the Granite Creek Watershed, Implementation North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR, Comment Period Ends: October 21, 2002, Contact: Robert Reed (541) 427–5335. Revision of FR Notice Published on 7/26/2002: CEQ Comment Period Ending 9/9/2002 has been Extended to 10/21/2002.

EIS No. 020377, Draft EIS, FHW, ND, U.S. 2 Highway Transportation Improvements, From near U.S. Highway 85 (milepost 31.93) to west of U.S. Highway 52 (milepost 131.24), Funding, NPDES and COE Section 404 Permits, Williams, Mountrail, and Ward Counties, ND, Comment Period Ends: October 21, 2002, Contact: J. Michael Bowen (701) 250–4204. Revision of FR Notice Published on 09/06/2002: Correction to Comment Period from 10/7/2002 to 10/21/2002.

Dated: September 17, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–24001 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7380–6]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Nogales, Arizona on October 9–10, 2002. It is open to the public.

DATES: On October 9, the meeting will begin at 8:30 a.m. and end at 5:30 p.m. Throughout the first day, invited speakers will address two border-region environmental infrastructure topics: conservation and health. A public comment session will take place during the meeting from 12 p.m.–12:30 p.m.

The following day, on October 10, the Board will conduct a routine half-day business meeting in the morning that will begin at 8 a.m. and end at 12 noon. After lunch, beginning at 1 p.m., the Board will host a two-hour special session on the potential effects of homeland security activities on border-region environmental infrastructure. The meeting will end at 3 p.m. on October 10.

ADDRESSES: The meeting will take place in the Mayor and Council Chambers of the Nogales, Arizona, City Hall. Its address is 777 North Grand Avenue. The phone number is (520) 287–6571.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, Office of Cooperative Environmental Management, Office of the Administrator, USEPA, MC1601E, 655 15 St. NW., Washington, DC 20460, (202) 233–0069, *koerner.elaine@epa.gov.* The Board Web site is *www.epa.gov/ocem/gneb-page.htm.*

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the meeting room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

SUPPLEMENTARY INFORMATION:

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background

The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border. It was created by

the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Public Law 92–463).

Dated: September 9, 2002.

Mark N. Joyce,

Acting Designated Federal Officer.

[FR Doc. 02–23991 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7380–5]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) will meet on October 10–11, 2002, in Washington, DC. During the two days, the Committee meeting as working groups, and as a body, will consider a number of issues related to the management of environmental protection programs and local governments. During the meeting, the Committee will be gathering information on a variety of subjects and will make decisions on topics to follow in the months ahead.

Topics to be considered by working groups include: Sprawl and federal policies, the status of storm water regulation, water infrastructure issues, and solid waste, re-use and energy issues. In plenary sessions, the Committee will receive presentations on environmental indicator activities, environmental management issues in the Great Lakes and discuss upcoming issues in water effluent guidelines and emerging issues in fine particulate management.

The Committee will hear comments from the public between 9:45 a.m.–10 a.m., October 11. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the numbers listed below to schedule agenda time. Time will be allotted on a first come, first served basis, and the total period for comments may be extended, if the number of requests for appearances required it.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meetings and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible, and to facilitate security clearance to the meeting. Seating will be on a first come, first served basis.

DATES: Work Group sessions will be held on October 10. The Local Government Advisory Committee plenary session will begin at 8 a.m. Friday, October 11 and conclude at 3 p.m.

ADDRESSES: The meetings will be held in Washington, DC. Work group sessions will be held at EPA Headquarters, in conference rooms 4128 and 5126 in the EPA West Building, located at 1301 Constitution Ave., NW. Meeting Registration will be conducted in 1117B EPA East Building, located 1201 Constitution Ave., NW. The LGAC plenary session will be held on Friday at the Marriott Residence Inn, located at 1199 Vermont Ave., NW., in the Washington/Jefferson conference room.

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW. (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for the Local Government Advisory Committee (LGAC) is Paul Guthrie (202) 564–3649.

Dated: September 10, 2002.

Paul N. Guthrie,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 02–23992 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7381–1]

New Industry Sector Performance Program; Request for Expressions of Interest From Industry Trade Associations

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of interest.

SUMMARY: The Environmental Protection Agency (EPA) is seeking expressions of interest from industry trade organizations to work with the newly reoriented sector program in the Office of Policy, Economics and Innovation (OPEI). This program will have a greater focus on environmental management systems (EMS) and actions that prompt industry-wide environmental gains. EPA would like to increase the number of industries participating in the program.

The new sector program will have staff level points-of-contact within EPA who are highly knowledgeable about specific industries. These individuals will play a liaison function among industry trade associations and companies, EPA program and regional offices, state and local governments, and other stakeholder groups. The sector points-of-contact will focus their attention primarily in two areas: Addressing regulatory or other programmatic barriers to improved environmental performance; and helping to expand the use of environmental management systems (EMS) by many willing companies in each industry.

EPA anticipates that participating industries will benefit from coordinated, cooperative, and constructive problem solving with government. The Agency will invite participating industries to engage in active dialogue, offer their own innovative ideas to reduce environmental impacts, and develop strategies to promote the use of EMS. Because industry-wide performance improvement is a goal, EPA will work with trade associations and others to find creative ways to document environmental progress and burden reductions without creating new process requirements.

EPA invites the expression of interest from industry trade associations that would like to explore working with EPA in this way. Industry leaders should consider several factors: the value of having a knowledgeable point-of-contact for their sector within EPA; the industry's potential to address the Administration's current environmental

priorities—reductions in greenhouse gas emissions and smog, improved water quality and infrastructure, increased recycling of hazardous waste, and enhanced environmental protection in agriculture; and the potential to expand the voluntary use of EMS among companies in the industry.

Trade associations should communicate their interest to EPA by letter or e-mail to the contact listed below. The Agency encourages prior telephone contact and consultation. EPA would like to invite an initial group of industries to work with the Agency in this new program starting in December 2002. Additional industries may be invited to participate in the future.

DATES: Contact by October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Benson, Director, Sector Strategies Division (mail code 1808T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. E-mail: *benson.robert@epa.gov.* Telephone: 202–566–2954.

Dated: September 17, 2002.

Thomas J. Gibson,

Associate Administrator for Policy, Economics and Innovation.

[FR Doc. 02–23993 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0222; FRL–7274–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice; Correction.

SUMMARY: EPA is correcting the ''DATES'' section and Unit IV of the deletion of uses document which was published in the **Federal Register** on August 28, 2002 (67 FR 55241) (FRL–7196–1) to correct one registration number and to add one registration number that was inadvertently omitted.

DATES: The deletions are effective on February 24, 2003, or on September 27, 2002 for products with registration numbers 000400–00490, 042056–00014, 005418–00153 and 062719–00080.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

In FR Doc. 02–21677, published in the **Federal Register** of August 28, 2002, at page 55241, make the following corrections:

1. The ''DATES'' section is corrected to read as set forth above.

2. Unit IV is corrected to read as follows:

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before February 24, 2003, or on or before September 27, 2002 for products with registration numbers 00400–00490, 042056–00014, 005418–00153 and 062719–00080.

Dated: September 9, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–23994 Filed 9–19–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6724–2A]

Developing Assessment Factors for Evaluating the Quality of Information From External Sources; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period extension

SUMMARY: This document is being issued to extend the comment period date regarding the EPA draft document, ''Assessment Factors for Evaluating the Quality of Information from External Sources,'' from the original end date of September 20, 2002 to September 30, 2002. The comment period will now be September 6, 2002 to September 30, 2002.

DATES: The public meeting will be held on September 20, 2002, from 9 a.m. to 1 p.m. (Eastern Standard Time, EST). Written comments must be received on or before September 30, 2002, 11:59 p.m. EST. For information on dates for submission of written comments, requests to present oral comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be held at the U.S. Environmental Protection Agency East Building, Public Hearing Room 1153, 1201 Constitution Avenue, NW., Washington, DC. Comments may be submitted by e-mail, mail, courier or in person. See **SUPPLEMENTARY INFORMATION** for instructions on submitting comments and public meeting information.

FOR FURTHER INFORMATION CONTACT: Greg Schweer, Office of Science Coordination and Policy (7203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8469; fax number: (202) 564–8482; e-mail address: *assessment.factors@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons or entities who develop or collect information which is voluntarily submitted to EPA or obtained by EPA for its use. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov.* To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''Federal Register-Environmental Documents.'' You can also go directly to the **Federal Register** listings at: *http://www.epa.gov/fedrgstr.* You may obtain electronic copies of the draft ''Assessment Factors for Evaluating the Quality of Information from External Sources'' from the Information Quality Guidelines Home Page at: *http://www.epa.gov/oei/qualityguidelines/*.

2. In person. The Agency has established a docket for this meeting under docket ID number OEI–10014. The docket consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). The public

version of the docket, which includes printed, paper versions of any electronic comments that may be submitted during the applicable comment period, is available for inspection at: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC, 20460. The docket is open from 8:30 pm to 4:30 pm EDT, Monday through Friday, excluding legal holidays. The telephone number is (202) 566–1752.

C. How Can I Request To Participate in the Public Meeting?

You may submit a request to present oral or written comments at the meeting and you may provide written comments prior to the meeting via electronic mail (e-mail), mail, by courier, or in person. To ensure proper receipt of your request and/or comments, it is imperative that you identify docket ID No. OEI–10014 in the subject line of the first page of your request/comments. The request to present brief oral comments (*i.e.*, limited to approximately 5 minutes) should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Although requests to present oral comments are accepted until the date of the meeting, to the extent that time permits, interested persons who have not submitted a request may be permitted to present oral comments. EPA will not be recording or transcribing the public meeting. To facilitate EPA's consideration of your planned comments, EPA recommends that you provide EPA with a written record of those comments you want EPA to consider, either prior to or at the public meeting. Comments must be received on or before September 20, 2002, 11:59 pm EDT.

To ensure timely receipt, e-mail (*assessment.factors@epa.gov*) is the Agency's preferred method for submitting requests to participate in the meeting and for submitting comments. Do not submit any information electronically that you consider to be CBI. If you submit your request and/or written comments by U.S. mail, send them to: U.S. EPA, EPA Docket Center (7407), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. If you submit requests and/or comments in person, by courier, or other shipping method, deliver them to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The docket is open from 8:30 pm to 4:30 pm EDT, Monday through Friday, excluding legal holidays. The telephone number is (202) 566–1752.

Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

In response to OMB's guidelines (67 FR 8452, February 22, 2002), EPA has developed Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency (Draft EPA Information Quality Guidelines; 67 FR 21234, April 30, 2002). The Draft EPA Information Quality Guidelines are available at EPA's site, *http://www.epa.gov/oei/qualityguidelines*. The Draft EPA Information Quality Guidelines address the various sources of information submitted to or obtained by the Agency for use in making decisions, and, in particular, discuss one category of information that includes information voluntarily submitted to the Agency or information that the Agency obtains from external third party sources. During development of these guidelines, EPA requested comments and held a public meeting. Subsequently, EPA developed a document, ''Assessment Factors for Evaluating the Quality of Information from External Sources,'' that specifically addresses assessment factors and considerations relevant to evaluating and using external sources of data and information. EPA is holding a public meeting on September 20, 2002 to obtain public input on factors and considerations they feel are useful to assess the quality of information voluntarily provided by external sources to the Agency or obtained by EPA for specific purposes. In addition, EPA is seeking comments from the public on the document, ''Assessment Factors for Evaluating the Quality of Information from External Sources.''

List of Subjects

Environmental protection, data quality, information quality.

Dated: September 5, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–23990 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on September 17, 2002, from 11:15 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

*** Closed Session**

Unfinished Business and General Orders

- Other

—Continue Discussion Regarding Regulatory Enforcement Issue

Dated: September 17, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–24029 Filed 9–18–02; 10:09 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2575]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

September 13, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding 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

* Session closed—exempt pursuant to 5 U.S.C. 552b(c)(10).

filed by October 7, 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: Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L–Band (IB Docket No. 96–132).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–23934 Filed 9–19–02; 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 October 4, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Young In Chung, Warren, New Jersey; to acquire the voting shares of BNB Financial Services Corporation, New York, New York, and thereby indirectly acquire Broadway National Bank, New York, New York.

Board of Governors of the Federal Reserve System, September 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–23970 Filed 9–19–02; 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 Web site 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 October 15, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Peoples Bancorp, Red Cloud, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples-Webster County Bank, Red Cloud, Nebraska.

Board of Governors of the Federal Reserve System, September 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–23971 Filed 9–19–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Workshop: Advertising of Weight Loss Products

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing public workshop.

SUMMARY: The FTC is planning to host a public workshop to explore alternate approaches to reducing deceptive claims in advertising for weight loss products.

DATES: The workshop will be held on November 19, 2002, from 9 a.m. to 5 p.m. at the Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC. The event is open to the public and there is no fee for attendance. Pre-registration is not required.

Requests To Participate as a Panelist: Written requests to participate as a panelist in the workshop must be filed by October 15, 2002. For further instructions, please see the ''Requests to Participate as a Panelist in the Workshop'' section below. Persons filing requests to participate as a panelist will be notified by October 29, 2002, if they have been selected.

Written Comments: Whether or not selected to participate, persons may submit written comments on the topics to be discussed by the panelists. Such comments must be filed on or before October 29, 2002. For further instructions on submitting comments, please see the ''Form and Availability of Comments'' sections below. To read the Commission's policy on how it handles the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

ADDRESSES: Written comments and requests to participate as a panelist in the workshop should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. In the alternative, they may be e-mailed to *weightloss@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, *rkelner@ftc.gov,* or Lesley Fair, (202) 326–3081, *lfair@ftc.gov,* Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. A detailed agenda and additional information on the workshop will be posted on the FTC's Web site, *www.ftc.gov,* by October 29, 2002.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

Obesity is a significant public health problem. According to the Surgeon General's 2001 *Call To Action To Prevent and Decrease Overweight and Obesity,* an estimated 61% of American adults are overweight or obese.[1] The relationship between overweight and medical conditions such as cardiovascular disease, hypertension,

[1] *The Surgeon General's Call To Action To Prevent and Decrease Overweight and Obesity,* U.S. Department of Health and Human Services, at xiii (2001).

certain cancers, type 2 diabetes, and osteoarthritis is well established and the toll of those diseases is substantial. Obesity-related illnesses account for approximately 300,000 deaths annually.[2]

In response, as many as 68 million U.S. adults are trying to lose weight.[3] Many of them turn to commercial weight loss products.[4] Consumers spend an estimated $33 billion annually on weight loss products, with the sale of dietary supplements accounting for a significant proportion of overall expenditures.[5] According to a CDC study, between 1996 and 1998, an estimated 17.2 million Americans used one or more non-prescription weight loss products.[6]

Unfortunately, the use of false and misleading claims in ads for these products is common. The Commission has undertaken a vigorous enforcement program, including the filing of more than eighty cases since 1992. Recognizing that law enforcement alone has not proven sufficient to deter the promoters of bogus diet products, the FTC staff has fought weight loss fraud on other fronts. To enlist the voluntary cooperation of industry, the staff has worked closely with the Partnership for Healthy Weight Management, a coalition of representatives from science, academia, the health care profession, government, commercial enterprises, and public interest organizations whose mission is to promote sound guidance on strategies for achieving and maintaining a healthy weight. To encourage self-regulatory efforts by publishers and broadcasters, the staff has met with members of the media to discuss voluntary clearance standards that would weed out the most egregious weight loss claims before they are disseminated to consumers.

Despite these efforts, the proliferation of deceptive weight loss ads appears to be on the rise. On September 17, 2002, the FTC staff issued *Weight-Loss Advertising: An Analysis of Current trends.*[7] Prepared with assistance from the Partnership for Healthy Weight Management, the report analyzes the claims and techniques used in 300 ads from all major forms of media. Based on its analysis, the staff concluded that false or misleading claims are common in ads for weight loss products. Furthermore, although deceptive advertising for weight loss products is by no means new, the staff's comparison of 1992 magazine ads with magazine ads from 2001 suggests that the number of products and the amount of advertising—much of it deceptive—have dramatically increased over the last decade. Reputable marketers continue to take care to avoid false and misleading claims, but it appears that too many unscrupulous marketers are making false claims promising dramatic and effortless weight loss to sell their products.

The report also finds that these deceptive ads have appeared in a wide range of print and broadcast media. Although some publishers and broadcasters embrace the benefits of voluntary self-regulation by choosing not to run ads that make outlandish promises to consumers, others have not. Many of the same questionable claims that the Commission has challenged as deceptive year after year, *e.g.,* that through the use of the advertised product consumers can lose substantial weight without diet and exercise, can lose weight continuing to eat unlimited amount of high-calorie foods, and can safely lose a substantial amount of weight in a short period of time, continue to appear.

Because consumers make their product selection based in part on advertising claims, ads that present false or misleading information can impede informed consumer decision making, inflict substantial financial injury, and even harm consumers' health. To explore that impact that these ads have on the public health and new approaches for fighting the proliferation of misleading claims for weight loss products, the Commission will convene a public workshop on November 19, 2002. Government officials, scientists, public health groups, marketers of weight loss products, advertising professionals, and representatives of the media are especially encouraged to participate.

Panel #1 will consist of officials from government agencies with expertise in the health risks of obesity. This panel will discuss why obesity has become a public health problem and what actions their respective agencies are taking to meet the crisis.

Panel #2 will consist of researchers, academicians, medical professionals, and industry experts who will discuss the state of the science. One possible approach to the problem would be to determine whether there are a list of common claims for weight loss products that are generally agreed to be false. To facilitate this discussion, the FTC staff requests comments on whether the current state of the science would establish that the following claims commonly found in ads for over-the-counter weight loss products are false:

(1) That the use of the advertised product will cause consumers to lose a substantial amount of weight without reducing their caloric intake and/or increasing their physical activity;

(2) That the use of the advertised product will cause consumers to lose a substantial amount of weight while still enjoying unlimited amounts of high-calorie foods;

(3) That consumers can lose a substantial amount of weight through the use of the advertised product that is applied to the body or rubbed into the skin (*e.g,* wraps, patches, belts, clips, or creams);

(4) That the use of the advertised product will cause consumers to lose weight preferentially only from those parts of the body for which they wish to lose weight;

(5) That consumers can lose a substantial amount of weight through the use of the product advertised to block or absorb fat or calories;

(6) That the advertised product will cause a substantial amount of weight loss for all users;

(7) That the advertised product will cause permanent weight loss; or

(8) That the use of the advertised product will cause consumers safely to lose more than three pounds per week for a period of more than four weeks.

In addition, commenters are encouraged to discuss the state of the science tending to prove or disprove other claims commonly found in ads for weight loss products.

Panel #3 will consist of representatives from the dietary supplement industry, non-prescription drug manufacturers, and others engaged in the sale of weight loss products. They will provide perspectives from the different sectors of the industry on the state of the advertising and marketing of weight loss products and discuss what the industry believes could be done through self-regulation, law enforcement, or other means to stop the proliferation of fraud in this product category.

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[2] Id.

[3] Serdula, M.K., *et al., Prevalence of Attempting Weight Loss and Strategies for Controlling Weight,* J.A.M.A. 1999; 282:1353–1358 <*http://jama.ama-assn.org/issues/v282n14/rfull/joc90559.html*>.

[4] Bryant, J., *Fat is a $34 Billion Business,* Atlanta Business Chronicle (Sept. 24, 2001) citing research by Marketdata Enterprises, Inc.

[5] Graham Cloditz, *Economic Costs of Obesity,* Am. J. Clin. Nutr. 1992; 55:503–507s, cited in Statistics Related to Overweight and Obesity, National Institute of Diabetes & Digestive & Kidney Diseases (visited July 25, 2002) <http://www.niddk.nik.gov/health/nutrit/pubs/statobes.htm#20>.

[6] Hiedi Michels Blanck, *et al., Use of Nonprescription Weight Loss Products: Results From a Multistate Survey,* J.A.M.A. 2001; 286;930–935 <*http://jama.ama-assn.org/issues/v286n8/rfull/joc10285.html*>.

[7] The report is available at *www.ftc.gov.*

Panel #4 will consist of law enforcement officials who will discuss the challenges they face in prosecuting weight loss fraud cases and why the efforts taken to date do not appear to have had the desired deterrent effect.

Panel #5 will consist of media law experts who will discuss the extent to which publishers and broadcasters may reject advertisements making questionable claims and what can be done to encourage the media to screen out patently false claims more effectively.

Panel #6 will consist of publishers and broadcasters who will discuss current approaches to self-regulation and the costs and benefits of voluntary screening procedures. This panel will also explore steps that could be taken to encourage effective self-regulation in this area and whether a list of presumptively false claims for weight loss products would assist them in their efforts.

Requests To Participate as a Panelist in the Workshop

Those parties who wish to participate as panelists in the workshop must notify the FTC in writing of their interest in participating by October 15, 2002, either by mail to the Secretary of the FTC or by e-mail to *weight loss@ftc.gov.* Requests to participate as a panelists should be captioned ''Weight Loss Advertising Workshop—Request to Participate, P024527.'' Parties are asked to include in their requests the name and number of the panel on which they would like to participate, a statement setting forth their expertise in or knowledge of the issues on which the panel will focus, and their contact information, including a telephone number, facsimile number, and e-mail address. An original and two copies of each document should be submitted. Panelists will be notified by October 29, 2002, whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop:

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.

2. The party's participation would promote a balance of interests being represented at the workshop.

3. The party has been designated by one or more interested parties who timely file requests to participate as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

To facilitate the discussion, the FTC requests that interested parties submit written comments on the issues that the panels will address. Comments should be captioned ''Advertising of Weight Loss Products Workshop—Comment, P024527'' and must be filed by October 29, 2002.

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be e-mailed to *weightloss@ftc.gov.*

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR part 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice and, to the extent technologically possible, all comments will also be posted on the FTC Web site, *www.ftc.gov.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–23938 Filed 9–19–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02038]

Improving Effectiveness of the Tuberculosis Prevention and Control Program in Estonia; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a sole source cooperative agreement for the National Tuberculosis Control Program (NTP), Ministry of Health of the Government of Estonia.

The purpose of this program is to provide education and technical assistance to improve the quality, efficiency, and effectiveness of programs for the prevention and control of tuberculosis (TB) in Estonia.

B. Eligible Applicants

Assistance will be provided only to the National Tuberculosis Control Program (NTP), Ministry of Health of the Government of Estonia to train TB nurses in ambulatory care, community-based treatment, and infection control.

The NTP, Ministry of Health of the Government of Estonia is the most appropriate and qualified agency to conduct the activities under this cooperative agreement for the following reasons:

1. The NTP is uniquely positioned, in terms of legal authority, ability, track record, and credibility in Estonia to develop and implement TB control activities in both public sites throughout the country.

2. The NTP is currently involved in TB treatment services in Estonia, enabling it to immediately become engaged in the activities listed in this announcement.

3. The purpose of the announcement is to utilize and build upon existing framework of TB control activities that the NTP has developed or initiated.

4. The NTP has been mandated by the Ministry of Health in Estonia to coordinate and implement TB treatment and control activities including Multi Drug Resistent TB (MDR–TB) within the country.

C. Funds

Approximately $65,000 is being awarded in FY 2002. The award will be made by September 30, 2002, for a 12-month budget period within a project period of up to five years.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Angelia D. Hill, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, MS E–09, Atlanta, GA 30341–4146. Telephone: (770) 488–2785. FAX: (770)488–2688. E-mail: *aph8@cdc.gov.*

Program technical assistance may be obtained from: Michael Qualls, Deputy Associate Director, International Activities, Division of Tuberculosis Elimination, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road Mailstop E–10, Atlanta, GA 30333. Telephone 404–639–8488. E-mail address: *muq1@cdc.gov.*

Dated: September 12, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control & Prevention.

[FR Doc. 02–23928 Filed 9–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02208]

Program To Promote Pediatric Trauma Training; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for a grant Program to Promote Pediatric Trauma Training.

The purpose of this program is to provide a training program in pediatric trauma for pre-hospital providers including prevention messages to reduce morbidity and mortality to pediatric patients who have suffered traumatic injuries. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

B. Eligible Applicant

Assistance is provided only to the Westchester County Department of Emergency Services. No other applications were solicited. H.R. Conf. Rep. No. 107–342, at 87 (2002) specifically directs CDC to award funds to this organization.

C. Funds

Approximately $86,184 is being awarded in FY 2002. The award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of 1 year.

D. Where To Obtain Additional Information

For business management technical assistance, contact: Van A King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number (770) 488–2751. E-mail address *vbk5@cdc.gov.*

For program technical assistance, contact: Paul Burlack, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, Mailstop F42, Atlanta, GA 30341–3724. Telephone number (770) 488–4713. E-mail address *PBurlack@cdc.gov.*

Dated: September 11, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–23927 Filed 9–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–250 and CMS–276]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* SNF Resident Assessment MDS Data and Supporting Regulations in 42 CFR, Sections 413.337, 413.343, 424.32, and 483.20; *Form No.:* CMS–R–250 (OMB# 0938–0739); *Use:* Skilled Nursing Facilities (SNFs) are required to submit the resident assessment data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th, 60th, and 90th days following admission, necessary to administer the payment rate methodology described in Section 413.337, are subject to the Paperwork Reduction Act. The burden associated with this is the SNF staff time required to complete the Minimum Data Set (MDS), SNF staff time to encode, and SNF staff time spent in transmitting the data.; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 17,000; *Total Annual Responses:* 2,657,859; *Total Annual Hours:* 1,993,394.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Form No.:* CMS–276 (OMB# 0938–0165); *Use:* These forms are needed to establish the reasonable cost of providing covered services to the enrolled Medicare population of an HMO in accordance with Section 1876 of the Social Security Act; *Frequency:* Quarterly, Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 30 (see breakdown in Supporting Documentation for clarification); *Total Annual Responses:* 180 (see breakdown in Supporting Documentation); *Total Annual Hours:* 7,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–23978 Filed 9–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10029 and CMS–R–254]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program Integrity Customer Service Project; *Form No.:* CMS–10029 (OMB# 0938–0837); *Use:* Medicare's Integrity Program seeks to improve customer service provided to beneficiaries and providers. The study's purpose is to identify baseline satisfaction with Program Integrity efforts, to prioritize improvement areas, and to identify potential service delivery changes that can be implemented by CMS or its contractors. Respondents include beneficiaries whose billing questions were transferred to Fraud, and providers who have been through enrollment, medical review, or cost report audit; *Frequency:* Annually; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,250; *Total Annual Responses:* 5,250; *Total Annual Hours:* 782.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* National Medicare Education Program (NMEP) Community Survey of Medicare Beneficiaries; *Form No.:* CMS–R–254 (OMB# 0938–0738); *Use:* A survey of Medicare beneficiaries in six communities will be conducted in January and February, 2003. A random, representative sample of Medicare beneficiaries will be selected using CMS administrative data. This approach will gather information on changes in: awareness of Medicare+Choice expansion and options; knowledge about Medicare and Medicare+Choice options; where beneficiaries go to find more information; and whether they are aware of the many information resources available to them; and satisfaction with their information/knowledge; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 2400; *Total Annual Responses:* 2400; *Total Annual Hours:* 600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–23977 Filed 9–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 16, 2002, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Robert J. Doyle, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12526. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a device that produces a computerized thermal image of the breast of women recommended for biopsy. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the October 16, 2002, meeting will be posted on October 15, 2002.

Procedure: On October 16, 2002, from 8:30 a.m. to 1 p.m., and from 1:30 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 7, 2002. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m., and for an additional 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 16, 2002, from 1 p.m. to 1:30 p.m., the meeting will be closed to the public to permit FDA to present to the

committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future agency issues.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 14, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–23949 Filed 9–19–02; 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: The Sentinel Centers Network (SCN) Core Data Set—New

HRSA's Bureau of Primary Health Care (BPHC) established the Sentinel Centers Network (SCN) to assist in addressing critical policy issues. Thirty-eight BPHC supported health centers and NHSC sites have been awarded funds through sub-contracts in this first year of operation. These health centers were identified as having adequate infrastructure and commitment through the competitive contract process to serve as ''laboratories'' that will generate data for timely policy analyses and conducting projects on topics that have immediate policy impact.

A protocol for core data collection and retrieval, timelines, expectations, and evaluation of the Network sites is currently underway. It is expected that sites will submit these core data, or have these data extracted from their existing information systems periodically. These core data may include provider level, encounter level, and user level information regarding, for example, data on service delivery, utilization, payer sources, demographics, clinical diagnoses and outcomes, staffing, and costs. Since all data obtained from the participant sites will be extracted/compiled from existing information systems, and not through primary data collection, burden will therefore be minimized. In addition, each participant site will receive technical assistance both on site and via telephone to reduce burden as much as possible.

Estimated burden hours:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Sites	38	4	152	8	1,216

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: September 12, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–23848 Filed 9–19–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request; Women's Health Initiative Observational Study

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Women's Health Initiative (WHI) Observational Study.

Type of Information Collection Request: Revision OMB #0925–0414 Exp: 05/03.

Need for Use of Information Collection: This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures.

Frequency of Response: On occasion.

Affected Public: Individuals and physicians.

Type of Respondents: Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
OS Participants	86,886	1.4059	.173	21,133
Next-of-kin	2,916	1	.0835	243
Physician's Office Staff	43	1	.0835	4
Total				21,380

The annualized cost burden is $213,948.

There are no annual Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Linda Pottern, Project Officer, Women's Health Initiative Program Office, 6705 Rockledge Drive, 1 Rockledge Centre, Suite 300, MSC 7966, Bethesda, MD 20892–7966, or call (301) 402–2900 or e-mail your request, including your address to: *Linda_Pottern@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 11, 2002.

Jacques E. Rossouw,

Acting Director, Women's Health Initiative.

[FR Doc. 02–23873 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New Tumor Suppressor Gene, p28ING5

Dr. Curtis C. Harris *et al.* (NCI)
DHHS Reference No. E–300–01/0 filed January 23, 2001
Licensing Contact: Catherine Joyce; 301/496–7735 ext. 258; e-mail: *joycec@od.nih.gov*

This technology pertains to the discovery of a new member of the ING (inhibitor growth) family of putative tumor suppressor genes, p28ING5. p28ING5 was identified by homology to the tumor suppressor gene p33ING1. Over-expression of the ING5 protein causes cell cycle arrest in human cancer cell lines and ING5 expression varies between cancer cell lines. Detection of ING5 gene or protein expression could potentially be used for cancer diagnosis and ING5 could be used as a medicant.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

HGC–1, A Gene Encoding a Member of the Olfactomedin-Related Protein Family

Griffin P. Rodgers, Wen-Li Liu, Jiachang Zhang (NIDDK)
U.S. Provisional Patent Application 60/338,759 (E–166–01/0) filed December 7, 2001
Licensing Contact: Brenda Hefti; 301/496–7736 ext. 206; e-mail: *heftib@od.nih.gov*

The current technology embodies a newly identified gene, Human Granulocyte Colony-Stimulating Factor-Stimulated-Clone-1 (hGC–1) that has been cloned and characterized, and its protein sequence has been deduced. The gene is expressed in the bone marrow, prostate, small intestine, colon, and stomach, and has been mapped to chromosome 13 in a region that contains a tumor suppressor gene cluster. The gene is found to be selectively present in normal human myeloid lineage cells and is believed to play a role in allowing lymphocytes to differentiate properly. It is believed that the gene may be used as a selective marker for human prostate cancer, multiple myeloma, B-cell chronic lymphocytic leukemia and other types of cancer and can be used diagnostically as well as in therapeutic screening activities.

Modulating IL–13 Activity Using Mutated Il–13 Molecules That Are Antagonists or Agonists of IL–13

R. Puri, Y. Oshima, and B. Joshi (FDA)
PCT Application PCT/US00/31044 (E–032–00/2) filed November 10, 2000, and claiming priority to a U.S. Provisional application filed November 11, 1999
Licensing Contact: Brenda Hefti; 301/496–7736 ext. 206; e-mail: *heftib@od.nih.gov*

The present invention provides antagonists and agonists of IL–13 activity. The antagonists can be used to reduce or end symptoms in conditions, such as asthma, allergic rhinitis, atopic dermatitis, parasitic infections, pulmonary fibrosis, and others in which

IL–13 is an initiator, mediator or enhancer of the abnormal state. The agonists can also be used as reagents in the maturation of monocytes into dendritic cells, or to pre-treat bone marrow stem cell donors to reduce GVH disease. The antagonists can be used to slow the growth of cells in cancers for which IL–13 is an autocrine growth factor.

This invention also claims IL–13 receptor binding molecules with affinity for the IL–13 receptor at least three times greater than that exhibited by wild type IL–13. Finally, this invention claims methods and compositions for specifically delivering an effector molecule to a tumor cell by chimeric molecules comprising the effector molecule (plant or bacterial toxin, chemotherapeutic agents or antibiotics) and an IL–13 receptor binding molecule (antagonists or agonists), and pharmaceutical compositions thereof.

Dated: September 12, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–23875 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 1–2, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: A Report of the Director addressing OAR initiatives. The topic of the meeting will be ''HIV/AIDS Research Needs in the Caribbean Basin.''

Place: 9000 Rockville Pike, Building 31C, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Veronica Leftwich, Program Analyst, Office of AIDS Research, National Institutes of Health, Building 2, Room 4W11, Bethesda, MD 20892, (301) 435–7698.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/od/oar/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23952 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, CAM and Oncology.

Date: October 21–22, 2002.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MAD 20814.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23871 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complentary and Alternative Medicine Special Emphasis Panel, Basic Science SEP.

Date: October 10, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23872 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, The Genetics of Biobehavioral Risk Factors for CVD.

Date: October 17, 2002.

Time: 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23957 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Psychosocial Factors and Cardiovascular Disease.

Date: October 17, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23958 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisoryl Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Cardiovascular Grants.

Date: October 11, 2002.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Two Rockledge Center, Room 7204, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alessandra Bini, PhD, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, 301–435–0299.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23959 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Minority Grants RFA–022, 023, 024, 025.

Date: October 29–30, 2002.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Alessandra Bini, PhD, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 10892, 301–435–0299.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23960 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Molecular Mechanisms of Mucous Cell Metaplasia and Excess Mucous Secretion in Human Airway Diseases.

Date: December 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur N. Freed, PhD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23961 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Interactive Computer Technology for Promoting Improved Self-Management of Insulin Dependent Diabetes Mellitus in Clinical Practice.

Date: October 28, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (303) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23867 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Device for Monitoring Childhood Diabetes Medical Regimen.

Date: November 15, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23868 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Cooperative Specialized Infertility Research Centers.

Date: October 8, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd 5th Floor, Rockville, MD 20852, (telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, HIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Reserach, 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23869 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Panel, Family Management of Type 1 Diabetes.

Date: October 10, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: September 11, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23870 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of research project application(s) (RO1).

Date: October 10, 2002.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of research project application(s) (RO1).

Date: October 10, 2002.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of research project application(s) (RO1).

Date: October 10, 2002.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of research project application(s) (RO1).

Date: October 10, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of research project application(s) (RO1).

Date: October 10, 2002.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23953 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: September 29–October 1, 2002.

Closed: September 29, 2002, 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: September 30, 2002, 8:30 p.m. to 5:30 p.m.

Agenda: An overview of the organization and conduct of research in the National Center for Toxicogenomics.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 1, 2002, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K. Akiyama, PhD, Division of Intramural Research, Nat. Institute of Environment, Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23954 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee, Allergy, Immunology, and Transplantation Research Committee.

Date: October 10–11, 2002.

Time: October 10, 2002, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Meridian Room, One Washington, Circle, NW., Washington, DC 20037.

Time: October 11, 2002, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Meridian Room, One Washington, DC 20037.

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, NIH, Scientific Review Program Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

DATED: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23955 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases Cooperative Research Center Supplement.

Date: October 4, 2002.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 2154, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301 496–8424, *rg.159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–23956 Filed 9–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Nominations for Listing in the 11th Report on Carcinogens

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (''the NTP RoC Subcommittee'') to be held on November 19 & 20, 2002, at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. On November 19, registration will begin at 9 a.m. and the meeting will begin at 9:30 a.m. On November 20, the meeting will begin at 8:30 a.m. Pre-registration is not required; however, persons requesting time to make oral, public comments are asked to notify Dr. Mary S. Wolfe, Executive Secretary, prior to the meeting (contact information given below). The agenda covers the peer review of 10 nominations for possible listing in the 11th Report on Carcinogens, and includes an opportunity for public input.

Background

The Department of Health and Human Services (DHHS) Report on Carcinogens (RoC) is a public information document prepared by the National Toxicology Program (NTP) in response to Section 301(b)(4) of the Public Health Service Act, as amended. The intent of the document is to provide a listing of those agents, substances, mixtures or exposure circumstances that are either ''known'' or ''reasonably anticipated'' to cause cancer in humans and to which a significant number of people in the United States are exposed. The process for preparation of the RoC has three levels of scientific peer review. Central to the evaluations of the review groups is the use of criteria for inclusion in or removal of listings from the RoC. The current criteria for listing in or delisting from the report is available on the Internet at the following website: *http://ntp-server.niehs.nih.gov/NewHomeRoc/ListingCriteria.html,* or can be obtained in hard copy by contacting Dr. Jameson at the address listed below. The review process for listing in or delisting from the RoC begins with initial scientific review by the National Institute of Environmental Health Sciences (NIEHS)/NTP Report on Carcinogens Review Committee (RG1), which is comprised of NIEHS/NTP staff scientists. The second scientific review group (RG2) is comprised of representatives from the Federal health research and regulatory agencies that are members of the NTP Executive Committee. The third step is external public peer review by the NTP RoC Subcommittee. Following completion of these reviews and solicitation of public comments through announcements in the **Federal Register** and other media, the independent recommendations of the three scientific peer review groups and all public comments are presented to the NTP Executive Committee for review and comment. All recommendations and public comments are submitted to the Director, NTP, who reviews them and makes a final recommendation to the Secretary, DHHS, concerning the listing or delisting of substances or exposure circumstances in the RoC. The Secretary has final review and approval for the 11th RoC.

Agenda

The meeting of the NTP RoC Subcommittee is scheduled for November 19 & 20, 2002. Tentatively scheduled to be peer reviewed are 10 nominated chemicals or exposure circumstances. These nominations are listed alphabetically in the attached table, along with supporting information and a tentative order of presentation and review. Background summary documents for each of the nominations are available to the public and include a summary of the scientific data and information being used to evaluate the nomination. A copy of the draft background summary document for each of these nominations is available electronically through the NTP's homepage at *http://ntp-server.niehs.nih.gov/* (select Report on Carcinogens) or can be obtained on CD or in hard copy, as available, from: Dr. C.W. Jameson, Report on Carcinogens, NIEHS, MD EC–14, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–4096; FAX 919/541–0144; email *jameson@niehs.nih.gov).*

Previous announcements in the **Federal Register** (July 24, 2001: Volume 66, Number 142, Pages 38430–38432 and March 28, 2002: Volume 67, Number 60, Page 14957) called for public comments on the nominations to be reviewed for possible listing in the 11th RoC. These announcements identified a total of 17 nominations. This review by the NTP RoC Subcommittee is for the first set of 10 nominations identified in those **Federal Register** announcements that have completed review by the RG1 and the RG2. The remaining 7 nominations for the 11th RoC will be reviewed by the NTP RoC Subcommittee in 2003. The date and details about that meeting will be published in a future **Federal Register** notice.

Solicitation of Public Comment

The NTP RoC Subcommittee meeting is open to the public, and time will be provided for oral public comment on each of the nominations under review. In order to facilitate planning for the meeting, persons requesting time for an oral presentation regarding a particular nomination should notify the Executive Secretary, Dr. Mary S. Wolfe, P.O. Box 12233, A3–01, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; email *wolfe@niehs.nih.gov*) no later than November 4, 2002. Each organization is allowed one time slot for an oral presentation per nomination. Persons registering to make comments are asked to provide, if possible, a written copy of their statement by November 4th so copies can be made and distributed to NTP RoC Subcommittee members for their timely review prior to the meeting. Written statements can supplement and expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). At least 7 minutes will be allotted to each speaker, and if time permits, can be extended to 10 minutes. Individuals who register to make oral presentations by November 4th will be notified about the time available for their presentation at least one week prior to the meeting. Registration for making public comments will also be available on-site. Time allowed for presentation by on-site registrants may be less then that for preregistered speakers and will be determined by the number who have registered at the meeting. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 25 copies of the text. These copies will be distributed to the NTP RoC Subcommittee members and supplement the record. All comments

received in response to this **Federal Register** notice will be posted on the NTP RoC web site.

Written comments, in lieu of making oral comments, are welcome. All comments must include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and should be received by November 4, 2002 for distribution to the NTP RoC Subcommittee. Written comments received after November 4th will not be considered by NTP RoC Subcommittee members in their reviews.

Solicitation of Additional Information

The NTP would welcome receiving information from completed human or experimental animal cancer studies or studies of mechanism of cancer formation, as well as current production data, human exposure information, and use patterns for any of the nominations listed in this announcement. Organizations or individuals that wish to provide information should contact Dr. C.W. Jameson at the address given above.

The agenda and a roster of NTP RoC Subcommittee members will be available prior to the meeting on the NTP homepage at *http://ntp-server.niehs.nih.gov/* and upon request from Dr. Wolfe. Following the meeting, summary minutes will also be available on the NTP web site (*http://ntp-server.niehs.nih.gov*, select Meetings) and upon request from Dr. Wolfe.

Dated: September 12, 2002.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

SUMMARY DATA FOR NOMINATIONS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS REPORT ON CARCINOGENS SUBCOMMITTEE NOVEMBER 19 AND 20, 2002

Nomination to be reviewed CAS number	Primary uses or exposures	To be reviewed for—	Tentative review order
1-Amino-2,4-dibromoanthraquinone/ (81–49–2)	1-Amino-2,4-dibromoanthraquinone is an anthraquinone-derived vat dye that is used in the textile industry.	Listing in the 11th RoC	1
Cobalt Sulfate/(10124–43–3)	Cobalt sulfate is used in electroplating and electrochemical industries. It is also used as a colorinig agent for ceramics, a drying agent in inks, paints, varnishes and linoleum, and has been added to animal feed as a mineral supplement.	Listing in the 11th RoC	6
Diethanolamine (DEA)/(111–42–2)	DEA is used in the preparation of surfactants used in liquid laundry, dishwishing detergents, cosmetics, shampoos, and hair conditioners. DEA is also used in metal working fluids, in textile processing, industrial gas purification and as an anticorrosin agent.	Listing in the 11th RoC	5
Naphthalene/(91–20–3)	Naphthalene is used as an intermediate in the synethesis of many industrial chemicals, an ingredient in some moth repellants and toilet bowl deodorants, as an antiseptics for irragatinig animal wounds and to control lice on livestock and poultry.	Listing in the 11th RoC	2
Nitrobenzene/(98–95–3)	Nitrobenzene is used mainly in the produdction of aniline, itself a major chemical intermediate in the production of dyes.	Listing in the 11th RoC	8
Nitromethane/(75–52–5)	Nitromethane is used in specialized fuels, in explosives and in the synthesis of nitromethane derivatives, pharmaceuticals, agricultural soil fumigants and industrial antimicrobials. In the past it was used as a chemical stabilizer to prevent the decomposition of various halogenated hydrocarbons such as metal degreasers and aerosol propellants.	Listing in the 11th RoC	4
Selected Heterocyclic Animes (Three Nominations): (1) 2-Amino-3,4-dimethylimidazo[4,5-f] quinoline (meIQ)/(77094–11–2) (2) 2-Amino-3,8-dimethylimidazo[4,5-f] quinoxaline (MeIQx)/(77500–04–0) (3) 2-Amino-1-methyl-6-phenylimidazo[4,5-b] pyridine (PhIP)/(105650–23–5)	MeIQ, MeIQx, and PhIP are heterocyclic amines that are formed during heating or cooking and are found in cooked meats and fish.	Listing in the 11th RoC	[1]3
4,4′-Thiodianiline/(139–65–1)	4,4′-Thiodianiline has been produced commercially since the early 1940s as an intermediate of several diazo dyes.	Listing in the 11th RoC	7

[1] These three nominations will be reviewed together.

[FR Doc. 02–23874 Filed 9–19–02; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–7]

Notice of Proposed Information Collection for Public Comment: HOPE VI—In-Depth Assessment of Family and Neighborhood Outcomes—Wave Two of Panel Study

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date: November 19, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing Department of Housing and Urban Development, 451 7th St., SW., Room 4238 Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, x 4128 or Robert A. Leonard, (202) 708–3700, x4027 for copies of the proposed survey or other documents. These are not a toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission or responses.

This Notice also lists the following information:

Title of Proposal: HOPE VI—In-depth Assessment of Family and Neighborhood Outcomes—Wave Two of Panel Study.

Office: Public Housing Investments in the Office of Public and Indian Housing, HUD

OMB Approval Number: Extension of OMB #2577–0236.

Description of the Need for the Information and its Proposed Use: Questions have been raised among some observers of the HOPE VI program about where the original residents of the developments are living. The purposes of the information collected for this study is to increase knowledge of the ways in which housing choices and outcomes of original residents are affected by revitalization efforts at selected HOPE VI sites. Data gathered will be used by the Urban Institute and Abt Associates to prepare a project report that will allow HUD to begin assessing the benefits of HOPE VI for the original residents, particularly those that may accrue to families choosing to move to other locations, and to provide more guidance to grantees on relocation choices and strategies. This notice covers the second and third waves of a three-wave panel study. The survey for waves 2 and 3 will cover the same topic areas as were addressed in the baseline survey: housing and neighborhood conditions; adult and child health; child education; adult employment, income and hardship; and relocation from public housing.

Form Number: None.

Members of Affected Public: 887 randomly selected original residents of the five selected HOPE VI sites that have received HOPE VI grants between 1998 and 2000 and that have not begun relocating residents.

Frequency of Submission: Once.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Original Residents	887		2		1		1,774

Total Estimated Burden Hours: 1,774.

Status of the Proposed Information Collection: Extension of previous approval.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 10, 2002.

Harold L. Bunce,

Deputy Assistant Secretary, for Economics Affairs.

[FR Doc. 02–23932 Filed 9–19–02; 8:45 am]
BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–42]

Notice of Proposed Information Collection: Comment Request; Request for Proposals—Contract Administrators for Project-Based Section 8 Housing Assistant Payments (HAP) Contracts

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 19, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Deborah Lear, Office of Housing Assistance Contract Administration Oversight, Department of Housing and Urban Development, 451 7th Street SW.,

Washington, DC 20410, telephone (202) 708–2866, extension 2768 (this is not a toll free number) for other information or copies of the proposed form.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).;

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information of those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Proposal—Contract Administrators for Project-Based Section 8 Housing Assistance Payments (HAP) Contracts.

OMB Control Number, if applicable: 2502–0528.

Description of the need for the information and proposed use: This information collection is essential for the continued outsourcing of third party contracts for performance based Section 8 Contract Administration. Contractors will be responsible for overseeing over 20,000 Section 8 contracts. This Section 8 contract portfolio represents an investment of over $4 billion in Section 8 funds and administration, and oversight of these contracts will support the Department's mission of providing safe, decent, sanitary, and affordable housing on a nationwide basis.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 3,660; the number of respondents is 57 generating approximately 862 annual responses; the frequency of response is monthly and annually; and the estimated time needed to prepare the response varies from 5 hours to 40 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 17, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–23933 Filed 9–19–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

John D. Garrity,

Director, Office of Special Needs Assistant Programs.

[FR Doc. 02–23648 Filed 9–19–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Antelope Road L.P. Property, Murrieta, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: PCC II—Murrieta Oaks North, LLC (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing a 5-year permit to the Applicant that would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica,* ''gnatcatcher'') incidental to otherwise lawful activities associated with the construction of a residential development (a maximum of approximately 387 residential units) on a 37.1-acre site in the City of Murrieta, Riverside County, California. The project would result in the incidental take of two pairs of gnatcatchers on the project site through permanent removal of approximately 35 acres of habitat.

We request comments from the public on the permit application and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed action and the measures that the Applicant will undertake to minimize and mitigate take of the gnatcatcher.

DATES: We must receive your written comments on or before November 19, 2002.

ADDRESSES: Please address written comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Assistant Field Supervisor, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by

appointment, during normal business hours at the above address and at the Murrieta Public Library located at 39589 Los Alamos Rd., Murrieta, California.

Background

Section 9 of the Act and federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act to include ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicant is proposing development of residential housing (containing up to approximately 319 multi-family and 68 single-family residential units) on 37.1 acres. The project site is located at the northwest corner of Sierra Lane and McElwain Road in the City of Murrieta, Riverside County, California. Historically, the site has been disturbed by dry crop farming and grazing and more recently by discing for weed abatement and off-road vehicle use. The project site is surrounded by existing rural residential dwellings and roads and is subject to disturbance or degradation by domestic pets, human recreation, invasive plant species, noise, and weed abatement needs due to the proximity of humans and the small size of the site. The proposed project site is not directly connected to large blocks of suitable gnatcatcher habitat being considered by the Service and local agencies for the long term conservation of this species. The project site does not occur within designated critical habitat for the gnatcatcher.

No gnatcatchers were detected during surveys conducted according to Service protocol in 2000. An apparently single male and a pair of gnatcatchers with an active nest were detected during protocol surveys in 2001. Based on these survey results, the Service concluded that implementation of the proposed project will likely result in take of up to two pairs of gnatcatchers through the permanent removal of 35.18 acres of vegetation on the 37.1-acre site.

Federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) were not detected on the project site during three years of surveys, 1999-2001. The federally endangered Stephens' kangaroo rat (*Dipodomys stephensi,* ''SKR'') may occupy portions of the proposed project site, though no SKR surveys have been conducted at the project site. Because the proposed project site occurs within the plan area boundary of the Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County, California (March 1996), compliance with the SKR Habitat Conservation Plan and its associated implementation agreement will be required prior to any ground-disturbing activities.

To mitigate take of gnatcatchers on the project site, the Applicant proposes to purchase credits towards conservation in-perpetuity of 74 acres of riversidean sage scrub and two pairs of gnatcatchers from an off-site conservation bank (or banks) in western Riverside County. The conservation bank(s) collect fees supporting a management endowment to ensure their permanent management and monitoring of sensitive species and habitats, including the gnatcatcher.

The Service's Environmental Assessment considers the environmental consequences of four alternatives, including: (1) The Proposed Project Alternative, which consists of issuance of the incidental take permit and implementation of the Plan and Implementing Agreement; (2) the No Action Alternative which consists of no permit issuance and no development at this time; (3) the Reduced Project Alternative, which consists of issuing a permit for development of either the multi-or single-family residences on half of the project site; and (4) the Different Location Alternative, which consists of relocation of the project to another site within the City of Murrieta. The alternatives to the Proposed Project Alternative would result in less long-term conservation for the gnatcatcher within western Riverside County, as they would not contribute as much, or at all, to conservation of areas within or directly connected to habitat being considered by the Service and local agencies for long-term conservation of the species. Thus, these alternatives would contribute less to the long-term survival and recovery of the gnatcatcher than the Proposed Project Alternative.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the gnatcatcher. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: September 13, 2002.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–23884 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal is extend the collection of information described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB Approval Number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives.

Bureau Form Number: None.

Frequency: Annual proposals, annual or final reports.

Description of Respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual Responses: 370.

Annual Burden Hours: 12,800 hours.

Bureau Clearance Officer: John Cordyack, 703–648–7313.

Dated: June 28, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–23847 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Final Environmental Impact Statement for the Teayawa Energy Center, Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) has filed a Final Environmental Impact Statement (FEIS) for the Teayawa Energy Center, located on the Torres Martinez Indian Reservation in Riverside County, California, with the U.S. Environmental Protection Agency (EPA). The EPA's Notice of Availability for the FEIS appeared in the **Federal Register** on Friday, September 13, 2002. The FEIS is available for public review. Details on the project and the contents of the FEIS are provided under the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments on the FEIS must arrive by October 12, 2002. The Record of Decision will be issued on or after October 15, 2002.

ADDRESSES: You may mail or hand carry written comments to Ronald Jaeger, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1846.

Copies of the FEIS have been sent to all agencies and individuals who participated in the scoping process, public hearings, and those who commented on the Draft EIS. To obtain a copy of the FEIS, please write or call William Allan, Environmental Protection Specialist, at the above address, telephone (916) 978–6043. Copies of the FEIS are also available at the Tribal Hall, Torres Martinez Reservation, 66–725 Martinez Road, Thermal, California 92254 and at the City of Mecca Library, 65250 Coahuilla Street, Mecca, California 92254.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: Calpine Corporation, through an agreement with the Torres Martinez Desert Cahuilla Indians, plans to construct, own, and operate the Teayawa Energy Center (TEC), a 600-megawatt, natural-gas-fired power plant located on a 41.5-acre parcel of Tribal land in Riverside County, California, northeast of the town of Mecca. The parcel is located along 62nd Avenue, east of Johnson Street near the Coachella Canal.

Natural gas would be supplied to the energy center from a Southern California intrastate pipeline. A new gas pipeline approximately 12 miles long will connect TEC to the intrastate gas pipeline system. The preferred natural-gas-line route extends north from the site within an existing utility corridor to an interconnection point on the nearest natural-gas transmission pipeline, located north of the Interstate 10 (I–10) freeway. Roughly 4,000 acre-feet per year of process water for cooling would be supplied to the energy center. The preferred water supply for the project would include a connection to the Coachella branch of the All American Canal (Coachella Canal) for cooling water, and an onsite groundwater well for potable water and backup purposes when canal water is unavailable.

The energy center would use a ''zero liquid discharge'' system for treatment of process wastewater, including cooling tower blowdown. Cooling water would be cycled approximately 10 to 14 times, depending on water quality, in the cooling tower. Wastewater would be concentrated to a sludge-like consistency and evaporated in onsite ponds. The resulting mineral concentrations that build up in the evaporation ponds would be stored, dried and eventually hauled offsite for disposal at an appropriate landfill. Sanitary waste would be collected in a storage tank and periodically trucked to an offsite treatment plant, or disposed using a septic tank and leachfield, if soil conditions permit.

Electricity produced by the energy center would be transformed up to transmission level voltage in an onsite switchyard that would be interconnected to the double-circuit, 230-kilovolt (kV) transmission lines owned by the Imperial Irrigation District (IID). These existing transmission lines are located immediately east of the proposed site, on the eastern edge of the Coachella Canal. To address potential localized transmission system congestion and reliability concerns, the project would also require construction of a new electrical transmission line segment between the site and an IID substation in the City of Coachella. In addition, re-conductoring and related improvements to approximately 40 miles of existing offsite transmission lines owned by IID and Southern California Edison (SCE) and situated between the Coachella substation and the SCE grid will also be required.

Alternatives to the proposed project that are considered in the FEIS include alternative natural-gas pipeline routes, alternative water supplies, a smaller energy center, and no action.

Areas of environmental concern addressed in the FEIS include land use; geology and soils; water resources; agricultural resources; biological resources; cultural resources; mineral resources; paleontological resources; traffic and transportation; noise; air quality; public health/environmental hazards; public services and utilities; hazardous materials, hazardous waste handling and worker safety; socio-economics/environmental justice; Indian trust assets; and visual resources.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 9 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from

organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR, part 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: September 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–24011 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Picayune Rancheria of Chukchansi Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Picayune Rancheria of Chukchansi Indians Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Picayune Rancheria trust lands to be in conformity with the laws of the State of California where applicable and necessary. Although the Ordinance was adopted on December 27, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Picayune Rancheria Liquor Control Ordinance, Resolution No. 2001–38, was duly adopted by the Tribal Council of the Picayune Rancheria on December 27, 2001. The Picayune Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Picayune Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 2001–38, the Picayune Rancheria Liquor Control Ordinance was duly adopted by the Picayune Rancheria Tribal Council on December 27, 2001.

Dated: September 9, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Picayune Rancheria Liquor Control Ordinance, Resolution No. 2001–38, reads as follows:

Picayune Rancheria of Chukchansi Indians Liquor Control Ordinance

Article I—Declaration of Public Policy and Purpose

Section 1.1. The importation, distribution, possession, consumption and sale of liquor within the exterior boundaries of the Picayune Rancheria is a matter of special concern to the members of the Picayune Rancheria of Chukchansi Indians (the Tribe).

Section 1.2. Federal law, as codified at 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe. By adoption of this Ordinance, it is the intention of the Tribal Council to establish tribal law regulating the sale, distribution and consumption of liquor on tribal lands and to ensure that such activity conforms with all applicable provisions of the laws of the State of California.

Section 1.3. The Tribal Council, as the governing body of the Tribe pursuant to its Constitution, has power to: (i) Promulgate and enforce ordinances governing the conduct of members of the Tribe and non-members within the Tribe's jurisdiction; (ii) regulate the conduct of business activities within the exterior boundaries of the Rancheria; and (iii) safeguard the peace, safety, morals and general welfare of the Tribe. Accordingly, the Tribal Council has determined that it is in the best interest of the Tribe to enact a tribal ordinance governing the importation, distribution, sale, possession, and consumption of liquor within the exterior boundaries of the Picayune Rancheria (the Rancheria). By Tribal Council Resolution No. 2001–38, the Tribal Council has adopted this Ordinance for the regulation of the importation, distribution, sale, possession and consumption of liquor on the Rancheria.

Section 1.4. The Tribal Council has determined that only licensed Liquor Operators, as defined herein, shall be permitted to import, distribute or sell liquor on the Rancheria pursuant to this Ordinance, and the purchase, distribution and sale of liquor shall take place only at duly licensed tribally-owned enterprises and at tribally-sanctioned special events, as operated on tribal lands.

Section 1.5. The Tribal Council has determined that any importation, possession, consumption, sale or other commercial distribution of liquor on the Rancheria, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Tribe and is therefore prohibited.

Section 1.6. Based upon the foregoing findings and determinations, the Tribal Council hereby enacts this Liquor Control Ordinance (the Ordinance) as follows:

Aritcle II—Definitions

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1. *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2. *Alcoholic Beverage.* Identical in meaning to the term Liquor as defined herein.

Section 2.3. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this Ordinance, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as Strong Beer.

Section 2.4. *Gaming Compact.* The federally approved Tribal-State Compact, dated September 10, 1999, between the State of California and the Tribe.

Section 2.5. *Liquor.* The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contain more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.6. *Liquor Operator.* Any licensed importer, licensed wholesaler, or licensed retailer of liquor pursuant to this Ordinance.

Section 2.7. *Licensed Importer.* A person, duly licensed by the Tribal Council and the

State, who imports liquor onto the Rancheria for ultimate sale on the Rancheria.

Section 2.8. *Licensed Retailer.* A retail seller of liquor that is duly licensed by the Tribal Council and the State.

Section 2.9. *Licensed Wholesaler.* A wholesale seller of liquor that is duly licensed by the Tribal Council and the State.

Section 2.10. *Malt Liquor.* Includes beer, strong beer, ale, stout and porter.

Section 2.11. *Management Agreement.* The agreement dated October 15, 1999, and all amendments made thereto, made between the Picayune Rancheria of Chukchansi Indians, the Chukchansi Economic Development Authority and Cascade Entertainment Group, LLC.

Section 2.12. *Package.* Any container or receptacle used for holding liquor.

Section 2.13. *Person.* Any individual, partnership, corporation or other business entity or association.

Section 2.14. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character, and all other places within the exterior boundaries of the Rancheria of like or similar nature to which the general public has unrestricted access and which generally are used by the public.

Section 2.15. *Sale and Sell.* Any exchange, barter, and traffic, including the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

Section 2.16. *Special Event.* Any social, charitable or for-profit discreet activity or event conducted by the Tribal Council or any tribal enterprise on tribal lands at which liquor is sold or proposed to be sold.

Section 2.17. *Special Event Site.* The physical location within Rancheria boundaries where a Special Event is held or proposed to be held.

Section 2.18. *Spirits.* Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.19. *State Law.* The duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the Compact.

Section 2.20. *Tribal Council.* The duly elected Tribal Council of the Tribe in accordance with the Constitution of the Picayune Rancheria of Chukchansi Indians.

Section 2.21. *Tribe.* The Picayune Rancheria of Chukchansi Indians, as governed by its Constitution.

Section 2.22. *Tribal Enterprise.* Any business entity, operation or enterprise owned, in whole or in part, by the Tribe.

Section 2.23. *Tribal Land.* All land within the exterior boundaries of the Picayune Rancheria.

Section 2.24. *Wine.* Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, *etc.*), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III—Enforcement

Section 3.1. *Tribal Council Powers.* The Tribal Council, in furtherance of the Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations, consistent with this Ordinance, governing the possession, distribution, purchase, sale and/or consumption of alcoholic beverages in public places on the Rancheria as the Tribal Council deems necessary;

(b) Employ managers, accountants, clerks, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to exercise its authority as set forth in this Ordinance;

(c) Issue licenses permitting the importation, possession, sale and/or distribution of liquor on the Rancheria;

(d) Hold hearings on violations of this Ordinance or for the issuance, suspension or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Publish notices and make such reports to the Tribe as may be appropriate;

(h) Collect taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of licenses, and keep accurate records, books and accounts;

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

(k) Exercise such other powers as may be necessary to carry out the purposes of this Ordinance.

Section 3.2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members, employees and agents shall not:

(a) Accept any gratuity, compensation or other thing of value from any Liquor Operator, including a wholesaler, retailer or distributor, or from any licensee, unless such gratuity, compensation or other thing of value is used directly for marketing and/or promotion only;

(b) Waive the immunity of the Tribe from suit except by express resolution of the Tribal Council, such waiver being subject to the following limitation: the waiver must be transaction specific, limited as to duration and beneficiary, including a provision that limits recourse only to specified assets or revenues of the Tribe or a tribal entity, and specifies the process and venue for dispute resolution, including applicable law; or

(c) Violate the terms of any contract validly executed by the Tribe.

Section 3.3. *Inspection Rights.* The public places on or within the Rancheria where liquor is sold or distributed shall be open for inspection by the Tribal Council or its designees at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

Aritcle IV—Liquor Sales

Section 4.1. *Restricted Locations and License Required.* No possession, distribution or sale of liquor shall occur on or within public places within the exterior boundaries of the Rancheria, except (i) at a tribal enterprise or an authorized special event, located on tribal lands; and (ii) by a duly licensed Liquor Operator.

Section 4.2. *Retail Sales for Cash.* All retail liquor sales within the Rancheria shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

Section 4.3. *Wholesale and Import Sales.* All purchases and sales of liquor by importers and wholesalers of liquor may be by cash or credit, in accordance with the normal business practices for such industries within the State of California.

Section 4.4. *Sale for Personal Consumption.* Except for sales by licensed importers and licensed wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21) years. Resale of any alcoholic beverage purchased within the exterior boundaries of the Rancheria is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Rancheria and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages up to five hundred ($500.00) dollars, as determined by the Tribal Court after notice and an opportunity to be heard.

Section 4.5. *Compliance Required.* All possession, distribution, sale and consumption of liquor on tribal lands shall be in compliance with this Ordinance including all applicable provisions of California State law.

Article V—Licensing

Section 5.1. *Licensing Procedures.* In order to control the proliferation of establishments on tribal lands that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to import or sell liquor, whether wholesale or retail, within the exterior boundaries of the Rancheria, must apply to the Tribal Council for a Liquor Operator's license.

Section 5.2. *Required Licenses.* A person shall not:

(a) Import liquor onto tribal lands unless such person becomes a licensed importer;

(b) Engage in business as a wholesale dealer of liquor, beer or wine unless such person becomes a licensed wholesaler;

(c) Engage in the retail sale of liquor, beer or wine unless such person becomes a licensed retailer.

Section 5.3. *State Licensing.* No person shall be allowed or permitted to distribute, sell or provide liquor on the Rancheria, consistent with this Ordinance, unless such person is also licensed by the State of California to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable tribal license shall automatically be revoked or suspended.

Section 5.4. *Application.* Any person or entity applying for a license to sell or provide liquor on the Rancheria shall complete and submit an application, described below, provided for this purpose by the Tribal Council and pay such application fee as may be set by the Tribal Council.

Section 5.5. *Application Fee.* Any person or entity applying for a license under this Ordinance shall pay to the Tribal Council an application fee in the amount of One Thousand Four Hundred ($1,400.00) Dollars, which shall be deposited into the Tribal Treasury.

Section 5.6. *Issuance of License.* The Tribal Council may issue a license if it reasonably believes that such issuance is in the best interest of the Tribe and its members. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Council, further, the Tribal Council acknowledges that there is no tribal legislation prohibiting the sale of tobacco and/or alcoholic beverages previously in force, and no such legislation will be enacted during the term of the Management Agreement.

Section 5.7. *Period of License.* Each license may be issued for a period not to exceed seven (7) years from the date of issuance.

Section 5.8. *Renewal of License.* A licensee may renew a license if such licensee has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Tribe and the other residents of the Rancheria.

Section 5.9. *Suspension or Revocation of License; Notice, Hearing, Right to Legal Counsel; Writing.* The Tribal Council may suspend or revoke a license issued under this Ordinance for violation of any of the provisions of the laws of the Tribe including this Ordinance, or any conditions of the Liquor Operator's license, or for false information provided by the licensee on the application for an Operator's license, or on the application for renewal of an Operator's License, provided that the Tribal Council provide notice and a hearing, at which the licensee shall be given an opportunity to have legal counsel, to submit testimony and evidence, to cross examine witnesses, and respond to any charges against it and, to demonstrate why the license should not be suspended or revoked. Any decision to revoke a license under this Ordinance shall be in writing, and shall state with specificity the reasons and evidence justifying revocation. In the event any Liquor Operator's license is suspended or revoked pursuant to this Ordinance, all application fees paid by the licensee shall be forfeited and shall not be refunded to such licensee.

Section 5.10. *Application for License.* An application for any of the licenses described in Section 5.2, above, must be made to the Tribal Council. Each application must:

(a) Be made on such form as the Tribal Council prescribes;

(b) Include the name, address and social security or tax identification number of the applicant. If the applicant is: (i) A partnership, the application must include the names and addresses of all partners; (ii) a corporation, association, limited liability company or other organization, the application must include the names and addresses of the president, vice president, secretary and managing officer or officers;

(c) Include the following information regarding all persons listed in (b) above: (i) Birth certificate or other suitable proof of age; (ii) background information of the applicant's business history relating to the import, distribution or sale of liquor, including a complete and full disclosure of all previously held licenses obtained from any jurisdiction relating to transactions of liquor; (iii) a copy of all current liquor licenses issued to applicant by the State of California; (iv) if the applicant is a corporation, limited liability company or other business association, proof of good standing from the jurisdiction in which the entity is organized; (v) a description of the type of liquor business proposed to be conducted on the Rancheria, including the scope of such business and liquor activity, the location and such other information as the Tribal Council may request; and (vi) satisfactory proof that the applicant's past and present record as a business person and citizen demonstrates that the applicant is of good moral character and reputation, is financially responsible, and that the applicant has not been convicted of a felony;

(d) Specify the location of the premises for which the license is sought, which shall be the location of a tribally-owned enterprise within the Rancheria, and

(e) Be accompanied by the annual license fee required for the particular license for which application is made.

Section 5.11. *Contents of License.* Every license issued under this Ordinance shall set forth:

(a) Name of the person to whom it is issued;

(b) Location of the premises and the name of the tribal enterprise where liquor is proposed to be imported, delivered, and/or sold;

(c) Type of license issued; and

(d) Statement that license is nontransferable, except that upon prior written notice and in accordance with regulations of the Tribal Council, the location of the premises for which it was issued may be changed.

Section 5.12. *Notice of Application for License.* Upon submission of a sworn application to the Tribal Council for a Liquor Operator's license, or renewal of an existing license, the Tribal Council Secretary shall review the application for completeness and determine whether on the face of the application, the applicant and the premises meet the criteria provided by this Ordinance, the tribal Gaming Code and tribal law. Upon determination that a submitted application or renewal for a Liquor Operator's license is complete, and the application or renewal meets the criteria listed herein, the Tribal Council Secretary shall post a notice at the tribal office for ''Application for Liquor Operator License,'' which shall include the applicant's name, and the license applied for by the applicant, and the date set for the issuance of such license.

Section 5.13. *Hearing on Application for License.* All applications for a Liquor Operator's license, or for renewal of an existing license, shall be considered by the Tribal Council in open public session at which the applicant, the Tribal Council and any person supporting or protesting the application, shall have the right to attend, to express their views and to offer sworn oral testimony and documentary evidence relevant to the application. At the discretion of the Tribal Council, the hearing may be scheduled for a Tribal Council or General Council meeting with thirty (30) days notice. The applicant and any protestant, at each one's own expense, shall have the right to be represented by an attorney. The proceedings shall be recorded by tape using recording devices that permit the tape itself to be reproduced in kind under the control of the Tribal Council by commonly available equipment. A copy of the tape may be obtained at the request and the expense of any participant in the proceedings. A typed transcript of the proceedings shall be transcribed by the Tribal Council Secretary, or its designated agent, and a copy of such typed transcript may be purchased by any participant to the proceedings, at such requesting participant's own expense. The original taped recording shall be the property of the Tribal Council and shall be the official record of such proceedings.

Section 5.14. *Denial of Application for License.* If an application for a new or renewal of a Liquor Operator's license has been denied by the Tribal Council, or if the application for a new or renewal for a license is withdrawn by the applicant after a hearing has been held in which testimony is received regarding any reason for denying the application, the withdrawal shall have the same effect as an order denying the application; the Tribal Council may not consider an application for a license to sell alcoholic beverages, or issue a license to sell alcoholic beverages, for the same, or substantially the same, premises for two (2) years. The two (2) year prohibition commences with the date of the Tribal Council's final decision, or if the decision is judicially reviewed, on the date the judicial decision is final, or if the application is withdrawn, on the date of withdrawal.

Section 5.15. *Right of Review.* Any person aggrieved by a final decision of the Tribal Council shall have the right of judicial review of the Tribal Council's decision by the Tribal Court, if and when established; provided that a party to a validly approved contract with the Tribe may seek such remedies identified in such contract in addition to or in lieu of the review provided in this Ordinance. In the event no Tribal Court has been established, such person may request further consideration and review of

the decision by the Tribal Council, which shall be granted if the aggrieved person presents new or additional material information to the Tribal Council along with a written request for further consideration that outlines the issues to be reconsidered.

Section 5.16. *Special Events License.* In accordance with procedures and regulations to be issued by the Tribal Council, a person may apply for a special license of limited duration known as a Special Events License. The Tribal Council, in its discretion, may grant to any licensed Liquor Operator, or to any tribal, or community organization conducting a tribal or organizational activity or to any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, a special license to sell beer and/or wine to the patrons of such event or activity to be consumed on the licensed premises and within the licensed enclosure or special event site. The special license to sell beer and/or wine shall expire within twelve (12) hours after the designated completion of the activity or special event, unless extended in writing by the Tribal Council.

Article VI—Taxes

Section 6.1. *Sales Tax.* The Tribal Council shall have the authority to impose a tax on all wholesale and retail liquor sales that take place on tribal lands. Such tax may be implemented by a duly enacted resolution of the Tribal Council, as supplemented by regulations adopted pursuant to this Ordinance. Such tax shall not be imposed on a party to a contract validly executed by the Tribe, if it is inconsistent with such validly executed contract. Subject to the foregoing limitation, any tax imposed by authority of this Section shall apply to all retail and wholesale sales of liquor on tribal lands.

Section 6.2. *Payment of Taxes to the Tribe.* All taxes imposed pursuant to this Article VI shall be paid to the General Treasury of the Tribe and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

Article VII—Rules, Regulations and Enforcement

Section 7.1. *Evidence.* In any proceeding under this Ordinance, proof of any unlawful possession, distribution or sale of liquor shall be prima facie evidence of a violation of this Ordinance.

Section 7.2. *Civil Violations.* Any person who shall import, sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall have liquor in his/her possession for distribution or resale without a license, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Council in accordance with its duly adopted regulations. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe or other persons located outside tribal lands for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside the Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. *Illegal Purchases.* Any person within the boundaries of the Rancheria who, in a public place, sells or buys liquor from any person other than a licensed Liquor Operator at a tribal enterprise or special event shall be guilty of a violation of this Ordinance.

Section 7.4. *Providing Liquor to Underage Person.* No person under the age of twenty-one (21) years shall serve, consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section shall be guilty of a violation of this Ordinance for each and every drink so consumed.

Section 7.5. *Selling Liquor to Underage Person.* Any person who, in a public place, sells, distributes or provides any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each separate sale or drink provided.

Section 7.6. *Civil Penalty.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe the amount of two hundred fifty dollars ($250.00) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The payment of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice, hearing and an opportunity to respond to such allegations.

Section 7.7. *Identification Requirement.* Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27) years, the licensed purveyor of liquor may require the prospective purchaser to present any one of the following officially-issued cards of identification which shows the prospective purchaser's age, signature, and photograph:

(a) Drivers license of any state or identification card issued by any state Department of Motor Vehicles (DMV);

(b) United States Uniformed Services identification documents; or

(c) Passport

Section 7.8. *Refusal to Sell or Distribute Liquor.* Whenever a licensed purveyor of liquor requires the presentation of an officially-issued card of identification under Section 7.7, above, and the prospective purchaser fails to present such identification, the licensed purveyor shall refuse to sell or distribute any liquor to such prospective purchaser.

Article VIII—Abatement

Section 8.1. *Public Nuisance Established.* Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2. *Abatement of Nuisance.* The Tribal Chairperson, upon authorization by a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Tribe, to abate and perpetually enjoin any nuisance declared under this Ordinance. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant, the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars ($5,000.00) payable to the Tribe and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provisions of this Ordinance or of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Tribe.

Section 8.3. *Evidence.* In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

Article IX—Use of Proceeds

Section 9.1. *Application of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing activity pursuant to this Ordinance and from fines imposed as a result of violations of this Ordinance, shall be applied as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the Tribal Council for governmental services and programs on tribal lands.

Article X—Miscellaneous Provisions

Section 10.1. *Severability and Savings Clause.* If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 10.2. *Effective Date.* This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. *Repeal of Prior Acts.* Any and all prior resolutions, laws, regulations or ordinances of the Tribe pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

Section 10.4. *Conformance with State Law.* All interpretations, acts and transactions

under this Ordinance shall be in conformity with the Compact and the laws of the State of California, within the intent of 18 U.S.C. 1154, 1161.

Article XI—Amendments

Section 11.1 This Ordinance may be amended only pursuant to a duly enacted Resolution of the Tribal Council, with certification by the Secretary of the Interior, or his designee, and publication in the **Federal Register,** if required.

[FR Doc. 02–23856 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–02–1320–EL–P; NDM 91647]

Request for Public Comment on Environmental Analysis, Fair Market Value and Maximum Economic Recovery; Coal Lease Application NDM 91647, The Falkirk Mining Company

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces the availability of the Environmental Assessment (EA) for the Falkirk Mining Company's Federal Coal Lease Application NDM 91647 and requests public comment on the associated Finding of No Significant Impact (FONSI), Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources subject to the lease application.

The land included in Coal Lease Application NDM 91647 is located in McLean County, North Dakota, and is described as follows:

T. 146N., R. 82W., 5th P. M.
Sec. 34: NW¼SW¼.

40.00 acres.

The EA addresses the cultural, socioeconomic, environmental and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

Alternative 1: (Proposed Action) Would involve leasing the tract, as applied for. This tract contains an estimated 300,000 tons of recoverable coal reserves.

Alternative 2: (No Action) Reject or deny the coal lease application. The Federal coal reserves would be bypassed.

The public is invited to submit written comments on the FONSI associated with this proposed action as well as the FMV and MER of the proposed lease tract.

Notice is also given that a public hearing will be held on Monday, September 23, 2002, at 10 a.m. on the FONSI, FMV, and MER for the proposed lease sale at the BLM North Dakota Field Office, 2933 Third Avenue West, Dickinson, North Dakota.

DATES: Written comments must be received on or before 4:30 p.m., Friday, October 4, 2002, at the Bureau of Land Management North Dakota Field Office, 2933 Third Avenue West, Dickinson, North Dakota.

ADDRESSES: Comments or questions may be directed to Doug Burger, Field Manager, North Dakota Field Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619 (701–227–9148). Copies of the EA are available at the above address. For more complete data on this tract, please contact Coal Coordinator, Rebecca Good (406–896–5080), Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59107–6800.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR parts 3422 and 3425, not less than 30 days prior to publication of a notice of sale, the Secretary shall solicit public comments on the proposed sale, FMV, and MER on the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59107–6800, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Written comments should be sent to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800, and should include, but not necessarily be limited to, the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve MER of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining, and inclusion of the tract in an existing mining operation;

3. The FMV appraisal including but not limited to the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, and any comparable sales data of similar coal lands.

The value given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

FOR FURTHER INFORMATION CONTACT: Doug Burger, District Manager, North Dakota Field Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619, telephone 701–227–9148.

Dated: July 24, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02–23935 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–PB–252Z]

Front Range Resource Advisory Council (Colorado) Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: In accordance with the Federal Land Policy and Management Act(FLPMA) and the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. Appendix, notice is hereby given that the Front Range Resource Advisory Council (Colorado) meeting scheduled for September 18, 2002 at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado has been cancelled. Notice of the meeting appeared in the **Federal Register:** May 20, 2002.

DATES: The meeting was scheduled for September 18, 2002 from 9:15 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: For further information contact Ken Smith at (719) 269–8500, Bureau of Land Management (BLM), Front Range Center Office, 3170 East Main Street, Canon City, Colorado 81212.

SUPPLEMENTARY INFORMATION: There are no plans to reschedule the meeting.

Dated: September 13, 2002.

John L. Carochi,

Acting Front Range Center Manager.

[FR Doc. 02–23879 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–22 and TA–2104–2]

U.S.-Central America Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: September 16, 2002.

SUMMARY: Following receipt of a request on August 30, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–22 and TA–2104–2, *U.S.-Central America Free Trade Agreement: Advice Concerning the Probable Economic Effect,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Christopher Melly, Project Leader (202–205–3461; *cmelly@usitc.gov*) or Dennis Luther, Deputy Project Leader (202–205–3497; *luther@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; *wgearhart@usitc.gov*). 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 the USTR, pursuant to section 131 of the Trade Act of 1974, in its report the Commission will provide advice as to the probable economic effect of duty-free treatment for imports of products of the five member countries of the Central American Economic Integration System (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which 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 2001 trade data. The advice with respect to the removal of U.S. duties on imports from the Central American countries will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty. In addition, pursuant to section 2104(b)(2) of the Trade Act of 2002, the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of the Central American countries (a list of products was provided by the USTR) on (i) industries in the United States producing like or directly competitive products and (ii) the U.S. economy as a whole. The Commission expects to provide its report to the USTR by December 27, 2002.

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 October 8, 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., September 24, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 26, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 18, 2002. In the event that, as of the close of business on September 24, 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 to the Commission (202–205–1806) after September 24, 2002, for information concerning 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 § 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 to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends 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 October 18, 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*).

List of Subjects

Central American countries Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, tariffs, and imports.

Issued: September 16, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23913 Filed 9–19–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–21 and TA–2104–1]

U.S.-Morocco Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: September 13, 2002.

SUMMARY: Following receipt of a request on August 30, 2002, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–21 and TA–2104–1, *U.S.-Morocco Free Trade Agreement: Advice Concerning the Probable Economic Effect,* under section 131 of the Trade

Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Michelle Vaca-Senecal, Project Leader (202–205–3356; *mvaca-senec@usitc.gov*), Heather Sykes, Deputy Project Leader (202–205–3436; *hsykes@usitc.gov*), or Ralph Watkins, Chief, Miscellaneous Manufactures Branch (202–205–3492, *watkins@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; wgearhart@usitc.gov). 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 the USTR pursuant to section 131 of the Trade Act of 1974, in its report the Commission will provide advice as to the probable economic effect of duty-free treatment for imports of products of Morocco (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The import 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 import advice will be based on the 2002 Harmonized Tariff System nomenclature and 2001 trade data. The advice with respect to the removal of U.S. duties on imports from Morocco will assume that any known U.S. non-tariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. non-tariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty. In addition, pursuant to section 2104(b)(2) of the Trade Act of 2002, the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of those agricultural products of Morocco (a list of products was provided by USTR) on (i) industries in the United States producing like or directly competitive products and (ii) the economy as a whole. The Commission expects to provide its report to USTR by November 28, 2002.

Public Hearing

A public hearing in connection with this 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 October 10, 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., September 24, 2002. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 27, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 16, 2002. In the event that, as of the close of business on September 24, 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 to the Commission (202–205–1806) after September 24, 2002, for information concerning 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 § 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 to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends 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 October 16, 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*).

List of Subjects

Morocco, tariffs and imports.

Issued: September 16, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–23912 Filed 9–19–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 223F]

Controlled Substances: Final Revised Aggregate Production Quotas for 2002

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final aggregate production quotas for 2002.

SUMMARY: This notice establishes final 2002 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2002 published July 23, 2002 (67 FR 48207).

EFFECTIVE DATE: September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The 2002 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2002 to provide adequate supplies of

each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On July 23, 2002, a notice of the proposed revised 2002 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (67 FR 48207). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before August 22, 2002.

Ten companies commented on a total of eleven Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for gamma-hydroxybutyric acid, dextropropoxyphene, dihydrocodeine, fentanyl, hydrocodone (for sale), hydromorphone, methylphenidate, morphine (for sale), noroxymorphone (for sale), oxycodone (for sale) and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2001 year-end inventories, initial 2002 manufacturing quotas, 2002 export requirements, actual and projected 2002 sales and use, and research and product development requirements. Based on this information, the DEA has adjusted the final 2002 aggregate production quotas for alphamethadol, gamma-hydroxybutyric acid, dextropropoxyphene, dihydrocodeine, fentanyl, hydrocodone (for conversion), morphine (for sale), noroxymorphone (for sale), oxycodone (for sale) and thebaine to meet the legitimate needs of the United States.

Regarding hydrocodone (for sale), hydromorphone and methylphenidate, the DEA has determined that the proposed revised 2002 aggregate production quotas are sufficient to meet the current 2002 estimated medical, scientific, research and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2002 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established final 2002 quotas
Schedule I	
2,5-Dimethoxyamphetamine	12,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	4
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15
3,4-Methylenedioxymethamphetamine (MDMA)	15
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	7
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	3
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	95
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	8,220,000
Heroin	9

Basic class	Established final 2002 quotas
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	46
Marihuana	840,000
Mescaline	7
Methaqualone	9
Methcathinone	9
Methyldihydromorphine	2
Morphine-N-oxide	201
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	7
Normorphine	57
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	131,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	902
Alphaprodine	2
Amobarbital	451,000
Amphetamine	13,964,000
Carfentanil	120
Cocaine	251,000
Codeine (for sale)	43,494,000
Codeine (for conversion)	59,051,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	741,000
Diphenoxylate	708,000
Ecgonine	51,000
Ethylmorphine	12
Fentanyl	733,000
Glutethimide	2
Hydrocodone (for sale)	25,702,000
Hydrocodone (for conversion)	2,500,000
Hydromorphone	1,409,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	12
Levomethorphan	2
Levorphanol	37,000
Meperidine	9,583,000
Metazocine	1
Methadone (for sale)	12,705,000
Methadone Intermediate	19,081,000
Methamphetamine	2,244,000
[275,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,950,000 grams for methamphetamine for conversion to a Schedule III product; and 19,000 grams for methamphetamine (for sale)]	
Methylphenidate	20,967,000
Morphine (for sale)	18,046,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	40,000
Noroxymorphone (for conversion)	6,000,000
Opium	700,000
Oxycodone (for sale)	34,482,000
Oxycodone (for conversion)	1,100,000
Oxymorphone	454,000
Pentobarbital	27,728,000

Basic class	Established final 2002 quotas
Phencyclidine	21
Phenmetrazine	2
Phenylacetone	10,218,000
Secobarbital	1,002
Sufentanil	2,100
Thebaine	43,292,000

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: September 13, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–23876 Filed 9–19–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing

Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA020001 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
New York:
NY020017 (Mar. 1, 2002)
NY020018 (Mar. 1, 2002)
NY020026 (Mar. 1, 2002)

Volume II

None

Volume III

None

Volume IV

Michigan:
MI020001 (Mar. 1, 2002)
Wisconsin:
WI020011 (Mar. 1, 2002)

Volume V

None

Volume VI

Montana:
MT020006 (Mar. 1, 2002)
MT020007 (Mar. 1, 2002)
MT020034 (Mar. 1, 2002)

Volume VII

California:
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volume, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 12th day of September 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–23704 Filed 9–19–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. F–M Coal Corporation

[Docket No. M–2002–071–C]

F–M Coal Corporation, P.O. Box 1733, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (Escapeways; bituminous and lignite mines) to its Mine No. 4 (I.D. No. 15–18466) located in Knox County, Kentucky. The petitioner proposes to use two five-pound or one ten-pound portable chemical fire extinguishers on each Mescher tractor at Mine No. 4. Each fire extinguisher would be inspected on a daily basis by the equipment operator prior to entering the escapeway, and records would be maintained for all inspections of the fire extinguishers. The fire extinguishers will be readily accessible to the equipment operator. A sufficient number of spare fire extinguishers will be maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Snyder Coal Company

[Docket No. M–2002–072-C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) to its Rattling Run Slope Mine (I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Mountain Coal Company, L.L.C.

[Docket No. M–2002–073–C]

Mountain Coal Company, L.L.C., 5174 Highway 133, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.352 (Return air courses) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to temporarily use a portion of the #4 belt entry as a return air course. The petitioner has listed specific stipulations that would be used to achieve an equivalent level of safety when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before October 21, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 16th day of September, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–23945 Filed 9–19–02; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–254]

Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Unit 1; Exemption

1.0 Background

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License No. DPR–29, which authorizes operation of the Quad Cities Nuclear Power Station (Quad Cities), Unit 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 boiling-water reactor located in Rock Island County, Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.55a, ''Codes and standards,'' paragraph (g)(4) requires that American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (Code) Class 1, 2, and 3 components, including supports, shall meet the requirements, except the design and access provisions and the preservice examination requirements, as stated in the ASME Code, Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' to the extent practical within the limitations of design, geometry, and materials construction of the components. 10 CFR 50.55a(g)(4)(ii) requires that inservice examination of components and system pressure tests conducted during the first 10-year interval and subsequent intervals comply with the requirements in the latest edition and addenda of ASME Code, Section XI, incorporated by reference in 10 CFR 50.55a(b) twelve months prior to the start of the 120-month interval, subject to limitations and modifications listed therein. The 1989 Edition of the ASME Code is the code of record for the third 10-year interval for Quad Cities, Unit 1. Therefore, inservice inspection of the ASME Code Class 1, 2, and 3 components is to be performed in accordance with ASME Code, 1989 Edition, Section XI, Table IWB–2500, Examination Category B–D, Item Nos. B3.90 and B3.100.

The licensee's application dated July 10, 2002, requests a schedular extension for Quad Cities, Unit 1, from implementation of inservice examinations of certain reactor pressure vessel (RPV) nozzle-to-vessel welds and nozzle inside radius sections, per ASME Code, Section XI, Table IWB–2500, Examination Category B–D, Item Nos. B3.90 and B3.100, by the end of the current 120-month inspection interval, as required by 10 CFR 50.55a(g)(4)(ii). The current interval ends on February 17, 2003, for Quad Cities Unit 1. The proposed exemption would grant an extension for the performance of the third interval inspections until the completion of the Unit 1 refueling outage in January 2005.

The proposed action is needed to provide temporary relief from the regulation and to prevent unnecessary radiation worker exposure. Quad Cities, Unit 1, was designed and fabricated before the examination requirements of ASME Section XI were formalized and published. The plant was not specifically designed or constructed to permit easy access to the RPV nozzle-to-vessel welds and nozzle inside radius sections for inservice inspection, from the inside or outside surface. The biological shield, lead bricks, and insulation around the nozzles do not permit ready access by personnel for inservice examination from the outside surface. The inside surface is totally inaccessible due to the inherent design of the reactor vessel. The task to access a nozzle for inservice examination employs several work groups and a significant number of man-hours with the attendant large radiation exposure accumulation. The estimated radiation dose avoided by exempting the nine nozzles until the fourth inspection interval is a minimum of 60 man-rem.

Plans to mitigate the radiation exposure accumulation by means of chemical decontamination of the reactor recirculation system piping were evaluated by the licensee for the November 2002 refueling outage. However, chemical decontamination would result in the removal of the noble metals chemical application (NMCA) coating on the piping. Re-application of NMCA to the reactor recirculation system piping during, or immediately after, the November 2002 outage is not desirable due to the potential effects of double exposure of fuel to the NMCA process. Without a planned re-application of NMCA until the January 2005 refueling outage, the affected piping would be more susceptible to intergranular stress corrosion cracking and potential crack creation and growth in the affected piping. Cracks would necessitate additional repair activities in a high radiation field. Given these potentially deleterious effects, the optimum time for source term reduction would be during the January 2005 outage concurrent with the next application of NMCA, permitting inspection activities to be performed in a lower dose environment.

10 CFR 50.12 permits the Nuclear Regulatory Commission to grant exemptions which are authorized by law, will not present undue risk to the health and safety of the public, and are consistent with the common defense and security, provided that special circumstances are present. Pursuant to 10 CFR 50.12(a)(2), the Commission believes that special circumstances exist in that the requested schedular exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. The licensee states that all nine nozzles have received a minimum of three ultrasonic examinations in previous outages and each has received a baseline examination along with the

two previous inservice examinations during the first and second 120-month inspection intervals. Implementation of inspection requirements industry-wide, to date, for RPV nozzle-to-vessel welds and nozzle inside radius sections of Class I systems, have not resulted in any findings in any of the identified nozzles with the exception of boiling-water reactor feedwater and control rod drive return line nozzles (NUREG–0619, November 1980). Given that both plant and industry experience shows no evidence of service-induced flaws, the increased risk of extending the inspection interval is minimal. Therefore, an extension of the completion date from the third 120-month inspection interval refueling outage of November 2002 until the fourth 120-month inspection interval refueling outage of January 2005 to achieve the inservice examinations and reduce excessive radiation dose is beneficial. In addition, the requested exemption will only provide temporary relief from the applicable regulation and does not jeopardize the health and safety of the public. The delayed examinations performed during the fourth 10-year interval will be credited to the third 10-year interval. These examinations will be repeated during the fourth 10-year interval in accordance with the fourth 10-year interval inservice inspection program.

3.0 Discussion

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. These circumstances include the special circumstances that the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purpose of the regulation is to ensure the structural integrity of the reactor pressure vessel.

The staff examined the licensee's rationale to support the exemption request and concluded that granting it would meet the underlying purpose of 10 CFR part 50. Public health and safety will not be jeopardized by the granting of the delay because the components listed in the licensee's July 10, 2002, exemption request are not the limiting components for RPV embrittlement. Additionally, previous examinations of the RPV nozzle-to-vessel welds and nozzle inside radius sections have not detected service-induced flaws. The proposed delay of examinations of the components results in no reduction in the number, type, or coverage of the examinations. Finally, the requested exemption is consistent with the common defense and security.

The licensee asserts that under 10 CFR 50.12(a)(2)(iii), the requested schedular exemption ''will avoid undue hardship or costs.'' However, 10 CFR 50.12(a)(2)(iii) requires for special circumstances that compliance would result in hardship or other costs that are significantly in excess of those contemplated or that the requirements are significantly in excess of those incurred by others similarly situated. The staff finds that there are no excessive hardships or costs.

10 CFR 50.12(a)(2)(v) requires that the exemption would offer only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. All nine nozzles have received a minimum of three ultrasonic examinations in previous outages and each has received a baseline examination along with the two previous inservice examinations during the first and second 120-month inspection intervals. Coordinating the next inservice inspection with chemical decontamination and re-application of NMCA would be advantageous from the perspective of reducing both worker radiation exposure and vulnerability of the affected piping to intergranular stress corrosion cracking. The alternate inservice inspection schedule delays the planned inspections for a maximum of 26 months and results in a significant reduction in radiation exposure of a minimum of 60 person-rem. The staff finds that the licensee merits the required special circumstances under 10 CFR 50.12(a)(2)(v).

Based upon a consideration that the exemption would offer only temporary relief from the regulation and result in a significant reduction in worker radiation exposure, the staff concludes that an extension of the completion date from the third 120-month inspection interval refueling outage of November 2002 until the fourth 120-month inspection interval refueling outage of January 2005 to achieve the inservice examinations is beneficial.

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 Exelon Generation Company, LLC an exemption for Quad Cities, Unit 1, from the requirements of 10 CFR 50.55a(g)(4)(ii) for implementation of inservice examinations of certain reactor pressure vessel (RPV) nozzle-to-vessel welds and nozzle inside radius sections, as listed in the licensee's July 10, 2002, application, per ASME Code, Section XI, Table IWB–2500, Examination Category B–D, Item Nos. B3.90 and B3.100, by the end of the current 120-month inspection interval.

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 56860).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of September, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–23948 Filed 9–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338, 50–339, 50–280, 50–281, 72–16 and 72–2]

North Anna Power Station, Units 1 and 2 and Surry Power Station, Units 1 and 2; North Anna and Surry Independent Spent Fuel Storage Installations; Exemption

1.0 Background

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37, which authorize operation of the North Anna and Surry Power Stations, Units 1 and 2, respectively. In addition, the licensee is the holder of Special Nuclear Material License Nos. SNM–2507 and SNM–2501 for the Independent Spent Fuel Storage Installations (ISFSIs) at the North Anna and Surry Power Stations, respectively. These licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

North Anna Power Station consists of two pressurized-water reactors and an ISFSI located in Louisa County in the Commonwealth of Virginia. Surry

Power Station consists of two pressurized-water reactors and an ISFSI located in Surry County in the Commonwealth of Virginia.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), § 40.64(b) requires that each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the NRC within 30 days after September 30 of each year a statement of its foreign origin source material inventory. This statement is to be submitted to the address specified in the reporting instructions and include the Reporting Identification Symbol assigned by the NRC to the licensee.

The licensee, in its submittal dated November 5, 2001, proposed an exemption from 10 CFR 40.64(b) to allow for the reporting of foreign origin source material inventory to be made in conjunction with their material status reporting. By letter dated December 29, 2000, the staff approved of the licensee's request to submit the material status reports as of June 30 and December 31 of each year and to file these reports within 30 days after the end of the reporting period. This proposed exemption would allow for the annual statement of foreign origin source material inventory to be submitted once each year concurrently with a material status report. The licensee is proposing this reporting schedular change to avoid diverting personnel resources from refueling activities and post-refueling accountability to the preparation of foreign origin source material inventory reports.

3.0 Discussion

Pursuant to 10 CFR 40.14(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 40 when the exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The staff has determined that an exemption would be required to approve of the use of the alternate reporting dates for the foreign origin source material inventory. The staff examined the licensee's rationale to support the exemption request and concluded that the alternate dates would meet the underlying purpose of 10 CFR part 40. An alternative reporting date for the foreign origin source material inventory does not present any risk to the public health and safety. In addition, this exemption will not change the physical inventory of uranium or thorium or any combination of uranium or thorium at the plant, nor will this exemption change the amount or form of data required to be submitted to the staff by 10 CFR 40.64(b). The annual accounting and subsequent statement of foreign origin source material inventory will still be performed and the criteria for performing this accounting will not be affected.

The staff has examined the licensee's rationale to support the exemption request and concludes that the exemption meets the criteria of 10 CFR 40.14(a) and is appropriate and does not reduce the overall effectiveness of the licensee's foreign origin source material tracking program or the information required for submittal in accordance with 10 CFR 40.64(b).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 40.14(a), the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 40.64(b), for North Anna and Surry Power Stations, Units 1 and 2, and their respective ISFSIs.

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 58437).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of September, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Regulation.

[FR Doc. 02–23947 Filed 9–19–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Extension of Public Comment Period Environmental Impact Statement for the Mixed Oxide Fuel Fabrication Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: On April 24, 2002, the U.S. Nuclear Regulatory Commission (NRC) published a Notice of Delay in Issuance of the Draft and Final Environmental Impact Statements for the Mixed Oxide (MOX) Fuel Fabrication Facility (see 67 FR 20183, dated April 24, 2002, for more details). The public was asked to submit comments on or before August 30, 2002, on:

(1) How the immobilization of surplus plutonium as a No Action Alternative should be discussed in the Draft Environmental Impact Statement (DEIS), since the Department of Energy (DOE) has canceled plans to build the Plutonium Immobilization Plant.

(2) Whether there are additional reasonable alternatives not identified during scoping that should be considered in the DEIS, in light of the changes described above. As discussed in the Scoping Summary Report, NRC is considering the environmental impacts of the proposed action (construction and operation of the proposed MOX fuel fabrication facility), continued storage of surplus plutonium at existing DOE sites, and immobilization of surplus plutonium. If the immobilization alternative is not considered, then the DEIS would only evaluate the proposed action and one No Action Alternative.

On August 22, 2002, the NRC announced three mid-September public meetings to discuss changes in the applicant's Environmental Report that resulted from changes in DOE's plans (see 67 FR 54501, dated August 22, 2002, for more details). In that notice, the staff indicated that it will also accept comments on the questions included in the April 24, 2002 **Federal Register** Notice. Consistent with this decision, the NRC is extending the August 30, 2002, deadline to submit responses to the above questions to September 30, 2002.

DATES: The comment period is extended to September 30, 2002.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will also be accepted by e-mail. Interested parties may e-mail their comments to *teh@nrc.gov.* Comments will be accepted by fax at (301) 415–5398, Attention: Tim Harris.

AVAILABILITY OF DOCUMENTS FOR REVIEW: Information and documents associated with the MOX project are available for public review through: *http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html.* Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public

Document Room, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the proposed MOX facility, please contact: Tim Johnson at (301) 415–7299, or Drew Persinko at (301) 415–6522. For general information on the NRC NEPA process, please contact: Tim Harris at (301) 415–6613.

Signed in Rockville, MD, this 12th day of September, 2002.

For the Nuclear Regulatory Commission.

Cheryl Trottier,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–23946 Filed 9–19–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Plant Tours

AGENCY: Postal Rate Commission.

ACTION: Notice regarding plant tours.

SUMMARY: The anticipated mid-September tour of Chicago-area mailer and United States Postal Service (USPS) facilities by a Postal Rate Ciommissioner and several staff members, notices at 67 FR 57463, has been indefinitely postponed. A tour of the USPS facility in Merrifield, Virginia, is scheduled for Wednesday, September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

DATES: September 11–13, 2002: Chicago-area plant tours—postponed. September 18, 2002: USPS facility in Merrifield, VA.

Steven W. Williams,

Secretary

[FR Doc. 02–23887 Filed 9–19–02; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment.

(2) *Form(s) submitted:* G–19L.

(3) *OMB Number:* 3220–0179.

(4) *Expiration date of current OMB clearance:* 11/30/2002.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,000.

(8) *Total annual responses:* 1,000.

(9) *Total annual reporting hours:* 250.

(10) *Collection description:* Under Section 2(e)(3) of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the beneficiary works for a railroad or earns more than the prescribed amounts. The collection obtains earnings information needed by the Railroad Retirement Board to determine possible reductions in annuities because of earnings.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–23979 Filed 9–19–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27568]

Filings Under the Public Utility Holding Company Act of 1935, as Amended

September 13, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 8, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 8, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Progress Energy, Inc. et al. (70–9659)

Progress Energy, Inc. (''Progress Energy''), a registered holding company, and its indirect wholly-owned nonutility subsidiary, Progress Ventures, Inc. (''Progress Ventures'') (together, ''Applicants''), both of 410 South Wilmington Street, Raleigh, NC 27602, have filed a post-effective amendment to their application-declaration in this filing under sections 9(a) and 10 of the Act and rule 54 under the Act.

Progress Energy owns, directly or indirectly, all of the issued and outstanding common stock of three public-utility subsidiaries: Carolina Power & Light Company (''CP&L''), which generates, transmits, purchases and sells electricity in parts of North Carolina and South Carolina; Florida Power Corporation (''Florida Power''), which generates, transmits, purchases and sells electricity in parts of Florida; and North Carolina Natural Gas Corporation (''NCNG''), which distributes gas at retail in parts of North Carolina. Collectively, CP&L, Florida Power and NCNG are referred to as the ''Utility Subsidiaries.'' Together, the Utility Subsidiaries provide electric service and natural gas or gas transportation service to approximately 2.9 million wholesale and retail customers in parts of North Carolina, South Carolina and Florida. Progress Ventures is an intermediate nonutility holding company that holds interests in several ''exempt wholesale generators'' (''EWGs''), as defined in section 32 of the Act, and energy-related companies within the meaning of rule 58 that are engaged in synthetic fuels production.

By order dated December 12, 2000, in this filing (''December 2000 Order''),[1] the Commission authorized Progress Energy, the Utility Subsidiaries and Progress Energy's direct and indirect nonutility subsidiaries, among other things, to engage in a program of external and intrasystem financing and to organize and acquire the equity securities of specified types of new subsidiaries through September 30, 2003 (''Authorization Period''). Among other specific authorization granted by the December 2000 Order, the Commission authorized Progress Energy, through its nonutility subsidiaries, to invest up to $500 million (''Investment Limitation'') in connection with the acquisition or construction of certain types of nonutility energy-related assets in the United States that are incidental to their energy marketing activities (''Energy-Related Assets'') or in the equity securities of existing or new companies substantially all of whose physical properties consist or will consist of Energy-Related Assets.[2]

Applicants state that Progress Ventures entered into a letter of intent with Westchester Gas Company, a nonassociate company, to acquire approximately 215 producing gas wells, 52 miles of intrastate pipeline and 170 miles of gas gathering lines located in Texas and Louisiana. The transaction closed on April 29, 2002. Progress Ventures paid a total consideration of $148 million, which includes $128 million in Progress Energy common stock and $20 million in cash.

Applicants now request a supplemental order of the Commission to increase the Investment Limitation from $500 million to $1 billion. Progress Energy, through Progress Ventures, states that it is actively considering several other investments in Energy-Related Assets similar to the Westchester Gas assets. Applicants state that investment in Energy-Related Assets represent an important component of Progress Ventures' overall strategy to diversify its portfolio of assets and earnings. In addition, Applicants state investments in Energy-Related Assets are intended to provide a fuel hedge for Progress Ventures' merchant generation plants.[3]

Applicants further state that, although Progress Ventures has not identified any additional investments in Energy-Related Assets at this time, its current business plan contemplates additional investments of this type that would, in the aggregate, exceed the remaining authorized amount under the Investment Limitation (approximately $350 million following the Westchester Gas transaction). Applicants assert that the proposed increase is reasonable and would represent a prudent use of capital for a company the size of Progress Energy.

All other terms, conditions and limitations contained in the December 2000 Order, as modified by the September 20, 2001 and March 15, 2002 orders, shall remain the same.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23885 Filed 9–19–02; 8:45 am]

BILLING CODE 8010–01–P

[1] *See Progress Energy, Inc. et al.*, Holding Co. Act Release No. 27297. The December 2000 order was modified by orders dated September 20, 2001 and March 15, 2002, Holding Co. Act Release Nos. 27440 and 27500, respectively.

[2] Energy-Related Assets are defined under the December 2000 Order to include natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities.

[3] Progress Ventures states that it currently has approximately 3,100 MW of gas and oil fired merchant generation in operation or under construction and may expand its merchant generation portfolio by another 2,800 MW over the next few years through acquisitions or new installations.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 23, 2002: A Closed Meeting will be held on Tuesday, September 24, 2002, at 2:30 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, September 24, 2002 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Formal orders of investigations; and

Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–24072 Filed 9–18–02; 11:37 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46498; File No. SR–CHX–2002–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

September 13, 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 July 31, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or Exchange'') filed with the Securities and Exchange Commission (''SEC'' or Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the ''Schedule''), effective August 1, 2002, to change the calculation of the fixed fee charged to specialists trading Dual Trading System securities and to reduce the fees relating to the assignment of Nasdaq/NM securities. The text of the proposed rule change is below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Proposed new language is in italics. Proposed deletions are bracketed.

Membership Dues and Fees

* * * * *

A.–C. No change to text.

D. Specialist Assignment Fees

Specialist Application Fee	$150 per application [filed after April 1, 2000].
Assignment Fee of Dual Trading System Securities.	[Beginning on April 1, 2000,] *O*[o]nce the Committee on Specialist Assignment and Evaluation approves a member organization to act as specialist in a security, that member organization must pay the following fee: $350 If the security was assigned without competition. $1,000 If the security was assigned in competition with at least one other member firm and up to one-third of all member firms that trade Dual Trading System Securities. $4,000 If the security was assigned in competition with more than one-third of all member firms that trade Dual Trading System Securities.
Assignment of Nasdaq/NM Securities	Beginning on [April 1, 2000] *August 1, 2002,* once the Committee on Specialist Assignment and Evaluation approves a member organization to act as specialist in a security, that member organization must pay the following fee: [$2,000] *$350* If the security was assigned without competition. [$4,000] *$1,000* If the security was assigned in competition with [at least] one other member firm [and up to one-third of all member firms] that trade*s* Nasdaq/NM Securities. [$15,000] *$4,000* If the security was assigned in competition with [more than] *two or more other* [one-third of all] member firms that trade Nasdaq/NM Securities.

* * * * *

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security =	[$417,000 × Percent of Fixed Costs Per Tier × CTA Trade Volume Per Security/CTA Trade Volume Per Tier. (Effective April 1, 2000).] $500,000 × Percent of Fixed Costs Per Tier × CTA Trade Volume Per Security/CTA Trade Volume Per Tier. (Effective *August 1, 2002* [October 1, 2000]).
Fixed Fee For Member Firms Trading Nasdaq/NMS Securities=	No change to text.
Fixed Fee Per Dedicated Odd-Lot Dealer	No change to text.

''Percent of Fixed Costs Per Tier'' is taken from the following table:

Tier	Description of tier	Percent of fixed costs per tier
1	1–25 Most Active Securities.	[11%] *17%*
2	26–100	[11%] *18%*
3	101–*200* [250]	[12%] *15%*
4	*201+* [251–500]	[13%] *50%*
[5]	[501–1000]	[19%]
[6]	[1001–2700+]	[34%]

Classification of a particular security for a particular Tier is based on the total number of trades reported to the Consolidated Tape Association in such security for a specific month.

''CTA Trade Volume Per Security'' means the total number of trades reported to the Consolidated Tape Association in a specific security for a specific month.

''CTA Trade Volume Per Tier'' means the total number of trades reported to the Consolidated Tape Association in all securities classified in a particular Tier for a specific month.

''Dedicated Odd-Lot Dealer'' means any odd-lot dealer (as defined in Article XXXI, Rule 3) whose principal business is the trading of odd-lots.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule by (1) changing the fixed fees charged specialists who trade Dual Trading System securities; and (2) reducing the fees associated with the assignment of Nasdaq/NM securities.[3] Each of these changes is described below.

Change in the Dual Trading System Specialist Fixed Fee. For a number of years, the fixed fee charged to specialists trading Dual Trading System issues has been calculated so that specialists pay a lower percentage of the fixed fee on securities that trade the most and, correspondingly, a higher percentage of the fixed fee on securities that trade the least. The Exchange does not use this tiered structure in its assessment of fixed fees for specialists trading Nasdaq/NM securities, and Exchange management does not believe that, in the long term, it is appropriate to continue using it in the Dual Trading System specialist program. However, to avoid the quite significant impact on a few individual firms that would result from immediately collapsing all of the tiers into one, the attached rule text would collapse the existing six tiers into four and place additional portions of the fee on the more actively traded stocks.

Decrease in Nasdaq/NM Assignment Fees. Several years ago, for a variety of reasons, the Exchange began charging specialists who sought assignment of Nasdaq/NM securities a higher fee than specialists who sought assignment of Dual Trading System issues. Given the decrease in the number of Nasdasq/NM

[3] Dual Trading System issues are securities that are traded on the Exchange and on either the American Stock Exchange or the New York Stock Exchange.

issues traded on the Exchange, it no longer appears appropriate to maintain this different fee schedule. As a result, this proposal would decrease the Nasdaq/NM assignment fees to be more like the fees charged for the assignment of Dual Trading System securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing date, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–24 and should be submitted by October 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23886 Filed 9–19–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4131]

Culturally Significant Objects Imported for Exhibition Determinations: ''Afghanistan: A Timeless History''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Afghanistan: A Timeless History,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Museum of Fine Arts, Houston, TX, from on or about November 15, 2002 to on or about February 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 13, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–23983 Filed 9–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4132]

Culturally Significant Objects Imported for Exhibition Determinations: ''Blithe Spirit: The Windsor Set''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Blithe Spirit: The Windsor Set,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about October 30, 2002 to on or about February 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 13, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–23984 Filed 9–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4133]

Culturally Significant Objects Imported for Exhibition Determinations: ''Drawn Toward the Avant-Garde: Nineteenth- and Twentieth-Century French Drawings From the Royal Museum of Fine Arts, Copenhagen''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Drawn Toward the Avant-Garde: Nineteenth- and Twentieth-Century French Drawings from the Royal Museum of Fine Arts, Copenhagen,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Frick Art and Historical Center, Pittsburgh, Pennsylvania from on or about October 19, 2002 to on or about January 5, 2003, the Museum of Fine Arts, St. Petersburg, Florida from on or about January 25, 2003 to on or about March 23, 2003, and the Arkansas Art Center from on or about April 12, 2002 to on or about June 8, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 13, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–23985 Filed 9–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4130]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Legacy of Genghis Khan: Courtly Art and Culture in Western Asia, 1256–1353''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''The Legacy of Genghis Khan: Courtly Art and Culture in Western Asia, 1256–1353,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about October 28, 2002 to on or about February 16, 2003, the Los Angeles County Museum of Art from on or about April 13, 2003 to on or about July 27, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 16, 2002

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–23982 Filed 9–19–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection Activity Under OMB Review; Request for Extension Without Change of Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension without change, of a previously approved information collection.

DATES: Comments on this notice must be received by November 19, 2002.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (SVC–124), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (*e.g.,* FedEx, UPS) may be faster];

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329;

(3) By fax to the Docket Management Facility at 202–493–2251; or

(4) By electronic means through the Web site for the Docket Management System at: *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this regulation. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Torlanda Archer or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1037.

SUPPLEMENTARY INFORMATION:

Title: Aviation Charter Rules.

OMB Control Number: 2106–0005.
Expiration Date: December 31, 2002.
Type of Request: Extension without change, of a previously approved information collection.

Abstract: In 14 CFR part 380 (adopted 1979) of its Special Regulations, the Department established the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and Public Charter operators. Public Charter operators arrange transportation for groups of persons on aircraft chartered from direct air carriers. This arrangement is less expensive for the travelers than individually buying a ticket. Further, the charter operator books hotel rooms, tours, etc., at the destination for the convenience of the traveler. Part 380 exempts charter operators from certain provisions of the U.S. Code in order that they may provide this service.

A primary goal of part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. The forms (OST Forms 4532, 4533, 4534 and 4535) that comprise the operator's filing are the information collections at issue here.

On May 22, 1998 the Department of Transportation published a Final Rule amending its charter air transportation regulations to update the rules.

The collection involved here under 14 CFR part 380 requests general information about the charter operator and direct air carrier that will provide a Public Charter and requires each to certify that it has contracted with the other to provide the transportation. The routing, charter price and tour itinerary of the proposed charter are also identified. The collection also requires the charter operator, direct air carrier and financial institution(s) involved to certify that proper financial instruments are in place or other arrangements have been made to protect the charter participants' funds and that all parties will abide by the Department's Public Charter regulations.

Respondents: Public Charter operators.
Estimated Number of Respondents: 316.
Average Annual Burden per respondents: 4.25 hours.
Estimated Total Burden on Respondents: 1,343 hours.

The information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR part 380 can be obtained from Ms. Torlanda Archer at the address and telephone number shown above.

Comments Are Invited On: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the current information collection; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on September 12, 2002.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 02–23917 Filed 9–19–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection Activity Under OMB Review; Request for Extension Without Change of Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

DATES: Comments on this notice must be received by November 19, 2002.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (SVC–124), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (e.g., FedEx, UPS) may be faster];

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;

(3) By fax to the Docket Management Facility at (202)493–2251; or

(4) By electronic means through the Web Site for the Docket Management System at: *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this regulation. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

SUPPLEMENTARY INFORMATION:

Title: Passenger Manifest Information.
Expiration Date: October 31, 2002.
OMB Control Number: 2105–0534.
Type of Request: Extension without change of a previously approved collection.

Abstract: Public Law 101–604 (entitled the Aviation Security Improvement Act of 1990, or ''ASIA 90'', and later codified as 49 U.S.C. 44909) requires that certificated air carriers and large foreign air carriers collect the full name of each U.S. citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The Passenger Manifest Information; Final Rule (14 CFR 243) was published in the **Federal Register**, Vol. 63. No.32 (February 18, 1998). The rule was effective March 20, 1998.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 23,245.

Total Annual Responses: 53.8 million.

Estimated Total Burden on Respondents: 1.05 million hours.

Comments are invited on: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the current information collection; (c) ways to enhance the quality, utility, and clarity of the information being collected, and (d) ways to minimize the burden of the collection of information of respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC on September 12, 2002.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 02–23918 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agency Information Collection Activity Under OMB Review; Request for Extension Without Change of Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

DATES: Comments on this notice must be received by November 19, 2002.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (*SVC–124*), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (*e.g.,* FedEx, UPS) may be faster];

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic means through the Web Site for the Docket Management System at: *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Type of Request: Extension without change for a currently approved information collection.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Department officials to review the qualifications of individuals who wish to serve on Department-sponsored advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT'S advisory committees were created by statute and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Respondents: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Estimated Number of Respondents per year: 100.

Total Burden: 35 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

Comments are Invited on: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's estimate of the burden of the current information collection, (c) ways to enhance the quality, utility, and clarity of the information being collected and (d) ways to minimize the burden of the collection of information on respondents including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC on September 13, 2002.

Michael Dannenhauer,

Director, Executive Secretariat.

[FR Doc. 02–23919 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date but does not require Department approval for the agreements. The Department may extend the waiting period for these agreements at the end of the thirty-day period. The Department has determined to extend the waiting period for the Delta/Northwest/Continental agreements for an additional thirty days.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: As required by 49 U.S.C. 41720, Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review on August 23, more than thirty days before the airlines planned to implement these agreements. The statute requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to the Department at least thirty days before they can be implemented, including the code-sharing and frequent-flyer reciprocity agreements proposed by Delta, Continental, and Northwest. We may extend the waiting period by 150 days for code-sharing agreements and by sixty days for other types of agreements. At the end of the waiting period (either the thirty-day period or any extended period established by us), the parties may implement their agreement, since doing so would not require our approval. To block the airlines from implementing their agreements, we would normally need to issue an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding that determined that the agreements' implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

We are informally reviewing the agreements submitted by Delta, Continental, and Northwest under 49 U.S.C. 41720. Although our review is informal, we have invited interested parties to submit comments on the agreements. 67 FR 56340 (September 3, 2002). We are considering their comments, the agreements, and other information in our possession, and we will be consulting with the Justice Department, which is responsible for enforcing the antitrust laws in the airline industry.

We have concluded that we need additional time to analyze the issues presented by the agreements. Those issues are important and require careful consideration. We have therefore determined to extend the waiting period by thirty days, from September 22 to October 22. We took similar action on the United/US Airways joint venture agreements. 67 FR 54525 (August 22, 2002). We understand the need to complete our review as promptly as possible, so that the three airlines will know our views on whether and under what terms they may go forward with the agreements.

Issued in Washington, DC, on September 17, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–23968 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Extension of waiting period.

SUMMARY: United Air Lines and US Airways have submitted code-sharing and frequent flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least thirty days before the agreements' proposed effective date and authorizes the Department to extend the waiting period for any such agreement. The Department has determined to extend the waiting period for the United/US Airways agreements for an additional thirty days.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On July 25 United and US Airways submitted code-sharing and frequent flyer program reciprocity agreements to the Department more than thirty days before the airlines planned to implement them, as required by 49 U.S.C. 41720. That statute authorizes us to extend the waiting period by 150 days for code-sharing agreements and 60 days for the other types of agreements covered by the advance-filing requirement. We have extended the waiting period once by thirty days. 67 FR 54525 (August 22, 2002).

As has been true for all agreements submitted under 49 U.S.C. 41720 since its enactment, our review of the United/US Airways agreements has been informal, but we have given interested parties an opportunity to submit comments on the agreements. 67 FR 50745 (August 5, 2002). We have been reviewing the agreements, the comments submitted by outside parties, and other information in our possession, and we have been discussing the issues with the Justice Department.

We have again concluded that we need additional time for analyzing the agreements. The agreements present important issues that demand careful examination. We have therefore determined to extend the waiting period by another thirty days, from September 23 to October 23. While we may extend the waiting period for the code-share agreement after this extension if necessary, this will be the last extension of the waiting period permitted by statute for the frequent-flyer reciprocity agreement.

We are aware that the two airlines wish to be able to implement the agreements promptly, and we therefore intend to conclude our review as soon as reasonably possible.

Issued in Washington, DC, on September 17, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–23969 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 13, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within

21 days after the filing of the application.

Docket Number: OST–2002–13327.

Date Filed: September 10, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PTC1 0221 dated August 12, 2002 (Mail Vote 228),

TC1 Areawide Resolutions r1–r4,

PTC1 0228 dated September 6, 2002 adopting Mail Vote 228 and amendment,

PTC1 0223 dated August 12, 2002 (Mail Vote 230),

TC1 Longhaul (except between USA and Chile, Panama), Resolutions r5–r42,

PTC1 0230 dated September 6, 2002 adopting Mail Vote 230 and amendment

PTC1 0224 dated August 12, 2002 (Mail Vote 231),

TC1 Longhaul between USA and Chile, Panama, Resolutions r43–r57,

PTC1 0231 dated September 6, 2002 adopting Mail Vote 231,

Minutes—PTC1 0233 dated September 6, 2002,

Tables—PTC1 Fares 0072 dated September 10, 2002,

Intended effective date: January 1, 2003.

Docket Number: OST–2002–13331.

Date Filed: September 10, 2002.

Parties: Members of the International Air Transport Association.

Subject:

PTC1 0222 dated August 12, 2002 (Mail Vote 229),

TC1 Caribbean Resolutions r1–r13,

PTC1 0229 dated September 6, adopting Mail Vote 229 and amendment,

PTC1 0225 dated August 12, 2002 (Mail Vote 232),

Within South America Resolutions r14–r25,

PTC1 0232 dated September 6, adopting Mail Vote 232 and amendment,

Minutes—PTC1 0233 dated September 6, 2002 filed with TC1 Areawide and TC1 Longhaul agreements,

Tables—PTC1 Fares 0071 and 0073 both dated September 10, 2002.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–23922 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 13, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–370.

Date Filed: September 9, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 2002.

Description: Amendment of United Air Lines, Inc., pursuant to 49 U.S.C. 41101, 14 CFR parts 201 and 302, and Subpart B, amending its application for renewal of its certificate of public convenience and necessity for Route 703, authorizing it to engage in scheduled foreign air transportation of persons, property, and mail from any point or points in the United States, via any intermediate points, to any point or points in Peru and beyond, consistent with the open skies regime between the United States and Peru.

Docket Number: OST–2002–13330.

Date Filed: September 10, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 1, 2002.

Description: Application of TAP Air Portugal, pursuant to 49 U.S.C 41301 and 41302, 14 CFR parts 211 and 302, and subpart B, requesting an amendment to its foreign air carrier permit authorizing TAP to provide: (a) Scheduled foreign air transportation of persons, property and mail from points behind Portugal via Portugal and intermediate points to a point or points in the United States and beyond, as provided in Annex I of the Open Skies Agreement, together with all of the operational rights provided for in the Annex; and, (b) charter service in foreign air transportation of passengers (and their accompanying baggage) and/or cargo to the full extent permitted by Annex II of the Open Skies Agreement.

Docket Number: OST–2002–13365.

Date Filed: September 13, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2002.

Description: Application of Glenwood Aviation, LLC, d/b/a America Rising, pursuant to 49 U.S.C 41102, part 204 and subpart B, requesting a certificate of public convenience and necessity, authorizing Glenwood to engage in interstate scheduled air transportation of persons, property and mail.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–23921 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Multi-Aero, Inc. d/b/a Air Choice One

AGENCY: Office of Secretary, Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–9–14), Docket OST–02–12417.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Multi-Aero, Inc. d/b/a Air Choice One fit, willing, and able to provide scheduled passenger operations as a commuter air carrier under 49 U.S.C. 41738.

Responses: Objections and answers to objections should be filed in Docket OST–02–12417 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than September 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: September 13, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–23923 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, by Mr. William Salyer, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety in certain Jeep Cherokee and Jeep Grand Cherokee vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP02–005.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Chief, Defect and Recall Information Analysis Division, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: On April 11, 2002, Mr. Walter Salyer submitted a petition requesting that the agency investigate sudden acceleration in model year (MY) 1991–1995 Jeep Cherokee and MY 1993–1995 Jeep Grand Cherokee vehicles (subject vehicles), a vehicle population of 1,302,000. The petition alleges that a defect exists in the subject vehicles involving the design and assembly of the connector interface between the main wiring harness and the powertrain control module (PCM) in these vehicles. The petitioner states that with the cruise control power switch in the ''OFF'' position, the potential at the vent and vacuum pins is approximately zero volts. The neighboring pins are all operating at approximately battery voltage. Mr. Sayler alleges that current flow from the neighboring pins to the vent and vacuum pins could occur in the presence of an electrically conductive contaminant (water/moisture), and that energization of the cruise control can occur. Mr. Salyer alleges that such cruise control energization leads to a rapid increase in engine speed to wide-open throttle. Mr. Salyer further alleges that depending on the state of the cruise control power switch, this undesired acceleration may, or may not, be terminated by application of the service brakes.

The cruise control system in the subject vehicles is electrically controlled and vacuum operated. The PCM operates the vehicle speed control system by controlling the vent and vacuum functions of the speed control servo circuits. Depending on the signal it receives from the vehicle speed control switches, the PCM either applies vacuum to or vents vacuum from the servo, by applying voltage to either the vent or vacuum pin. The servo is directly connected by cable to the throttle plate in the throttle body.

The petitioner, Mr. Salyer, correctly states that with the cruise control power switch in the ''OFF'' position, the potential at the vent and vacuum pins is zero volts. The neighboring pins are operating at approximately battery voltage. Mr. Sayler concludes that current flow from the neighboring pins to the vent and vacuum pins could occur in the presence of an electrically conductive contaminant (water/moisture), and that energization of the cruise control can occur. An analysis of the cruise control circuit shows that it maybe possible for the engine to operate at full throttle if this malfunction occurs. The cruise control is designed to be deactivated with brake pedal application; however, Mr. Salyer notes that if other parts of the system malfunction at the same time, it is possible that the cruise control will not shut off.

In September 1997, DaimlerChrysler Corporation (DCX) commenced a Safety Improvement Campaign, 97I–002, to install brake transmission shift interlocks (BTSI) in MY 1984–1995 Jeep Cherokees and Wagoneers and MY 1993–1995 Jeep Grand Cherokee and Grand Wagoneer vehicles equipped with automatic transmissions, a total of 1,010,000 vehicles. The BTSI prevents the operator from shifting out of ''Park'' unless the brake pedal is depressed.

In March 1998, Mr. Salyer's company, Infospace, Inc., conducted an analysis of a sudden acceleration crash occurring in June 1996 involving a MY 1993 Jeep Grand Cherokee in Mercer Island, Washington. This vehicle did not have a BTSI. The Grand Cherokee allegedly suddenly accelerated when the operator shifted into ''Drive'' and hit a retaining wall, resulting in a serious injury to a pedestrian. Mr. Salyer's analysis concluded that water in the PCM was the cause of the sudden acceleration.

The number of sudden acceleration reports involving the subject vehicles received by ODI from consumers in each calendar year from 1993 through June 12, 2002, shows a marked reduction in reports in 1998 and continuing through June 2002. In addition, the data furnished by Mr. Salyer also shows a dramatic downward trend since 1997. This data obtained solely from DCX is illustrated on page 36 of the petitioner's report, and shows approximately 210 reports in 1997 and 30 in 2000. It appears that DCX's safety improvement campaign has had a dramatic effect, implying that the major cause for the sudden acceleration in the subject vehicles was incorrect pedal application.

ODI has received a total of 476 complaints of sudden, unintended acceleration, for all causes, on the subject vehicles. Only 36 complaints of sudden acceleration, for all causes, have been reported during the past two years. None of these complaints refer to any malfunction or defect related to the main wiring harness connector or the PCM and none refer to water intrusion into the PCM.

While it may be possible for water in the PCM to activate the cruise control in the subject vehicles under rare circumstances, such activation would not lead to a sudden acceleration incident unless there was also a malfunction of the switch that shuts off the cruise control upon application of the brake pedal. Moreover, incidents of sudden acceleration in the subject vehicles have significantly decreased since the beginning of DCX's campaign, so that the current rate of such incidents is comparable to the rates of other vehicle models. Thus, it appears that the predominant cause of sudden acceleration incidents involving the subject vehicles has been pedal misapplication, rather than water contamination.

For the foregoing reasons, further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: September 10, 2002.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 02–23915 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20991]

Greyhound Lines, Inc., and Laidlaw Inc.—Continuance in Control—Crucero U.S.A., L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Greyhound Lines, Inc. (Greyhound), a motor passenger carrier, and Laidlaw Inc. (Laidlaw), a noncarrier, through their indirectly controlled subsidiary, Sistema Internacional de Transporte de Autobuses, Inc. (SITA), seek approval under 49 U.S.C. 14303 to continue in indirect control of Crucero, U.S.A., L.L.C. (Crucero), upon Crucero's becoming a regulated motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by November 4, 2002. Applicant may file a reply by November 19, 2002. If no comments are filed by November 4, 2002, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20991 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street, NW. (8th Floor), Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS): 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Greyhound, an indirect subsidiary of Laidlaw, holds nationwide, motor passenger carrier operating authority under Docket No. MC–1515. Through its noncarrier subsidiary, SITA, Greyhound controls Americanos U.S.A., L.L.C. (MC–309813), operating between Mexican border crossings at points in TX, on the one hand, and, on the other, Albuquerque, NM, Denver, CO, Dallas and Houston, TX, and Chicago, IL, and between other points in the southernwestern United States; Autobuses Amigos, L.L.C. (MC–34062), operating between Mexican border crossing points at Brownsville and Houston, TX, and points in the southeastern United States; and Gonzalez, Inc., d/b/a/ Golden State Transportation (MC–173837), operating in Arizona, California, Colorado, and Nevada.[1]

Laidlaw also directly or indirectly controls a number of motor passenger carriers, including Laidlaw Transit Ltd (MC–102189), and Greyhound Canada Transportation Corp. (MC–304126), both of which are authorized to conduct charter and special passenger carrier operations within the United States. Laidlaw's other motor passenger carrier subsidiaries, with the exception of Greyhound, are also largely limited to charter and special operations within the United States.

Crucero, a company indirectly controlled by Applicants through their noncarrier subsidiary, SITA, holds no authority to operate as a motor passenger carrier, but has filed an application [Form OP–1(P)] with the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, for authority to perform scheduled, regular-route service in California and Arizona.

Applicants note that Crucero will concentrate on serving the transportation needs of Hispanic passengers principally between Los Angeles, CA, and Phoenix, AZ, on the one hand, and, on the other, the Mexican border crossing points at San Ysidro and Calexico, CA, and Nogales and Douglas, AZ. The applicants assert that the affiliation of Crucero with Greyhound and its regulated carriers will ensure that Crucero will have an adequate number of buses to meet the travel needs of its passengers and to make them available for its Greyhound and Laidllaw affiliates when needed. Applicants maintain that such arrangements will render the operations of Crucero efficient and economical, which will enure to the benefit of the public.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicants' representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''*http://www.stb.dot.gov.*''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed continuance in control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 4, 2002, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: September 13, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–23950 Filed 9–19–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Through its noncarrier subsidiary, GLI Holding Company, Greyhound also controls Rockford Coach Lines, L.L.C. (MC–66810), operating in Illinois; Valley Transit Co., Inc. (MC–74), operating in Texas; Carolina Coach Company (MC–13300), operating in Delaware, Maryland, North Carolina, Pennsylvania and Virginia; Texas, New Mexico & Oklahoma Coaches, Inc., (MC–61120), operating in Colorado, Kansas, New Mexico, Oklahoma and Texas; and Vermont Transit Co., Inc. (MC–45626), operating in Maine, Massachusetts, New Hampshire, New York and Vermont.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection Activities Under OMB Review: OMB No. 2139–0007 Omnibus Customer Satisfaction Surveys

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

OMB CONTROL NUMBER: 2139–0007 (Omnibus Customer Satisfaction Survey Program).

SUMMARY: BTS has submitted an Information Collection Request (ICR) described in this notice to the Office of Management and Budget (OMB) for review and approval as required under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. This information collection is a targeted survey covered by OMB control number 2139–0007, which expires on April 30, 2004.

DATES: Comments must be submitted on or before October 21, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Building, Room 10202, Washington, DC 20502, ATTN: Desk Officer for the Bureau of Transportation Statistics. Comments should identify the OMB approval number and be submitted in duplicate. The OMB requests comments by October 21, 2002 to process the ICR expeditiously.

FOR FURTHER INFORMATION CONTACT: June Taylor Jones, Survey Statistician, Officer of Survey Programs, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–4743; fax: (202) 366–3385; e-mail: *june.jones@bts.gov.*

SUPPLEMENTARY INFORMATION:

Title: Omnibus Customer Satisfaction Surveys—Targeted Survey.

OMB Approval Numbers: 2139–0007.

Executive Order (E.O.) 12862, Setting Customer Service Standards, directs certain federal agencies to conduct surveys to determine the kind and quality of services and products our customers want and their level of satisfaction with existing services and products. BTS surveys its own customers and assists other DOT agencies in their efforts to evaluate customer satisfaction. BTS uses the information it collects to improve product development and service delivery and determine whether additional products and services are needed. In accordance with the E.O., BTS is planning to conduct a survey of airline pilots (private, commercial, and transport) to assess the effectiveness of and their satisfaction with the Safety Seminar program conducted by the Federal Aviation Administration (FAA). A two-page questionnaire will be mailed to a sample of pilots. Results from the survey will be used to evaluate the usefulness of the information presented in the FAA-sponsored safety seminars and will assess the effectiveness of seminar presentation techniques. Pilots will also be asked to provide recommendations on what topics should be covered in future safety seminars and to identify the best methods for presenting safety information. Pilots who do not currently participate in the safety seminar program will be asked to provide recommended changes to the program that would increase the likelihood of their participation.

Estimated annual burden hours: This is a one-time survey and is not currently scheduled to be conducted on a regular basis. The questionnaire will require an average of 10 minutes to complete and the sample size will be approximately 6,000 pilots. The estimated response rate for this population is approximately 50% resulting in a total of 450 burden hours.

Estimated Annual Cost of Burden: (Government Only): The combined estimated cost to the government is $70,000. This figure includes salary costs based on hours, overhead, printing, and payment to contractors.

Susan Lapham,

Associate Director for Statistical Programs.

[FR Doc. 02–23920 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Notebook Computer Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain notebook computer products which were offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of notebook computer products assembled in the United States with United States and foreign components is the United States.

DATE: The final determination was issued on February 3, 1998. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8836).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 2, 1998, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain notebook computer products which were offered to the United States Government under an undesignated government procurement contract. The U.S. Customs ruling number is HQ 560677. This final determination was issued at the request of Dell Computer Corporation under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, the assembly in the United States of foreign and United States components to create certain notebook computer products results in a substantial transformation of the foreign components. Accordingly, the country of origin of the computer products is the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**. Customs has recently learned that notice of the final determination issued as HQ 560677 was inadvertently not published as required by 19 CFR 177.29. Nevertheless, because publication of notice of the final determination is a prerequisite to the initiation of judicial review of the determination by a party-in-interest under 19 CFR 177.30, this document gives notice of the final determination issued on February 3, 1998. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 20, 2002.

Dated: September 6, 2002.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

HQ 560677

February 3, 1998.

MAR–05 RR:TC:SM 560677 BLS

CATEGORY: Marking

Richard F. Busch, II,
Hall & Evans, L.L.C., 1200 Seventeenth Street, Denver, Colorado 80202–5817.

Re: U.S. Government Procurement; Final Determination; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, Customs Regulations (19 CFR 177.21 *et seq.*); Country of origin of Notebook computer products; substantial transformation; HRL 735608; HRL 559336

Dear Mr. Busch: This is in reference to your letters dated September 23 and September 29, 1997, on behalf of Dell Computer Corporation (Dell), requesting a final determination of origin under Subpart B of Part 177, Customs Regulations (19 CFR 177.21 *et seq.*) in connection with the offering of two portable notebook computer products for sale to the U.S. Government. (Scenarios 1 and 2 of your submission).

In your letter of December 3, 1997, you also advised that Dell was withdrawing its ruling request at this time in connection with Scenario 3, pertaining to certain operations in the U.S., but would re-submit the request with additional information at a later date. Under the circumstances, we will address only the issues pertaining to the notebook computers.

Under Subpart B of Part 177, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain ''Buy America'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Hall & Evans, L.L.C., as counsel to Dell, a party-at-interest within the meaning of 19 CFR 177.22(d)(1), is entitled to request this final determination.

Facts

The two notebook computer products, ''Twister'' and ''Mojave,'' are designed and engineered to meet a broad range of custom configurations. Mojave is primarily designed to meet the needs of government agencies/large corporations, and Twister is primarily designed to meet the needs of sophisticated individuals and small businesses.

In general, both the Mojave and Twister notebook computers will be manufactured by Dell from parts and components sourced through multiple vendors in a variety of countries. Dell's Texas manufacturing operation consists of three phases. The first phase is the Government customer's design/order, which is the actual beginning of a customized notebook computer system. The second phase of the manufacturing operation involves the assembly of parts, subassemblies and components during a multi-station production process. Finally, Dell has developed a proprietary systems integration process (FISH/FIDA) that transforms the non-operational ''chassis'' for Twister and Mojave into customized computer notebook systems that will operate to the precise requirements of different Government customers.

You state that Dell employs software programmers and hardware engineers, who must not only write the appropriate software to configure each system on a build-to-order basis, but also ensure all existing software and components are fully compatible and optimized with the thousands of software and hardware component configurations which the Government may dictate. You also state that all Dell employees who work on the Mojave and Twister production lines must attend internal training to become certified to perform the delicate tasks required in a number of the manufacturing stations.

Assembly of Twister

When the chassis is received from the Taiwanese OEM (original equipment manufacturer), the LCD and the CPU are already installed on the base plastics, but the BIOS and memory modules are not so installed. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); BIOS chip (U.S.); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The process of assembling the product is as follows:

Station 1. Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
Station 2. System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
Station 3. BIOS chip and memory modules installed.
Station 4. Hard Disk Drive prepared for installation.
Station 5. Hard Disk Drive installed into notebook chassis.
Station 6. PCMCIA modem card installed.
Station 7. AC adapter plugged in, PCMCIA insert removed and network interface card inserted. Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
Station 8. Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.
Station 9. Quality Control.
Station 10–12. Dell customized and proprietary ''Pic to Light'' assembly process. (A manufacturing system that identifies specific peripherals, components and subassemblies for inclusion into the manufacturing process along the assembly line.)
Station 13. ''Out of Box'' Audit. Notebooks are taken randomly from the assembly line and tested.
Station 14. Automatic processing and shipping.

Assembly of Mojave

The assembly of Mojave is similar but not identical to that of Twister. When Dell receives the notebook chassis from Taiwan, the LCD screen, floppy disc drive and the BIOS chip have been assembled onto the base plastics, but neither the keyboard nor the CPU and other primary chips are installed. The additional components which make up the Mohave are identical to the components assembled to make the Twister with the exception of the keyboard, which is not included as part of the Twister configuration. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The country of origin of the keyboard is Japan, but in the future will be Malaysia. The CPU is of U.S.-origin. The process of assembling Mojave is as follows:

Station 1. Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
Station 2. System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
Station 3. CPU processor module and hybrid cooler installed.
Station 4. Keyboard installed.
Station 5. Memory modules installed.
Station 6. Hard Disk Drive prepared for installation.
Station 7. Hard Disk Drive installed into notebook chassis.
Station 8. PCMCIA modem card installed.
Station 9. Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
Station 10. Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.

The operations performed at Stations 11 through 16 of the Mojave assembly line are identical to the operations that occur at Stations 9 through 14 of the Twister assembly line, including quality control, ''Pic to Light'' process, testing, and shipping.

Issue

Whether the assembly in the U.S. of the various components into the Twister and Mojave notebook computers constitute a substantial transformation, such that the computers may be considered products of the U.S.

Law and Analysis

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country or instrumentality is to be determined by the rule of substantial transformation. 19 U.S.C. § 2518(4). Such an article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. *See also* 19 CFR

§ 177.23(a). Thus, the critical issue that must be addressed in determining the country of origin of ''Mojave'' and ''Twister'' is whether the imported foreign components are substantially transformed as a result of the operations performed in the U.S. That is, does the name, character or use of the foreign components change as a result of the processing and assembly operations performed to manufacture the notebook computers. In *Belcrest Linens* v. *United States,* 573 F. Supp. 1149 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984), the issue framed by the court was whether as a result of the assembly process the parts lose their identity and become an integral part of the new article. Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 85–25. However, the issue of whether a substantial transformation occurs is determined on a case-by-case basis.

Dell contends that the chassis and other components of both Mojave and Twister undergo manufacturing processes resulting in customized notebook computers distinct from the components from which they were assembled. In this regard, Dell emphasizes that as distinguished from other companies' manual load, fixed image processes, Mojave and Twister are customer specific at the time of the order, and involve the loading of operational characteristics and the specific software capability requested by the customer. Dell points to the degree of expertise required to implement its proprietary FISH/FIDA manufacturing process, represented by its skilled programmers and engineers. Dell states that the interactions between various software packages and between hardware devices are resolved by Dell's FISH/FIDA process, which is not the case during a manual installation process (involving operational software from diskettes or CD ROMs). Accordingly, Dell argues that the assembly operations coupled with the unique customer-specific manufacturing process transform the foreign components into products, notebook computer systems, with a character and use distinct from the parts from which they were made.

Customs has previously considered the issue of whether the processing and assembly of electronic components into a finished article results in a substantial transformation of the individual components.

In Headquarters Ruling Letter (HRL) 711967 (March 17, 1980), Customs held that television sets which were assembled in Mexico with printed circuit boards, power transformers, yokes and tuners from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes. The U.S. and Korean parts were substantially transformed by the processing performed in Mexico and all the components lost their individual identities to become integral parts of the new article.

In HRL 732170 (January 5, 1990), Customs held that a backless television cabinet containing a tuner, speaker and circuit board imported in the U.S., was substantially transformed there when assembled with a domestic color picture tube, deflection yoke, electron beam bender and degaussed coil, and a remote control into a finished television receiver. Customs stated that the imported components lost their individual identities as a result of the assembly operation in that they became integral parts of a new article—a television.

HRL 735608 (April 27, 1995) involved various scenarios pertaining to the assembly of a desktop computer in the U.S. and the Netherlands. In one of the scenarios, foreign components to be assembled in the U.S. included the case assembly (including the computer case, system power supply and floppy disc drive), partially completed motherboard, CPU (which controls the interpretation and execution of instructions and includes the arithmetic-logic unit and control unit), hard disc drive, slot board, keyboard BIOS and system BIOS (basic input and output system). Additional components manufactured in the U.S. or the Netherlands to be assembled into the finished desktop computers depending on the model included an additional floppy drive, CD ROM disk, and memory boards. In that case, Customs found that the foreign case assemblies, partially completed motherboards, hard disk drives and slot boards underwent a change in name, character and use as a result of the operations in the U.S. and lost their separate identities in becoming an integral part of a desktop computer. Customs noted that the finished article, a desktop computer, was visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information. Accordingly, Customs held that the individual components underwent a substantial transformation as a result of the operations performed in the U.S.[1]

Based on the totality of the circumstances of this case and consistent with the rulings cited above, we find that the foreign components that are used in the manufacture of the notebook computers Twister and Mojave in the manner described are substantially transformed as a result of the operations performed in the U.S. The name, character, and use of the foreign chassis in each case, hard disk drive, floppy disc drive, memory boards and other foreign components change as a result of the processing and other assembly operations performed in the U.S. Like the case assemblies in HRL 735608 and HRL 559336, the chassis', hard disk drives, floppy disc drives, memory boards and other components lose their separate identities and become an integral part of a notebook computer as a result of the assembly operations and other processing. The character and use of the foreign components are changed as a result of the operations performed, in that a new article, a notebook computer, is visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information.

Holding

Based on the facts presented, foreign chassis', hard disk drives, floppy disks, memory boards and other foreign components, which are further processed and assembled into notebook computers in the U.S., in the manner described above, are substantially transformed as a result of the operations performed in the U.S. Accordingly, the country of origin of the notebook computers is the U.S.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Stuart P. Seidel,
Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–23758 Filed 9–19–02; 8:45 am]
BILLING CODE 4820–02–P

[1] *See* also HRL 559336 dated March 13, 1996, where Customs found that foreign components (*i.e.,* clamshell base, LCD video display, hard disk drive, floppy disk drive, kA/C power adapter) used in the assembly of notebook computers under four scenarios were substantially transformed as a result of the assembly operations performed int he U.S. In that case, depending on the scenario, the clamshell was either complete when received or consisted of a separate top (video display component) and base, which may or may not have included the keyboard. It is also noted that in the various scenarios presented, the CPU/daughterboard assembly, an essential component of the notebook computer, was produced int he U.S.

Federal Register

Friday,

September 20, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7375–9]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On June 23, 1999, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. On August 19, 20, and 23, 1999, petitions for judicial review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The amendments proposed on April 10, 2002 were in response to issues raised by two of those petitioners—the American Crop Protection Association (ACPA) and the American Cyanamid Company (now BASF Corporation). In this action, EPA takes final action on those proposed amendments to the rule to address issues raised by petitioners and to correct inconsistencies that have been discovered since EPA originally promulgated the rule.

EFFECTIVE DATE: September 20, 2002.

ADDRESSES: Docket No. A–95–20 contains supporting information used in developing these MACT standards. All dockets are located at the U.S. EPA, Air and Radiation Docket and Information Center, Mail Code 6102T, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, excluding interagency review materials, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Judicial Review. Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a court petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 19, 2002. Under Section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the EPA's TTN policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1360 of the rule, as well as in today's final action applicability sections. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. What Is the History of the PAI Production NESHAP?
II. What Types of Public Comments Were Received on the April 10, 2002 Proposal?
III. What Changes Were Made for the Final Amendments?
A. Technical Clarifications
B. Minor Technical Corrections
IV. What Are the Administrative Requirements for the Proposed Amendments?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
D. Executive Order 13045, Protection of Children for Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. The Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use

I. What Is the History of the PAI Production NESHAP?

On June 23, 1999, we promulgated NESHAP for PAI Production as subpart MMM in 40 CFR part 63 (64 FR 33550). The American Crop Protection Association and American Cyanamid Company (now BASF Corporation) filed petitions for judicial review of the promulgated PAI Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *ACPA* v. *EPA,* No. 99–1332, and *American Cyanamid Company* v. *EPA,* No. 99–1334 (Consolidated with *ACPA* v. *EPA,* No. 99–1332) (D.C. Cir.). The petitioners raised issues regarding the applicability of the rule, the alternative standard, alternatives to the standard for storage vessels, outlet concentration standards, procedures for calculating emissions averaging credits, initial compliance requirements for condensers, and performance testing over an entire batch cycle.

On January 18, 2002, ACPA and EPA signed a settlement agreement, which required us to propose amendments to the PAI Production NESHAP and include preamble discussion to clarify various issues raised by petitioners. Notice of this agreement was published in the **Federal Register** on February 4, 2002 (67 FR 5116) pursuant to the requirements of CAA section 113(g).

On April 10, 2002, we proposed amendments to address the issues raised by ACPA and BASF Corporation and included additional corrections and clarifications to ensure that the rule is implemented as intended. Some of the proposed amendments provided new compliance options and other new provisions that would reduce the burden associated with demonstrating compliance.

II. What Types of Public Comments Were Received on the April 10, 2002 Proposal?

Two comment letters were received on the April 10, 2002 proposed amendments to the rule. Comment letters were received from the U.S. Department of the Interior and CropLife America (CLA), formerly the American Crop Protection Association. In general, the comment letters were supportive and raised no significant issues. However, one of the comment letters included suggested editorial revisions to address clarity concerns and to correct errors in cross referencing other sections in the rule. We considered and agree with these suggestions and have made changes for the final amendments.

III. What Changes Were Made for the Final Amendments?

This preamble describes changes that address public comments on the proposed amendments and additional changes that clarify requirements and improve consistency with other rules.

A. Technical Clarifications

The preamble to the proposed amendments described several changes we were considering to improve the clarity of the rule, which were in addition to the proposed rule amendments resulting from the settlement agreement. We solicited public comments on these changes and we received none, so today's final rule amendments include these changes. The changes involve emissions averaging, initial compliance procedures for condensers, the duration of performance test runs, performance test requirements for large control devices, and monitoring provisions for the alternative standard.

1. Emissions Averaging

As described in the preamble to the proposed amendments, the emissions averaging provisions were intended to parallel the requirements in the Hazardous Organic NESHAP (HON). However, after making the changes for the settlement agreement, we realized that § 63.1362(h)(2) still differs from the HON in two ways. First, § 63.1362(h)(2) does not contain a requirement consistent with the HON's requirement that the control technology be approved for use in a manner that differs from the reference control technology. Since subpart MMM does not use the term ''reference control technology,'' we are adding language to § 63.1362(h)(2) to require that the control technology must be approved for use in a manner different from that otherwise required by the rule.

Second, the proposed changes to § 63.1362(h)(2)(iii) address two components from the HON's definition of reference control technology for wastewater, but they do not address the requirement that emissions from the design steam stripper be controlled by 95 percent. Without this component in § 63.1362(h)(2)(iii), no credits could be calculated for wastewater streams treated in a design steam stripper. Therefore, we are revising § 63.1362(h)(2)(iii) to specify that credits may not be calculated if wastewater streams are managed as specified in §§ 63.133 through 63.137, treated in a design steam stripper, and emissions from the design steam stripper are controlled in a device that meets the percent reduction requirements specified in § 63.139(c). This change means that credits can be calculated if the emissions from the design steam stripper are controlled using a device that has been approved for use in a different manner and assigned a nominal control efficiency greater than 95 percent.

2. Initial Compliance Procedures for Condensers Used To Control Process Vents

Section 63.1365(c)(3)(iii) specifies initial compliance procedures for determining controlled emissions from condensers used to control process vents. For the final amendments, we are deleting the requirement to measure the temperature as part of the initial compliance demonstration and instead, allow the temperature to be determined through engineering design evaluations, as required in § 63.1365(a)(1)(iii). The owner or operator would then use that temperature to calculate the controlled emissions as part of the initial compliance determination. Temperature measurement is only required as part of the monitoring requirements to demonstrate ongoing compliance.

3. Test Duration Requirements for Batch Operations

According to § 63.1365(b)(11)(iv) of the proposed amendments, the maximum duration of a test run may be either 24 hours or the duration of the longest batch controlled by the control device, whichever is shorter. The paragraph goes on to specify that each test run must ''include the same absolute or hypothetical peak-case conditions, as defined in paragraph (b)(11)(i) or (ii) of this section.'' We are amending this paragraph differently than we did at proposal to specify different test run duration limits depending on the format of the standard with which the owner or operator complies.

To demonstrate compliance with the percent reduction standard, the duration of test runs needs to be limited, only to the extent that the test run does not exceed the duration of the averaging period used in demonstrating ongoing compliance. Therefore, we are limiting the duration of test runs to 24 hours or the duration of the longest batch controlled by the control device, whichever is shorter. As we noted in the preamble to the proposed amendments, a consequence of this limitation is that, if the batch cycle exceeds 24 hours, an owner or operator may not take advantage of the exemption from developing an emission profile because

the test could not be conducted over the entire batch cycle in this case.

On the other hand, for tests to demonstrate compliance with the outlet concentration limit, we are limiting the duration of test runs to the applicable peak-case conditions (*i.e.*, 1 hour or up to 8 hours) because of the potential that a large number of low concentrations could be averaged in with high concentrations from a short period during the cycle, thereby rendering meaningless the concept of demonstrating compliance over peak-case conditions.

4. Performance Test Requirements for Large Control Devices

Section 63.1365(c)(3)(ii)(A) specifies measurement requirements for performance tests used to demonstrate percent reduction levels for large control devices. We edited the language to make it easier to read and understand. The meaning is unchanged.

5. Monitoring for the Alternative Standard

We have made a minor technical correction to eliminate an internal conflict in the monitoring provisions for the alternative standard. Specifically, the phrase ''98 percent or less'' in § 63.1366(b)(5)(ii)(A)(*2*) overlaps with the phrase ''95 percent or less'' in § 63.1366(b)(5)(ii)(A)(*1*). Since there are no requirements to control in the range greater than 95 percent to less than 98 percent, we have replaced the phrase ''98 percent or less'' with ''98 percent'' for the final amendments.

B. Minor Technical Corrections

One commenter suggested changes to correct a citation and to clarify the definition of a term for one equation. We concur with the suggestions and have made both changes. The sections and the associated changes are:

- Section 63.1361—We replaced the incorrect reference to § 63.1365(b)(2)(ii) with the correct reference to § 63.1365(c)(2)(ii) in the definition of ''process vent.''
- Section 63.1365(a)(2)—We revised the definition of the term ''CG_T'' in Equation 6 to read ''CG_T = total concentration of TOC or organic HAP in vented gas stream, average of samples, dry basis, ppmv.'' The change makes it clear that the equation may be used to calculate concentrations of either total organic carbon (TOC) or organic hazardous air pollutants (HAP), not just TOC, and it makes the definition consistent with the text in § 63.1365(a)(2).

IV. What Are the Administrative Requirements for the Amendments?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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.

It has been determined that these amendments do not constitute a ''significant regulatory action'' under the terms of Executive Order 12866. Consequently, this action was not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (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.''

Today's final amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to this rule. Thus, Executive Order 13132 does not apply to today's action.

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 9, 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.''

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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, EPA 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 EPA.

The 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 Executive Order has the potential to influence the regulation. Today's amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

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 1 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 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.

The EPA has determined that today's amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendments do not add new requirements that would increase this cost. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

F. 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 amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 (standard industrial classification (SIC) code 2879) that has up to 500 employees; (2) a small business in NAICS code 325199 (SIC code 2869) that has up to 1,000 employees; (3) 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 (4) 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 amendments on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the amendments impose no additional regulatory requirements on owners or operators of affected sources.

Although today's amendments will not have a significant economic impact, EPA nonetheless has tried to reduce the impact of the amendments on small entities. Many of the amendments define optional means of compliance. For example, vapor balancing was added as an optional means of compliance for storage tanks, compliance may be demonstrated for either TOC or total organic HAP rather than only TOC, monitoring of combustion device operating parameters is allowed under the alternative standard as an option to correcting to 3 percent oxygen, and we have specified additional EPA test methods that may be used to analyze wastewater without performing the validation procedures specified in Method 301 of Appendix A to 40 CFR part 63. We also added a provision that allows an owner or operator to request an extension to the specified period of planned routine maintenance of control devices for storage vessels during which the owner or operator is exempt from the standards. The amendments also simplify the initial compliance demonstration requirements and recordkeeping requirements for processes that are controlled by a dedicated control device.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 260–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

Today's amendments to the NESHAP will have no net impact on the information collection burden estimates made previously. An oversight has been corrected by adding recordkeeping and reporting requirements for add-on control devices for storage tanks equipped with floating roofs. The promulgated rule only included recordkeeping and reporting requirements for add-on control devices for storage tanks; even though both add-on control devices and floating roofs were considered in the cost impacts and burden estimates. Also, the amendments clarify the intent of several provisions in the 1999 NESHAP and correct inadvertent omissions and minor drafting errors in the 1999 NESHAP. Therefore, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

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) 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.

During the rulemaking, EPA searched for voluntary consensus standards that might be applicable. The search

identified 22 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods in the rule, but after review, none were considered practical alternatives to the specified EPA methods. An assessment of these voluntary consensus standards is presented in the preamble to the 1999 NESHAP (64 FR 33588, June 23, 1999). Today's action specifies additional EPA methods that may be used to determine the concentration of HAP in wastewater samples without conducting the validation procedures specified in 40 CFR 63.144, but no additional voluntary consensus standards have been identified.

I. The 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 20, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

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

Dated: September 6, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—[Amended]

2. Section 63.1360 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(2);

c. Revising paragraph (d)(3);

d. Redesignating paragraph (d)(4) as paragraph (d)(5) and adding a new paragraph (d)(4);

e. Revising paragraph (f) introductory text;

f. Revising paragraphs (f)(2) through (4) and adding paragraph (f)(5);

g. Revising paragraph (h); and

h. Revising paragraph (i)(1).

The revisions and additions read as follows:

§ 63.1360 Applicability.

* * * * *

(b) *New source applicability.* A new affected source subject to this subpart and to which the requirements for new sources apply is defined according to the criteria in paragraph (b)(1) or (2) of this section.

* * * * *

(2) Any dedicated PAI process unit that meets the criteria specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) For which construction, as defined in § 63.1361, commenced after November 10, 1997, or reconstruction commenced after September 20, 2002.

(ii) That has the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP.

* * * * *

(d) * * *

(3) Production of ethylene;

(4) Coal tar distillation; and

* * * * *

(f) *Storage vessel applicability determination.* An owner or operator shall follow the procedures specified in paragraphs (f)(1) through (5) of this section to determine whether a storage vessel is part of the affected source to which this subpart applies.

* * * * *

(2) Unless otherwise excluded under paragraph (f)(1) of this section, the storage vessel is part of a PAI process unit if either the input to the vessel from the PAI process unit is greater than or equal to the input from any other PAI or non-PAI process unit, or the output from the vessel to the PAI process unit is greater than or equal to the output to any other PAI or non-PAI process unit. If the greatest input to and/or output from a shared storage vessel is the same for two or more process units, including one or more PAI process units, the owner or operator must assign the storage vessel to any one of the PAI process units that meet this condition.

(3) Unless otherwise excluded under paragraph (f)(1) of this section, where a storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (f)(3)(i) through (iii) of this section.

(i) The storage vessel in the tank farm is not subject to the provisions of this subpart if the greatest input to or output from the storage vessel is for a non-PAI process unit. The input and output shall be determined among only those process units that share the storage vessel and that do not have an intervening storage vessel for that product (or raw material, as appropriate).

(ii) Except for storage vessels in a tank farm excluded in accordance with paragraph (f)(3)(i) of this section, applicability of this subpart shall be determined according to the provisions in paragraphs (f)(3)(ii)(A) through (C) of this section.

(A) Except as specified in paragraph (f)(3)(ii)(C) of this section, this subpart does not apply to the storage vessel in a tank farm if each PAI process unit that receives material from or sends material to the storage vessel has an intervening storage vessel for that material.

(B) Except as specified in paragraph (f)(3)(ii)(C) of this section, a storage vessel in a tank farm shall be assigned to the PAI process unit that receives the greatest amount of material from or sends the greatest amount of material to the storage vessel and does not have an intervening storage vessel. If two or more PAI process units have the same input to or output from the storage vessel in the tank farm, then the storage vessel in the tank farm may be assigned to any one of the PAI process units that meet this condition.

(C) As an alternative to the requirements specified in paragraphs (f)(3)(ii)(A) and (B) of this section, even if an intervening storage vessel is present, an owner or operator may elect to assign a storage vessel in a tank farm to the PAI process unit that sends the most material to or receives the most material from the storage vessel. If two or more PAI process units have the same input to or output from the storage vessel in the tank farm, then the storage vessel in the tank farm may be assigned to any one of the PAI process units that meet this condition.

(iii) With respect to a process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that the product or raw material entering or leaving the process flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(4) If use varies from year to year, then use for the purposes of this subpart for existing sources shall be based on the utilization that occurred during the year preceding June 23, 1999, or if the storage vessel was not in operation during that year, the use shall be based on the expected use in the 5 years after startup. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(5) If the storage vessel begins receiving material from (or sending material to) another process unit, or ceasing to receive material from (or send material to) a PAI process unit, or if there is a significant change in the use of the storage vessel, the owner or operator shall reevaluate the ownership determination for the storage vessel.

* * * * *

(h) *Applicability of process units included in a process unit group.* An owner or operator may elect to develop process unit groups in accordance with paragraph (h)(1) of this section. For the PAI process units in these process unit groups, the owner or operator may comply with the provisions in overlapping MACT standards, as specified in paragraphs (h)(2) through (4) of this section, as an alternative means of demonstrating compliance with the provisions of this subpart.

(1) Develop, revise, and document changes in a process unit group in accordance with the procedures specified in paragraphs (h)(1)(i) through (vi) of this section.

(i) Initially identify a non-dedicated PAI process unit that is operating on December 23, 2003 or a date after December 23, 2003, and identify all processing equipment that is part of this PAI process unit, based on descriptions in operating scenarios.

(ii) Add to the group any other non-dedicated PAI and non-dedicated non-PAI process units expected to be operated in the 5 years after the date specified in paragraph (h)(1)(i) of this section, provided they satisfy the criteria specified in paragraphs (h)(1)(ii)(A) through (C) of this section. Also identify all of the processing equipment used for each process unit based on information from operating scenarios and other applicable documentation.

(A) Each PAI process unit that is added to a group must have some processing equipment that is part of one or more PAI process units that are already in the process unit group.

(B) Each non-PAI process unit that is added to a group must have some processing equipment that is also part of one or more of the PAI process units in the group.

(C) No process unit may be part of more than one process unit group.

(iii) The initial process unit group consists of all of the processing equipment for the process units identified in paragraphs (h)(1)(i) and (ii) of this section.

(iv) If compliance is to be demonstrated in accordance with paragraph (h)(3) of this section, determine the primary product of the process unit group according to the procedures specified in paragraphs (h)(1)(iv)(A) through (C) of this section.

(A) The primary product is the type of product (*e.g.*, PAI, pharmaceutical product, thermoplastic resin, *etc.*) that is expected to be produced for the greatest operating time in the 5-year period specified in paragraph (h)(1)(i) of this section.

(B) If the process unit group produces multiple products equally based on operating time, then the primary product is the product with the greatest production on a mass basis over the 5-year period specified in paragraph (h)(1)(i) of this section.

(C) The primary product of the group must be redetermined if the owner or operator does not intend to make that product in the future or if it has not been made for 5 years. The results of the redetermination must be recorded as specified in § 63.1367(b) and reported in a Periodic report no later than the report covering the period for the end of the 5th year as specified in § 63.1368(g)(2). If the primary product changes, the owner or operator must either demonstrate compliance with the applicable subpart as specified in paragraph (h)(3) of this section or demonstrate compliance with the provisions of this subpart MMM.

(v) Add process units developed in the future in accordance with the conditions specified in paragraphs (h)(1)(ii)(A) through (C) of this section.

(vi) Maintain records of changes in the process units in each process unit group as specified in § 63.1367(b)(9), and maintain reports as specified in § 63.1368(f)(9) and (g)(2)(ix).

(2) If any of the products produced in the process unit group are subject to 40 CFR part 63, subpart GGG (Pharmaceuticals MACT), the owner or operator may elect to comply with the requirements of subpart GGG for the PAI process unit(s) within the process unit group, except for the following:

(i) The emission limit standard for process vents in § 63.1362(b)(2)(i) shall apply in place of § 63.1254(a)(2);

(ii) When the dates of April 2, 1997 and April 2, 2007 are provided in § 63.1254(a)(3)(ii), the dates of November 10, 1997 and November 10, 2007, respectively, shall apply for purposes of this subpart MMM; and

(iii) Requirements in § 63.1367(a)(5) regarding application for approval of construction or reconstruction shall apply in place of the provisions in § 63.1259(a)(5).

(3) If the primary product of a process unit group is determined to be a type of material that is subject to another subpart of 40 CFR part 63 on June 23, 1999 or startup of the first process unit after formation of the process unit group, whichever is later, the owner or operator may elect to comply with the other subpart for any PAI process unit within the process unit group, subject to the requirement in this paragraph (h)(3). Emissions from PAI Group 1 process vents, as defined in § 63.1361, must be reduced in accordance with the control requirements for Group 1 vents as specified in the alternative subpart. The criteria in the alternative subpart for determining which process vents must be controlled do not apply for the purposes of this paragraph (h)(3).

(4) The requirements for new and reconstructed sources in the alternative subpart apply to all PAI process units in the process unit group if, and only if, the affected source under the alternative subpart meets the requirements for construction or reconstruction.

(i) * * *

(1) *Compliance with other MACT standards.* (i) After the compliance dates specified in § 63.1364, an affected source subject to the provisions of this subpart that is also subject to the provisions of any other subpart of 40 CFR part 63 may elect, to the extent the subparts are consistent, under which subpart to maintain records and report to EPA. The affected source shall identify in the Notification of Compliance Status report required by § 63.1368(f) under which authority such records will be maintained.

(ii) After the compliance dates specified in § 63.1364, at an offsite reloading or cleaning facility subject to § 63.1362(b)(6), compliance with the emission standards and associated initial compliance monitoring, recordkeeping, and reporting provisions of any other subpart of 40 CFR part 63

constitutes compliance with the provisions of § 63.1362(b)(6)(vii)(B) or (C). The owner or operator of the affected storage vessel shall identify in the Notification of Compliance Status report required by § 63.1368(f) the subpart of 40 CFR part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

3. Section 63.1361 is amended by:

a. Revising the definitions for ''Construction,'' ''Consumption,'' ''Group 1 storage vessel,'' ''Group 1 wastewater stream,'' ''Intermediate,'' ''Process,'' ''Process unit group,'' ''Process vent,'' ''Recovery device,'' ''Supplemental gases,'' and ''Wastewater'';

b. Revising ''equipment identified in § 63.1362(l)'' to read ''equipment identified in § 63.1362(k)'' in the definition of ''pesticide active ingredient manufacturing process unit (PAI process unit)''; and

c. Adding definitions in alphabetical order for ''Dedicated PAI process unit,'' ''Formulation of pesticide products,'' ''Non-dedicated PAI process unit,'' ''Reconfiguration,'' and ''Reconstruction.''

The revisions and additions read as follows:

§ 63.1361 Definitions.

* * * * *

Construction means the onsite fabrication, erection, or installation of an affected source or dedicated PAI process unit. Addition of new equipment to an affected source does not constitute construction, provided the new equipment is not a dedicated PAI process unit with the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP, but it may constitute reconstruction of the affected source or PAI process unit if it satisfies the definition of reconstruction in this section. At an affected source, changing raw materials processed and reconfiguring non-dedicated equipment to create a non-dedicated PAI process unit do not constitute construction.

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If HAP are generated in the process as well as added as raw material, consumption includes the quantity generated in the process.

* * * * *

Dedicated PAI process unit means a PAI process unit constructed from equipment that is fixed in place and designed and operated to produce only a single product or co-products. The equipment is not designed to be reconfigured to create different process units, and it is not operated with different raw materials so as to produce different products.

* * * * *

Formulation of pesticide products means the mixing, blending, or diluting of a PAI with one or more other PAI or inert ingredients.

* * * * *

Group 1 storage vessel means a storage vessel at an existing affected source with a capacity equal to or greater than 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa, a storage vessel at a new affected source with a capacity equal to or greater than 40 m^3 and storing material with a maximum true vapor pressure greater than or equal to 16.5 kPa, or a storage vessel at a new affected source with a capacity greater than or equal to 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa.

* * * * *

Group 1 wastewater stream means process wastewater at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) for compounds in Table 9 of subpart G of this part or a maintenance wastewater stream that contains 5.3 Mg of compounds in Table 9 of subpart G of this part per discharge event.

* * * * *

Intermediate means an organic compound that is manufactured in a process and that is further processed or modified in one or more additional steps to ultimately produce a PAI.

* * * * *

Non-dedicated PAI process unit means a process unit that is not a dedicated PAI process unit.

* * * * *

Process means a logical grouping of processing equipment which collectively function to produce a product. For the purpose of this subpart, a PAI process includes all, or a combination of, reaction, recovery, separation, purification, treatment, cleaning, and other activities or unit operations which are used to produce a PAI or integral intermediate. Ancillary activities are not considered a PAI process or any part of a PAI process. Ancillary activities include boilers and incinerators (not used to comply with the provisions of § 63.1362), chillers or refrigeration systems, and other equipment and activities that are not directly involved (*i.e.*, they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a PAI. A PAI process and all integral intermediate processes for which 100 percent of the annual production is used in the production of the PAI may be linked together and defined as a single PAI process unit.

* * * * *

Process unit group means a group of process units that manufacture PAI and products other than PAI by alternating raw materials or operating conditions, or by reconfiguring process equipment. A process unit group is determined according to the procedures specified in § 63.1360(g).

Process vent means a point of emission from processing equipment to the atmosphere or a control device. The vent may be the release point for an emission stream associated with an individual unit operation, or it may be the release point for emission streams from multiple unit operations that have been manifolded together into a common header. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, process tanks, and product dryers. A vent is not considered to be a process vent for a given emission episode if the undiluted and uncontrolled emission stream that is released through the vent contains less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream; using an engineering assessment as discussed in § 63.1365(c)(2)(ii); from test data collected using Method 18 of 40 CFR part 60, appendix A; or from test data collected using any other test method that has been validated according to the procedures in Method 301 of appendix A of this part. Process vents do not include vents on storage vessels regulated under § 63.1362(c), vents on wastewater emission sources regulated under § 63.1362(d), or pieces of equipment regulated under § 63.1363.

* * * * *

Reconfiguration means disassembly of processing equipment for a particular non-dedicated process unit and reassembly of that processing equipment in a different sequence, or in combination with other equipment, to create a different non-dedicated process unit.

Reconstruction, as used in § 63.1360(b), shall have the meaning given in § 63.2, except that ''affected or previously unaffected stationary source''

shall mean either ''affected facility'' or ''PAI process unit.''

Recovery device, as used in the wastewater provisions, means an individual unit of equipment capable of, and normally used for the purpose of, recovering chemicals for fuel value (*i.e.*, net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams.

* * * * *

Supplemental gases means any nonaffected gaseous streams (streams that are not from process vents, storage vessels, equipment or waste management units) that contain less than 50 ppmv TOC and less than 50 ppmv total HCl and chlorine, as determined through process knowledge, and are combined with an affected vent stream. Supplemental gases are often used to maintain pressures in manifolds or for fire and explosion protection and prevention. Air required to operate combustion device burner(s) is not considered a supplemental gas.

* * * * *

Wastewater means water that meets either of the conditions described in paragraph (1) or (2) of this definition and is discarded from a PAI process unit that is at an affected source:

(1) Is generated from a PAI process or a scrubber used to control emissions from a PAI process and contains either:

(i) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 5 ppmw and has an average flow rate of 0.02 L/min or greater; or

(ii) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 10,000 ppmw at any flow rate;

(2) Is generated from a PAI process unit as a result of maintenance activities and contains at least 5.3 Mg of compounds listed in Table 9 of subpart G of this part per individual discharge event.

* * * * *

4. Section 63.1362 is amended by:

a. Revising paragraph (b)(2)(iv)(A);

b. Revising paragraph (b)(4)(ii)(A);

c. Revising paragraph (b)(5)(ii);

d. Revising paragraph (b)(6);

e. Revising paragraph (c)(2) introductory text;

f. Revising paragraph (c)(2)(iv) introductory text;

g. Revising paragraph (c)(2)(iv)(B);

h. Revising paragraphs (c)(3) through (6);

i. Adding paragraph (c)(7);

j. Revising paragraph (d) introductory text;

k. Revising paragraph (d)(2) introductory text;

l. Removing paragraph (d)(2)(v);

m. Revising paragraphs (d)(12) through (14);

n. Adding paragraphs (d)(15) and (16);

o. Revising paragraph (h)(2) introductory text;

p. Revising paragraphs (h)(2)(i) and (iii); and

q. Revising paragraphs (h)(3) and (4).

The revisions and additions read as follows:

§ 63.1362 Standards.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) To outlet concentrations less than or equal to 20 ppmv; or

* * * * *

(4) * * *

(ii) * * *

(A) To outlet concentrations less than or equal to 20 ppmv; or

* * * * *

(5) * * *

(ii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than 6.8 Mg/yr and less than or equal to 191 Mg/yr, these HCl and Cl_2 emissions shall be reduced by 94 percent or to an outlet concentration less than or equal to 20 ppmv.

* * * * *

(6) *Alternative standard.* As an alternative to the provisions in paragraphs (b)(2) through (5) of this section, the owner or operator may route emissions from a process vent to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of HCl and Cl_2 of 20 ppmv or less. If the owner or operator is routing emissions to a non-combustion control device or series of control devices, the control device(s) must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of HCl and Cl_2 of 50 ppmv or less. Any process vents within a process that are not routed to such a control device or series of control devices must be controlled in accordance with the provisions of paragraph (b)(2)(ii), (iii), (iv), (b)(3)(ii), (b)(4)(ii), (b)(5)(ii) or (iii) of this section, as applicable.

(c) * * *

(2) *Standard for existing sources.* Except as specified in paragraphs (c)(4), (5), and (6) of this section, the owner or operator of a Group 1 storage vessel at an existing affected source, as defined in § 63.1361, shall equip the affected storage vessel with one of the following:

* * * * *

(iv) A closed vent system meeting the conditions of paragraph (j) of this section and a control device that meets any of the following conditions:

* * * * *

(B) Reduces organic HAP emissions to outlet concentrations of 20 ppmv or less; or

* * * * *

(3) *Standard for new sources.* Except as specified in paragraphs (c)(4), (5), and (6) of this section, the owner or operator of a Group 1 storage vessel at a new source, as defined in § 63.1361, shall equip the affected storage vessel in accordance with any one of paragraphs (c)(2)(i) through (iv) of this section.

(4) *Alternative standard.* As an alternative to the provisions in paragraphs (c)(2) and (3) of this section, the owner or operator of an existing or new affected source may route emissions from storage vessels to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of hydrogen chloride and chlorine of 20 ppmv or less. If the owner or operator is routing emissions to a non-combustion control device or series of control devices, the control device(s) must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of HCl and Cl_2 of 50 ppmv or less.

(5) *Planned routine maintenance.* The owner or operator is exempt from the specifications in paragraphs (c)(2) through (4) of this section during periods of planned routine maintenance of the control device that do not exceed 240 hr/yr. The owner or operator may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed, it must indicate that no material will be added to the storage vessel between the time the 240-hr limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240-hr limit will be exceeded.

(6) *Vapor balancing alternative.* As an alternative to the requirements in paragraphs (c)(2) and (3) of this section, the owner or operator of an existing or new affected source may implement vapor balancing in accordance with paragraphs (c)(6)(i) through (vii) of this section.

(i) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the railcar or tank truck from which the storage tank is filled.

(ii) Tank trucks and railcars must have a current certification in accordance with the U.S. Department of Transportation pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars.

(iii) Hazardous air pollutants must only be unloaded from tank trucks or railcars when vapor collection systems are connected to the storage tank's vapor collection system.

(iv) No pressure relief device on the storage tank or on the railcar or tank truck shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices on affected storage tanks must be set to no less than 2.5 psig at all times to prevent breathing losses. The owner or operator shall record the setting as specified in § 63.1367(b)(8) and comply with the following requirements for each pressure relief valve:

(A) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(B) An instrument reading of 500 ppmv or greater defines a leak.

(C) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.1363(g)(4)(i) through (iv).

(vi) Railcars or tank trucks that deliver HAP to an affected storage tank must be reloaded or cleaned at a facility that utilizes one of the following control techniques:

(A) The railcar or tank truck must be connected to a closed vent system with a control device that reduces inlet emissions of HAP by 90 percent by weight or greater; or

(B) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the tank truck or railcar during reloading must be used to route the collected HAP vapor to the storage tank from which the liquid being transferred originated.

(vii) The owner or operator of the facility where the railcar or tank truck is reloaded or cleaned must comply with the following requirements:

(A) Submit to the owner or operator of the affected storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the affected storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph (c)(6)(vii)(A).

(B) If complying with paragraph (c)(6)(vi)(A) of this section, demonstrate initial compliance in accordance with § 63.1365(d), demonstrate continuous compliance in accordance with § 63.1366, keep records as specified in § 63.1367, and prepare reports as specified in § 63.1368.

(C) If complying with paragraph (c)(6)(vi)(B) of this section, keep records of:

(*1*) The equipment to be used and the procedures to be followed when reloading the railcar or tank truck and displacing vapors to the storage tank from which the liquid originates, and

(*2*) Each time the vapor balancing system is used to comply with paragraph (c)(6)(vi)(B) of this section.

(7) Compliance with the provisions of paragraphs (c)(2) and (3) of this section is demonstrated using the initial compliance procedures in § 63.1365(d) and the monitoring requirements in § 63.1366. Compliance with the outlet concentrations in paragraph (c)(4) of this section shall be determined by the initial compliance provisions in § 63.1365(a)(5) and the continuous emission monitoring requirements of § 63.1366(b)(5).

(d) *Wastewater.* The owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.147, with the differences noted in paragraphs (d)(1) through (16) of this section for the purposes of this subpart.

* * * * *

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.147, §§ 63.119 through 63.123 are applicable, with the exception of the differences noted in paragraphs (d)(2)(i) through (iv) of this section.

* * * * *

(12) As an alternative to using Method 18 of 40 CFR part 60, as specified in §§ 63.139(c)(1)(ii) and 63.145(i)(2), the owner or operator may elect to use Method 25 or Method 25A of 40 CFR part 60, as specified in § 63.1365(b).

(13) The requirement to correct outlet concentrations from combustion devices to 3 percent oxygen in § 63.139(c)(1)(ii) shall apply only if supplemental gases are combined with affected vent streams, and the procedures in § 63.1365(a)(7)(i) apply instead of the procedures in § 63.145(i)(6) to determine the percent oxygen correction. If emissions are controlled with a vapor recovery system as specified in § 63.139(c)(2), the owner or operator must correct for supplemental gases as specified in § 63.1365(a)(7)(ii).

(14) As an alternative to the management and treatment options specified in § 63.132(g)(2), any Group 1 wastewater stream (or residual removed from a Group 1 wastewater stream) that contains less than 50 ppmw of HAP listed in Table 2 to subpart GGG of this part may be transferred offsite or to an on-site treatment operation not owned or operated by the owner or operator of the source generating the wastewater (or residual) if the transferee manages and treats the wastewater stream or residual in accordance with paragraphs (d)(14)(i) through (iv) of this section.

(i) Treat the wastewater stream or residual in a biological treatment unit in accordance with §§ 63.138 and 63.145.

(ii) Cover the waste management units up to the activated sludge unit. Alternatively, covers are not required if the owner or operator demonstrates that less than 5 percent of the total HAP listed in Table 3 to subpart GGG of this part is emitted.

(iii) Inspect covers as specified in § 63.1366(h).

(iv) The reference in § 63.132(g)(2) to ''§ 63.102(b) of subpart F'' does not apply for the purposes of this subpart.

(15) When § 63.133 refers to Table 10 to subpart G of this part, the maximum true vapor pressures in the table shall be limited to the HAP listed in Table 9 to subpart G of this part.

(16) When the inspection, recordkeeping, and reporting requirements contained in § 63.148 are referred to in §§ 63.132 through 63.147, the inspection requirements in § 63.1366(h), the recordkeeping requirements in § 63.1367(f), and the reporting requirements in § 63.1368(g)(2)(iii) and (xi) shall apply for the purposes of this subpart.

* * * * *

(h) * * *

(2) Group 1 emission points that are controlled as specified in paragraphs (h)(2)(i) through (iii) of this section may not be used to calculate emissions averaging credits, unless the equipment

is approved for use in a different manner from that specified in paragraphs (b) through (d) of this section, and a nominal efficiency has been assigned according to the procedures in § 63.150(i). The nominal efficiency must exceed the percent reduction required by paragraphs (b) and (c) of this section for process vents and storage vessels, respectively, exceed the percent reduction required in § 63.139(c) for control devices used to control emissions vented from waste management units, and exceed the percent reduction required in § 63.138(e) or (f) for wastewater treatment processes.

(i) Storage vessels controlled with an internal floating roof meeting the specifications of § 63.119(b), an external floating roof meeting the specifications of § 63.119(c), or an external floating roof converted to an internal floating meeting the specifications of § 63.119(d).

* * * * *

(iii) Wastewater streams that are managed in waste management units that are controlled as specified in §§ 63.133 through 63.137, treated using a steam stripper meeting the specifications of § 63.138(d), and emissions from the steam stripper are controlled in a control device that meets the percent reduction requirements specified in § 63.139(c).

(3) Process vents and storage vessels controlled with a control device to an outlet concentration of 20 ppmv or 50 ppmv, as specified in paragraph (b)(2)(iv)(A), (b)(3)(ii), (b)(6), (c)(2)(iv)(B), or (c)(4) of this section, and wastewater streams controlled in a treatment unit to an outlet concentration of 50 ppmw, may not be used in any averaging group.

(4) Maintenance wastewater streams, wastewater streams treated in biological treatment units, and Group 2 wastewater streams that are not managed as specified in §§ 63.133 through 63.137 may not be included in any averaging group.

* * * * *

5. Section 63.1363 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (a)(10)(ii) and (iii);

c. Revising paragraphs (b)(3)(iii)(A) through (F);

d. Adding paragraph (b)(3)(iii)(G);

e. Revising paragraph (b)(3)(iv);

f. Revising paragraphs (c)(2)(i) and (iii);

g. Revising paragraph (c)(3)(i);

h. Revising paragraph (c)(4)(ii);

i. Revising paragraph (c)(5) introductory text;

j. Revising paragraph (c)(5)(iv);

k. Removing paragraphs (c)(5)(vi)(C) and (D);

l. Adding paragraph (c)(5)(vii);

m. Revising paragraph (c)(6);

n. Revising paragraph (c)(9);

o. Revising paragraph (e)(7)(iii);

p. Revising paragraph (e)(9);

q. Revising paragraph (f); and

r. Revising paragraph (g)(2)(vi).

The revisions and additions read as follows:

§ 63.1363 Standards for equipment leaks.

(a) * * *

(1) The provisions of this section apply to ''equipment'' as defined in § 63.1361. The provisions of this section also apply to any closed-vent systems and control devices required by this section.

* * * * *

(10) * * *

(ii) The identification on a valve in light liquid or gas/vapor service may be removed after it has been monitored as specified in paragraph (e)(7)(iii) of this section, and no leak has been detected during the follow-up monitoring. If an owner or operator elects to comply with § 63.174(c)(1)(i), the identification on a connector may be removed after it has been monitored as specified in § 63.174(c)(1)(i) and no leak is detected during that monitoring.

(iii) The identification on equipment, except as specified in paragraph (a)(10)(ii) of this section, may be removed after it has been repaired.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) Section 63.174(b), (f), (g), and (h) shall not apply. In place of § 63.174(b), the owner or operator shall comply with paragraphs (b)(3)(iii)(C) through (G) of this section. In place of § 63.174(f), (g), and (h), the owner or operator shall comply with paragraph (f) of this section.

(B) Days that the connectors are not in organic HAP service shall not be considered part of the 3-month period in § 63.174(c).

(C) If the percent leaking connectors in a group of processes was greater than or equal to 0.5 percent during the initial monitoring period, monitoring shall be performed once per year until the percent leaking connectors is less than 0.5 percent.

(D) If the percent leaking connectors in the group of processes was less than 0.5 percent, but equal to or greater than 0.25 percent, during the last required monitoring period, monitoring shall be performed once every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years. The percent leaking connectors will be calculated for the total of all monitoring performed during the 4-year period.

(E) The owner or operator shall increase the monitoring frequency to once every 2 years for the next monitoring period if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors monitored within either the 4 years specified in paragraph (b)(3)(iii)(D) of this section, the first 4 years specified in paragraph (b)(3)(iii)(G) of this section, or the entire 8 years specified in paragraph (b)(3)(iii)(G) of this section. At the end of that 2-year monitoring period, the owner or operator shall monitor once per year while the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator may again elect to monitor in accordance with paragraph (b)(3)(iii)(D) or (G) of this section, as applicable.

(F) If an owner or operator complying with the requirements of paragraph (b)(3)(iii)(D) or (G) of this section for a group of processes determines that 1 percent or greater of the connectors are leaking, the owner or operator shall increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii)(D) or (G) of this section after a monitoring period in which less than 0.5 percent of the connectors are determined to be leaking.

(G) Monitoring shall be required once every 8 years, if the percent leaking connectors in the group of process units was less than 0.25 percent during the last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the appropriate monitoring frequency specified in paragraph (b)(3)(iii)(D), (E), or (F) of this section.

(iv) Section 63.178, shall apply, except as specified in paragraphs (b)(3)(iv)(A) and (B) of this section.

(A) Section 63.178(b), requirements for pressure testing, shall apply to all processes, not just batch processes.

(B) For pumps, the phrase ''at the frequencies specified in Table 1 of this

subpart'' in § 63.178(c)(3)(iii) shall mean ''quarterly'' for the purposes of this subpart.

* * * * *

(c) * * *

(2) * * *

(i) *Monitoring.* Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b), except as provided in §§ 63.177, 63.178, paragraph (f) of this section, and paragraphs (c)(5) through (9) of this section.

* * * * *

(iii) *Visual inspections.* Each pump and agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal. If there are indications of liquids dripping from the seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (c)(2)(iii)(A) or (B) of this section prior to the next weekly inspection.

(A) The owner or operator shall monitor the pump or agitator by the method specified in § 63.180(b). If the instrument reading indicates a leak as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(3) * * *

(i) When a leak is detected pursuant to paragraph (c)(2)(i), (c)(2)(iii)(A), (c)(5)(iv)(A), or (c)(5)(vi)(B) of this section, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(3)(i) of this section.

* * * * *

(4) * * *

(ii) If, calculated on a 1-year rolling average, 10 percent or more of the pumps in a group of processes (or 3 pumps in a group of processes with fewer than 30 pumps) leak, the owner or operator shall monitor each pump once per month, until the calculated 1-year rolling average value drops below 10 percent (or three pumps in a group of processes with fewer than 30 pumps).

* * * * *

(5) *Exemptions.* Each pump or agitator equipped with a dual mechanical seal system that includes a barrier fluid system and meets the requirements specified in paragraphs (c)(5)(i) through (vii) is exempt from the requirements of paragraphs (c)(1) through (c)(4)(iii) of this section, except as specified in paragraphs (c)(5)(iv)(A) and (vii) of this section.

* * * * *

(iv) Each pump/agitator is checked by visual inspection each calendar week for indications of liquids dripping from the pump/agitator seal. If there are indications of liquids dripping from the pump or agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedures specified in either paragraph (c)(5)(iv)(A) or (B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump or agitator using the method specified in § 63.180(b) to determine if there is a leak of organic HAP in the barrier fluid. If the instrument reading indicates a leak, as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vii) When a leak is detected pursuant to paragraph (c)(5)(iv)(A) or (vi)(B) of this section, the leak must be repaired as specified in paragraph (c)(3) of this section.

(6) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (c)(1) through (3) of this section.

* * * * *

(9) If more than 90 percent of the pumps in a group of processes meet the criteria in either paragraph (c)(5) or (6) of this section, the group of processes is exempt from the requirements of paragraph (c)(4) of this section.

* * * * *

(e) * * *

(7) * * *

(iii) When a leak is repaired, the valve shall be monitored at least once within the first 3 months after its repair. Days that the valve is not in organic HAP service shall not be considered part of this 3-month period. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definitions of ''repaired'' and ''first attempt at repair.''

(A) The monitoring shall be conducted as specified in § 63.180(b) and (c) as appropriate, to determine whether the valve has resumed leaking.

(B) Periodic monitoring required by paragraphs (e)(2) through (4) of this section may be used to satisfy the requirements of paragraph (e)(7)(iii) of this section, if the timing of the monitoring period coincides with the time specified in paragraph (e)(7)(iii) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (e)(7)(iii) of this section, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (e)(7)(iii) of this section.

(C) If a leak is detected by monitoring that is conducted pursuant to paragraph (e)(7)(iii) of this section, the owner or operator shall follow the provisions of paragraphs (e)(7)(iii)(C)(*1*) and (*2*) of this section to determine whether that valve must be counted as a leaking valve for purposes of paragraph (e)(6) of this section.

(*1*) If the owner or operator elects to use periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve.

(*2*) If the owner or operator elects to use other monitoring prior to the periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

* * * * *

(9) Any equipment located at a plant site with fewer than 250 valves in organic HAP service in the affected source is exempt from the requirements for monthly monitoring specified in paragraph (e)(4)(i) of this section. Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraph (e)(4)(iii), (iv), or (v) of this section, except as provided in paragraph (f) of this section.

(f) *Unsafe to monitor, difficult-to-monitor, and inaccessible equipment.*

(1) Equipment that is designated as unsafe-to-monitor, difficult-to-monitor, or inaccessible is exempt from the requirements as specified in paragraphs (f)(1)(i) through (iv) of this section provided the owner or operator meets the requirements specified in paragraph (f)(2), (3), or (4) of this section, as applicable. All equipment, except connectors that meet the requirements in paragraph (f)(4) of this section, must be assigned to a group of processes. Ceramic or ceramic-lined connectors are subject to the same requirements as inaccessible connectors.

(i) For pumps and agitators, paragraphs (c)(2), (3), and (4) of this section do not apply.

(ii) For valves, paragraphs (e)(2) through (7) of this section do not apply.

(iii) For connectors, § 63.174(b) through (e) and paragraphs (b)(3)(iii)(C) through (G) of this section do not apply.

(iv) For closed-vent systems, § 63.172(f)(1), (f)(2), and (g) do not apply.

(2) *Equipment that is unsafe-to-monitor.*

(i) Valves, connectors, agitators, and any part of closed-vent systems may be designated as unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements identified in paragraphs (f)(1)(i) through (iii) of this section, or the inspection requirements identified in paragraph (f)(1)(iv) of this section.

(ii) The owner or operator of equipment that is designated as unsafe-to-monitor must have a written plan that requires monitoring of the equipment as frequently as practicable during safe-to-monitor times. For valves, connectors, and agitators, monitoring shall not be more frequent than the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located. For closed-vent systems, inspections shall not be more frequent than annually.

(3) *Equipment that is difficult-to-monitor.*

(i) A valve, agitator, pump, or any part of a closed-vent system may be designated as difficult-to-monitor if the owner or operator determines that the equipment cannot be monitored or inspected without elevating the monitoring personnel more than 2 meters above a support surface or the equipment is not accessible in a safe manner when it is in organic HAP service;

(ii) At a new affected source, an owner or operator may designate no more than 3 percent of valves as difficult-to-monitor.

(iii) The owner or operator of valves, agitators, or pumps designated as difficult-to-monitor must have a written plan that requires monitoring of the equipment at least once per calendar year or on the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located, whichever is less frequent. For any part of a closed-vent system designated as difficult-to-monitor, the owner or operator must have a written plan that requires inspection of the closed-vent system at least once every 5 years.

(4) *Inaccessible, ceramic, or ceramic-lined connectors.*

(i) A connector may be designated as inaccessible if it is:

(A) Buried;

(B) Insulated in a manner that prevents access to the equipment by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the equipment by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters above the ground; or

(E) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(F) Would require elevating the monitoring personnel more than 2 meters above a permanent support surface or would require the erection of scaffold.

(ii) At a new affected source, an owner or operator may designate no more than 3 percent of connectors as inaccessible.

(iii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(iv) Any connector that is inaccessible or that is ceramic or ceramic-lined is exempt from the recordkeeping and reporting requirements of paragraphs (g) and (h) of this section.

(g) * * *

(2) * * *

(vi) A list of equipment designated as unsafe-to-monitor or difficult-to-monitor under paragraph (f) of this section and a copy of the plan for monitoring this equipment.

* * * * *

6. Section 63.1365 is amended by:

a. Revising paragraph (a)(1)(iii);

b. Revising paragraph (a)(2);

c. Revising paragraph (a)(5);

d. Revising paragraph (a)(6);

e. Revising paragraph (a)(7)(i) introductory text;

f. Revising paragraphs (a)(7)(i)(A) and (C);

g. Revising paragraph (a)(7)(ii);

h. Revising paragraph (b) introductory text;

i. Revising paragraph (b)(8);

j. Revising paragraph (b)(11) introductory text;

k. Revising paragraph (b)(11)(iii) introductory text;

l. Revising ''paragraph (b)(1)(i)(B) of this section'' to read ''paragraph (b)(11)(i)(B) of this section'' in the last sentence of paragraph (b)(11)(iii)(A);

m. Adding paragraph (b)(11)(iii)(D);

n. Revising paragraph (b)(11)(iv);

o. Removing paragraph (b)(12);

p. Revising paragraph (c)(1)(iii) and (v);

q. Revising paragraph (c)(2)(i)(C);

r. Revising paragraphs (c)(2)(i)(D)(*4*)(*i*) and (*iii*);

s. Revising paragraphs (c)(2)(i)(E)(3) and (4);

t. Revising paragraph (c)(2)(i)(F);

u. Revising paragraph (c)(2)(ii) introductory text and paragraph (c)(2)(ii)(A);

v. Revising paragraph (c)(3)(ii)(A);

w. Revising paragraph (c)(3)(iii) introductory text;

x. Revising paragraphs (d)(1)(i)(A) and (B);

y. Revising paragraph (d)(3)(ii);

z. Revising paragraph (e);

aa. Revising ''§ 63.1362(h)(2)'' to read ''§ 63.1362(g)(2)'' and revising ''§ 63.1362(h)(3)'' to read ''§ 63.1362(g)(3)'' in paragraph (g) introductory text;

bb. Revising ''§ 63.1362(h)(2)'' to read ''§ 63.1362(g)(2)'' in paragraph (g)(3)(i);

cc. Revising ''§ 63.1362(h)(3)(i)'' to read ''§ 63.1362(g)(3)(i)'' in paragraph (g)(3)(ii);

dd. Revising ''§ 63.1362(h)(3)(ii)'' to read ''§ 63.1362(g)(3)(ii)'' in paragraph (g)(4) introductory text;

ee. Revising ''§ 63.1362(h)(3)(ii)(A)'' to read ''§ 63.1362(g)(3)(ii)(A)'' in paragraph (g)(4)(i); and

ff. Revising ''§ 63.1362(i)(3)(ii)(A)'' to read ''§ 63.1362(g)(3)(iii)(A)'' in paragraph (g)(4)(ii).

The revisions and additions read as follows:

§ 63.1365 Test methods and initial compliance procedures.

(a) * * *

(1) * * *

(iii) For a condenser, the design evaluation must consider the vent stream flow rate, relative humidity, and temperature, and must establish the maximum temperature of the condenser exhaust vent stream and the corresponding outlet organic HAP compound concentration level or emission rate for which the required reduction is achieved.

* * * * *

(2) *Calculation of TOC or total organic HAP concentration.* The TOC concentration or total organic HAP concentration is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or

operator shall compute TOC for each run using Equation 6 of this subpart. If compliance is being determined based on total organic HAP, the owner or operator shall compute total organic HAP using Equation 6 of this subpart, except that only organic HAP compounds shall be summed; when determining compliance with the wastewater provisions of § 63.1362(d), the organic HAP compounds shall consist of the organic HAP compounds in Table 9 of subpart G of this part.

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \qquad \text{(Eq. 6)}$$

Where:

CG_T = total concentration of TOC or organic HAP in vented gas stream, average of samples, dry basis, ppmv

$CGS_{i,j}$ = concentration of sample components in vented gas stream for sample j, dry basis, ppmv

n = number of compounds in the sample

m = number of samples in the sample run.

* * * * *

(5) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in § 63.1362(b)(6) and (c)(4) for combustion devices is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet HCl and chlorine concentration is 20 ppmv or less. Initial compliance with the alternative standards in § 63.1362(b)(6) and (c)(4) for noncombustion devices is demonstrated when the outlet TOC concentration is 50 ppmv or less, and the outlet HCl and chlorine concentration is 50 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1366(b)(5) on the initial compliance date. The owner or operator shall use Method 18 to determine the predominant organic HAP in the emission stream if the TOC monitor is calibrated on the predominant HAP.

(6) *Initial compliance with the 20 ppmv outlet limit.* Initial compliance with the 20 ppmv TOC or total organic HAP concentration is demonstrated when the outlet TOC or total organic HAP concentration is 20 ppmv or less. Initial compliance with the 20 ppmv HCl and chlorine concentration is demonstrated when the outlet HCl and chlorine concentration is 20 ppmv or less. To demonstrate initial compliance, the operator shall use applicable test methods described in paragraphs (b)(1) through (9) of this section, and test under conditions described in paragraph (b)(10) or (11) of this section, as applicable. The owner or operator shall comply with the monitoring provisions in § 63.1366(b)(1) through (5) on the initial compliance date.

(7) * * *

(i) *Combustion device.* Except as specified in § 63.1366(b)(5)(ii)(A), if the vent stream is controlled with a combustion device, the owner or operator must comply with the provisions in paragraphs (a)(7)(i)(A) through (C) of this section.

(A) To comply with a TOC or total organic HAP outlet concentration standard in § 63.1362(b)(2)(iv)(A), (b)(4)(ii)(A), (b)(6), (c)(2)(iv)(B), (c)(4), (d)(13), or § 63.172, the actual TOC outlet concentration must be corrected to 3 percent oxygen.

* * * * *

(C) The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the actual oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC, total organic HAP, and total HCl and chlorine samples are taken. The concentration corrected to 3 percent oxygen (C_d) shall be computed using Equation 7 of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 7)}$$

Where:

C_c = concentration of TOC, total organic HAP, or total HCl and chlorine corrected to 3 percent oxygen, dry basis, ppmv

C_m = total concentration of TOC, total organic HAP, or total HCl and chlorine in the vented gas stream, average of samples, dry basis, ppmv

$\%O_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(ii) *Noncombustion devices.* If a control device other than a combustion device, and not in series with a combustion device, is used to comply with a TOC, total organic HAP, or total HCl and chlorine outlet concentration standard, the owner or operator must correct the actual concentration for supplemental gases using Equation 8 of this subpart.

$$C_a = C_m\left(\frac{V_s + V_a}{V_a}\right) \qquad \text{(Eq. 8)}$$

Where:

C_a = corrected outlet TOC, total organic HAP, or total HCl and chlorine concentration, dry basis, ppmv

C_m = actual TOC, total organic HAP, or total HCl and chlorine concentration measured at control device outlet, dry basis, ppmv

V_a = total volumetric flow rate of affected streams vented to the control device

V_s = total volumetric flow rate of supplemental gases.

(b) *Test methods and conditions.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (9) of this section shall be used. Compliance tests shall be performed under conditions specified in paragraphs (b)(10) and (11) of this section.

* * * * *

(8) Wastewater analysis shall be conducted in accordance with § 63.144(b)(5)(i) through (iii) or as specified in paragraph (b)(8)(i) or (ii) of this section.

(i) As an alternative to the methods specified in § 63.144(b)(5)(i), an owner or operator may conduct wastewater analyses using Method 1666 or 1671 of 40 CFR part 136, appendix A, and comply with the sampling protocol requirements specified in § 63.144(b)(5)(ii). The validation requirements specified in § 63.144(b)(5)(iii) do not apply if an owner or operator uses Method 1666 or 1671 of 40 CFR part 136, appendix A.

(ii) As an alternative to the methods specified in § 63.144(b)(5)(i), an owner or operator may use procedures specified in Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. An owner or operator also may use any more recent, updated version of Method 8260 or 8270 approved by EPA. For the purpose of using Method 8260 or 8270 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with either Section 8 of Method 8260 or Method 8270. This program must include the elements related to measuring the concentrations of volatile compounds that are specified in paragraphs (b)(8)(ii)(A) through (C) of this section.

(A) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(B) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(C) Measurement of the average accuracy and precision of the specific

procedures, including field duplicates and field spiking of the material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

* * * * *

(11) *Testing conditions for batch processes.* Testing of emissions on equipment where the flow of gaseous emissions is intermittent (batch operations) shall be conducted at absolute peak-case conditions or hypothetical peak-case conditions, as specified in paragraphs (b)(11)(i) and (ii) of this section, respectively. Gas stream volumetric flow rates shall be measured at 15-minute intervals. Organic HAP, TOC, or HCl and chlorine concentration shall be determined from samples collected in an integrated sample over the duration of the test, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. In all cases, a site-specific test plan shall be submitted to the Administrator for approval prior to testing in accordance with § 63.7(c). The test plan shall include the emissions profile described in paragraph (b)(11)(iii) of this section. The term ''HAP mass loading'' as used in paragraphs (b)(11)(i) through (iii) of this section refers to the class of HAP, either organic or HCl and chlorine, that the control device is intended to control.

* * * * *

(iii) *Emissions profile.* The owner or operator may choose to perform tests only during those periods of the peak-case episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. Except as specified in paragraph (b)(11)(iii)(D) of this section, the owner or operator shall develop an emission profile for the vent to the control device that describes the characteristics of the vent stream at the inlet to the control device under either absolute or hypothetical peak-case conditions. The emissions profile shall be developed based on the applicable procedures described in paragraphs (b)(11)(iii)(A) through (C) of this section, as required by paragraphs (b)(11)(i) and (ii) of this section.

* * * * *

(D) *Exemptions.* The owner or operator is not required to develop an emission profile under the circumstances described in paragraph (b)(11)(iii)(D)(*1*) or (*2*) of this section.

(*1*) If all process vents for a process are controlled using a control device or series of control devices that reduce HAP emissions by 98 percent or more, no other emission streams are vented to the control device when it is used to control emissions from the subject process, and the performance test is conducted over the entire batch cycle.

(*2*) If a control device is used to comply with the outlet concentration limit for process vent emission streams from a single process (but not necessarily all of the process vents from that process), no other emission streams are vented to the control device while it is used to control emissions from the subject process, and the performance test is conducted over the entire batch cycle.

(iv) *Test duration.* Three runs, at a minimum of 1 hour each, are required for performance testing. When complying with a percent reduction standard, each test run may be a maximum of either 24 hours or the duration of the longest batch controlled by the control device, whichever is shorter, and each run must include the same absolute or hypothetical peak-case conditions, as defined in paragraph (b)(11)(i) or (ii) of this section. When complying with an outlet concentration limit, each run must include the same absolute or hypothetical peak-case conditions, as defined in paragraph (b)(11)(i) or (ii) of this section, and the duration of each run may not exceed the duration of the applicable peak-case condition.

(c) * * *

(1) * * *

(iii) Initial compliance with the organic HAP percent reduction requirements specified in § 63.1362(b)(2)(ii), (iii), and (b)(4)(ii) is demonstrated by determining controlled HAP emissions using the procedures described in paragraph (c)(3) of this section, determining uncontrolled HAP emissions using the procedures described in paragraph (c)(2) of this section, and calculating the applicable percent reduction. As an alternative, if the conditions specified in paragraph (b)(11)(iii)(D)(*1*) of this section are met, initial compliance may be demonstrated by showing the control device reduces emissions by 98 percent by weight or greater using the procedures specified in paragraph (c)(3) of this section.

* * * * *

(v) Initial compliance with the outlet concentration limits in § 63.1362(b)(2)(iv)(A), (b)(3)(ii), (b)(4)(ii)(A), (b)(5)(ii) and (iii) is demonstrated when the outlet TOC or total organic HAP concentration is 20 ppmv or less and the outlet HCl and chlorine concentration is 20 ppmv or less. The owner or operator shall demonstrate compliance by fulfilling the requirements in paragraph (a)(6) of this section. If an owner or operator elects to develop an emissions profile by process as described in paragraph (b)(11)(iii)(A) of this section, uncontrolled emissions shall be determined using the procedures in paragraph (c)(2) of this section.

* * * * *

(2) * * *

(i) * * *

(C) *Purging.* Emissions from purging shall be calculated using Equation 10 of this subpart, except that for purge flow rates greater than 100 scfm, the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

$$E = \sum_{i=1}^{n} P_i MW_i \times \left(\frac{(V)(t)}{(R)(T)} \right) \times \frac{P_T}{P_T - \sum_{j=1}^{m} \left(P_j \right)} \qquad \text{(Eq. 10)}$$

Where:

E = mass of HAP emitted

V = purge flow rate at the temperature and pressure of the vessel vapor space

R = ideal gas law constant

T = temperature of the vessel vapor space; absolute

P_i = partial pressure of the individual HAP

P_j = partial pressure of individual condensable compounds (including HAP)

P_T = pressure of the vessel vapor space

MW_i = molecular weight of the individual HAP

t = time of purge

n = number of HAP compounds in the emission stream

m = number of condensable compounds (including HAP) in the emission stream.

(D) * * *

(*4*) * * *

(*i*) As an alternative to the procedures described in paragraphs (c)(2)(i)(D)(1) and (*2*) of this section, emissions caused by heating a vessel to any temperature less than the boiling point may be calculated using Equation 15 of this subpart.

$$E = MW_{HAP} \times \left(N_{avg} \times 1n\left(\frac{P_T - \sum_{i=1}^{m}\left(P_{i,1}\right)}{P_T - \sum_{i=1}^{m}\left(P_{i,2}\right)} \right) - \left(n_{HAP,2} - n_{HAP,1}\right) \right) \qquad \text{(Eq. 15)}$$

Where:

E = mass of HAP vapor displaced from the vessel being heated

N_{avg} = average gas space molar volume during the heating process, as calculated using Equation 16 of this subpart

P_T = total pressure in the vessel

$P_{i,1}$ = partial pressure of the individual HAP compounds at T_1

$P_{i,2}$ = partial pressure of the individual HAP compounds at T_2

MW_{HAP} = average molecular weight of the HAP compounds, as calculated using Equation 14 of this subpart

$n_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

m = number of HAP compounds in the emission stream.

* * * * *

(*iii*) The difference in the number of moles of total HAP in the vessel headspace between the initial and final temperatures is calculated using Equation 17 of this subpart.

$$\left(n_{HAP,2} - n_{HAP,1}\right) = \frac{V}{(R)(T_2)} \sum_{i=1}^{n} P_{i,2} - \frac{V}{(R)(T_1)} \sum_{i=1}^{n} P_{i,1} \qquad \text{(Eq. 17)}$$

Where:

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

$n_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

V = volume of free space in vessel

R = ideal gas law constant

T_1 = initial temperature of the vessel contents, absolute

T_2 = final temperature of the vessel contents, absolute

$P_{i,1}$ = partial pressure of the individual HAP compounds at T_1

$P_{i,2}$ = partial pressure of the individual HAP compounds at T_2

n = number of HAP compounds in the emission stream.

(E) * * *

(*3*) The initial and final partial pressures of the noncondensable gas in the vessel are determined using Equations 21 and 22 of this subpart.

$$P_{ncl} = P_1 - \sum_{j=1}^{m}\left(P_j*\right)\left(x_j\right) \qquad \text{(Eq. 21)}$$

$$P_{nc2} = P_2 - \sum_{j=1}^{m}\left(P_j*\right)\left(x_j\right) \qquad \text{(Eq. 22)}$$

Where:

P_{nc1} = initial partial pressure of the noncondensable gas

P_{nc2} = final partial pressure of the noncondensable gas

P_1 = initial vessel pressure

P_2 = final vessel pressure

P_j^* = vapor pressure of each condensable compound (including HAP) in the emission stream

x_j = mole fraction of each condensable compound (including HAP) in the liquid phase

m = number of condensable compounds (including HAP) in the emission stream.

(*4*) The moles of HAP emitted during the depressurization are calculated by taking an approximation of the average ratio of moles of HAP to moles of noncondensable and multiplying by the total moles of noncondensables released during the depressurization, using Equation 23 of this subpart:

$$n_{HAP,e} = \frac{\left(\frac{n_{HAP,1}}{n_1} + \frac{n_{HAP,2}}{n_2}\right)}{2}\left[n_1 - n_2\right] \qquad \text{(Eq. 23)}$$

Where:

$n_{HAP,e}$ = moles of HAP emitted

$n_{HAP,1}$ = moles of HAP vapor in vessel at the initial pressure, as calculated using Equation 18 of this subpart

$n_{HAP,2}$ = moles of HAP vapor in vessel at the final pressure, as calculated using Equation 18 of this subpart

n_1 = initial number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart

n_2 = final number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart.

* * * * *

(F) *Vacuum systems.* Calculate emissions from vacuum systems using Equation 26 of this subpart:

$$E = \frac{(MW_{HAP})(La)(t)}{MW_{nc}}\left(\frac{\sum_{i=1}^{n} P_i}{P_T - \sum_{j=1}^{m} P_j}\right) \quad \text{(Eq. 26)}$$

Where:

E = mass of HAP emitted

P_T = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver

P_i = partial pressure of individual HAP at the receiver temperature or the ejector outlet conditions

P_j = partial pressure of individual condensable compounds (including HAP) at the receiver temperature or the ejector outlet conditions

La = total air leak rate in the system, mass/time

MW_{nc} = molecular weight of noncondensable gas

t = time of vacuum operation

MW_{HAP} = average molecular weight of HAP in the emission stream, as calculated using Equation 14 of this subpart, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate

n = number of HAP components in the emission stream

m = number of condensable compounds (including HAP) in the emission stream.

* * * * *

(ii) *Engineering assessments.* The owner or operator shall conduct an engineering assessment to determine uncontrolled HAP emissions for each emission episode that is not due to vapor displacement, purging, heating, depressurization, vacuum systems, gas evolution, or air drying. For a given emission episode caused by any of these seven types of activities, the owner or operator also may request approval to determine uncontrolled HAP emissions based on an engineering assessment. Except as specified in paragraph (c)(2)(ii)(A) of this section, all data, assumptions, and procedures used in the engineering assessment shall be documented in the Precompliance plan in accordance with § 63.1367(b). An engineering assessment includes, but is not limited to, the information and procedures described in paragraphs (c)(2)(ii)(A) through (D) of this section.

(A) Test results, provided the tests are representative of current operating practices at the process unit. For process vents without variable emission stream characteristics, an engineering assessment based on the results of a previous test may be submitted in the Notification of Compliance Status report instead of the Precompliance plan. Results from a previous test of process vents with variable emission stream characteristics will be acceptable in place of values estimated using the procedures specified in paragraph (c)(2)(i) of this section if the test data show a greater than 20 percent discrepancy between the test value and the estimated value, and the results of the engineering assessment shall be included in the Notification of Compliance Status report. For other process vents with variable emission stream characteristics, engineering assessments based on the results of a previous test must be submitted in the Precompliance plan. For engineering assessments based on new tests, the owner or operator must comply with the test notification requirements in § 63.1368(m), and the results of the engineering assessment may be submitted in the Notification of Compliance Status report rather than the Precompliance plan.

(3) * * *

(ii) * * *

(A) Performance test measurements shall be conducted at both the inlet and outlet of the control device for TOC, total organic HAP, and total HCl and chlorine, as applicable, using the test methods and procedures described in paragraph (b) of this section. Concentrations shall be calculated from the data obtained through emission testing according to the procedures in paragraph (a)(2) of this section.

* * * * *

(iii) *Condensers.* The owner or operator using a condenser as a control device shall determine controlled emissions for each batch emission episode according to the engineering methodology in paragraphs (c)(3)(iii)(A) through (G) of this section. The owner or operator must establish the maximum outlet gas temperature and calculate the controlled emissions using this temperature in the applicable equation. Individual HAP partial pressures shall be calculated as specified in paragraph (c)(2)(i) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) At the reasonably expected maximum filling rate, Equations 35 and 36 of this subpart shall be used to calculate the mass rate of total organic HAP or TOC at the inlet and outlet of the control device.

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i \quad \text{(Eq. 35)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o \quad \text{(Eq. 36)}$$

Where:

C_{ij}, C_{oj} = concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv

E_i, E_o = mass rate of total organic HAP or TOC at the inlet and outlet of the control device, respectively, dry basis, kg/hr

M_{ij}, M_{oj} = molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, g/gmole

Q_i, Q_o = flow rate of gas stream at the inlet and outlet of the control device, respectively, dscmm

K_2 = constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20 °C.

(B) The percent reduction in total organic HAP or TOC shall be calculated using Equation 37 of this subpart:

$$R = \frac{E_i - E_o}{E_i}(100) \quad \text{(Eq. 37)}$$

Where:

R = control efficiency of control device, percent

E_i = mass rate of total organic HAP or TOC at the inlet to the control device as calculated under paragraph (d)(l)(i)(A) of this section, kilograms organic HAP per hour

E_o = mass rate of total organic HAP or TOC at the outlet of the control device, as calculated under paragraph (d)(1)(i)(A) of this section, kilograms organic HAP per hour.

* * * * *

(3) * * *

(ii) Comply with the procedures described in § 63.120(a), (b), or (c), as applicable, with the differences specified in paragraphs (d)(3)(ii)(A) through (C) of this section.

(A) When the term ''storage vessel'' is used in § 63.120, the definition of the term ''storage vessel'' in § 63.1361 shall apply for the purposes of this subpart.

(B) When the phrase ''the compliance date specified in § 63.100 of subpart F of this part'' is referred to in § 63.120, the phrase ''the compliance date specified in § 63.1364'' shall apply for the purposes of this subpart.

(C) When the phrase ''the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in Table 5 or Table 6 of this subpart'' is referred to in § 63.120(b)(1)(iv), the phrase ''the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in § 63.1361'' shall apply for the purposes of this subpart.

* * * * *

(e) *Initial compliance with wastewater provisions.* The owner or operator shall demonstrate initial compliance with the wastewater requirements by complying with the applicable provisions in § 63.145, except that the owner or operator need not comply with the requirement to determine visible emissions that is specified in § 63.145(j)(1), and references to compounds in Table 8 of subpart G of this part are not applicable for the purposes of this subpart. When § 63.145(i) refers to Method 18 of 40 CFR part 60, appendix A–6, the owner or operator may use any method specified in § 63.1362(d)(12) to demonstrate initial compliance with this subpart.

* * * * *

7. Section 63.1366 is amended by:

a. Revising paragraph (b)(5);

b. Revising the first sentence of paragraph (b)(8) introductory text;

c. Revising paragraph (b)(8)(iii); and

d. Adding paragraph (h).

The revisions and additions read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(5) *Monitoring for the alternative standards.*

(i) For control devices that are used to comply with the provisions of § 63.1362(b)(6) and (c)(4), the owner or operator shall monitor and record the outlet TOC concentration and the outlet total HCl and chlorine concentration at least once every 15 minutes during the period in which the device is controlling HAP from emission streams subject to the standards in § 63.1362. A TOC monitor meeting the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 shall be installed, calibrated, and maintained, according to § 63.8. The owner or operator need not monitor the total HCl and chlorine concentration if the owner or operator determines that the emission stream does not contain HCl or chlorine. The owner or operator need not monitor for TOC concentration if the owner or operator determines that the emission stream does not contain organic compounds.

(ii) If supplemental gases are introduced before the control device, the owner or operator must either correct for supplemental gases as specified in § 63.1365(a)(7) or, if using a combustion control device, comply with the requirements of paragraph (b)(5)(ii)(A) of this section. If the owner or operator corrects for supplemental gases as specified in § 63.1365(a)(7)(ii) for non-combustion control devices, the flow rates must be evaluated as specified in paragraph (b)(5)(ii)(B) of this section.

(A) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.1365(a)(7), the owner or operator may monitor residence time and firebox temperature according to the requirements of paragraphs (b)(5)(ii)(A)(*1*) and (*2*) of this section. Monitoring of residence time may be accomplished by monitoring flow rate into the combustion chamber.

(*1*) If complying with the alternative standard instead of achieving a control efficiency of 95 percent or less, the owner or operator must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760 °C.

(*2*) If complying with the alternative standard instead of achieving a control efficiency of 98 percent, the owner or operator must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816 °C.

(B) *Flow rate evaluation for non-combustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.1365(a)(7)(ii) for non-combustion devices, the owner or operator must evaluate the volumetric flow rate of supplemental gases, V_s, and the volumetric flow rate of all gases, V_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 8 of this subpart, must be included in the Notification of Compliance Status report and in the next Periodic report submitted after an operating scenario change.

* * * * *

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii), (iv) through (ix), and (b)(5)(i)(A) of this section, or excursions as defined by paragraphs (b)(7)(i) and (ii) of this section, constitute violations of the operating limit according to paragraphs (b)(8)(i), (ii), and (iv) of this section.

* * *

* * * * *

(iii) Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv TOC outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device. Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv HCl and chlorine outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

* * * * *

(h) *Leak inspection provisions for vapor suppression equipment.*

(1) Except as provided in paragraphs (h)(9) and (10) of this section, for each vapor collection system, closed-vent system, fixed roof, cover, or enclosure required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (h)(2) through (8) of this section.

(2) Except as provided in paragraphs (h)(6) and (7) of this section, each vapor collection system and closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (h)(2)(i) and (ii) of this section and each fixed roof, cover, and enclosure shall be inspected according to the procedures and schedule specified in paragraph (h)(2)(iii) of this section.

(i) If the vapor collection system or closed-vent system is constructed of hard-piping, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section, and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the vapor collection system or closed-vent system is constructed of ductwork, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section,

(B) Conduct annual inspections according to the procedures in paragraph (h)(3) of this section, and

(C) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(iii) For each fixed roof, cover, and enclosure, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section, and

(B) Conduct semiannual visual inspections for visible, audible, or olfactory indications of leaks.

(3) Each vapor collection system, closed-vent system, fixed roof, cover, and enclosure shall be inspected according to the procedures specified in paragraphs (h)(3)(i) through (vi) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A.

(ii) *Detection instrument performance criteria.*

(A) Except as provided in paragraph (h)(3)(ii)(B) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic HAP or VOC, the average stream response factor shall be calculated on an inert-free basis.

(B) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (h)(3)(ii)(A) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (h)(3)(ii)(A) of this section.

(iii) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(iv) Calibration gases shall be as follows:

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (h)(2)(ii)(A) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(v) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in § 63.180(b) and (c). The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

(vi) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining compliance.

(4) Leaks, as indicated by an instrument reading greater than 500 parts per million above background or by visual inspections, shall be repaired as soon as practicable, except as provided in paragraph (h)(5) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(5) Delay of repair of a vapor collection system, closed-vent system, fixed roof, cover, or enclosure for which leaks have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.1361, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next shutdown.

(6) Any parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated, as described in § 63.1367(f)(1), as unsafe-to-inspect are exempt from the inspection requirements of paragraphs (h)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (h)(2)(i), (ii), or (iii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times. Inspection is not required more than once annually.

(7) Any parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated, as described in § 63.1367(f)(2), as difficult-to-inspect are exempt from the inspection requirements of paragraphs (h)(2)(i), (ii), and (iii)(A) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(8) Records shall be maintained as specified in § 63.1367(f).

(9) If a closed-vent system subject to this section is also subject to the equipment leak provisions of § 63.1363, the owner or operator shall comply with the provisions of § 63.1363 and is exempt from the requirements of this section.

(10) For any closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in paragraphs (h)(2) through (8) of this section.

8. Section 63.1367 is amended by:

a. Revising ''paragraphs (b)(3)(i) through (iii) of this section'' to read ''paragraphs (a)(3)(i) through (iii) of this section'' in paragraph (a)(3) introductory text;

b. Revising paragraph (a)(3)(i);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(4);

e. Revising paragraph (b)(6)(i);

f. Adding paragraph (b)(6)(ix) and revising paragraph (b)(7);

g. Adding paragraphs (b)(8) through (11); and

h. Revising paragraph (f).

The revisions and additions read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) * * *

(i) The owner or operator shall record the occurrence and duration of each malfunction of the process operations or of air pollution control equipment used to comply with this subpart, as specified in § 63.6(e)(3)(iii).

* * * * *

(b) *Records of equipment operation.* The owner or operator must keep the records specified in paragraphs (b)(1)

through (11) of this section up-to-date and readily accessible.

* * * * *

(4) For processes in compliance with the 0.15 Mg/yr emission limit of § 63.1362(b)(2)(i) or (b)(4)(i), daily records of the rolling annual calculations of uncontrolled emissions.

* * * * *

(6) * * *

(i) Except as specified in paragraph (b)(6)(ix) of this section, the initial calculations of uncontrolled and controlled emissions of gaseous organic HAP and HCl per batch for each process.

* * * * *

(ix) As an alternative to the records in paragraph (b)(6)(i) of this section, a record of the determination that the conditions in § 63.1365(b)(11)(iii)(D)(*1*) or (*2*) are met.

(7) Daily schedule or log of each operating scenario updated daily or, at a minimum, each time a different operating scenario is put into operation.

(8) If the owner or operator elects to comply with the vapor balancing alternative in § 63.1362(c)(6), the owner or operator must keep records of the DOT certification required by § 63.1362(c)(6)(ii) and the pressure relief vent setting and leak detection records specified in § 63.1362(c)(6)(v).

(9) If the owner or operator elects to develop process unit groups, the owner or operator must keep records of the PAI and non-PAI process units in the process unit group, including records of the operating time for process units used to establish the process unit group. The owner or operator must also keep records of any redetermination of the primary product for the process unit group.

(10) All maintenance performed on the air pollution control equipment.

(11) If the owner or operator elects to comply with § 63.1362(c) by installing a floating roof, the owner or operator must keep records of each inspection and seal gap measurement in accordance with § 63.123(c) through (e) as applicable.

* * * * *

(f) *Records of inspections.* The owner or operator shall keep records specified in paragraphs (f)(1) through (6) of this section.

(1) Records identifying all parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated as unsafe to inspect in accordance with § 63.1366(h)(6), an explanation of why the equipment is unsafe-to-inspect, and the plan for inspecting the equipment.

(2) Records identifying all parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated as difficult-to-inspect in accordance with § 63.1366(h)(7), an explanation of why the equipment is difficult-to-inspect, and the plan for inspecting the equipment.

(3) For each vapor collection system or closed-vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (f)(3)(i) or (ii) of this section.

(i) Hourly records of whether the flow indicator specified under § 63.1362(j)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 63.1362(j)(2), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(4) For each inspection conducted in accordance with § 63.1366(h)(2) and (3) during which a leak is detected, a record of the information specified in paragraphs (f)(4)(i) through (ix) of this section.

(i) Identification of the leaking equipment.

(ii) The instrument identification numbers and operator name or initials, if the leak was detected using the procedures described in § 63.1366(h)(3); or a record of that the leak was detected by sensory observations.

(iii) The date the leak was detected and the date of the first attempt to repair the leak.

(iv) Maximum instrument reading measured by the method specified in § 63.1366(h)(4) after the leak is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(vi) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vii) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(viii) Dates of shutdowns that occur while the equipment is unrepaired.

(ix) The date of successful repair of the leak.

(5) For each inspection conducted in accordance with § 63.1366(h)(3) during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(6) For each visual inspection conducted in accordance with § 63.1366(h)(2)(i)(B) or (iii)(B) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

* * * * *

9. Section 63.1368 is amended by:

a. Revising paragraph (e)(4);

b. Revising paragraph (f)(6);

c. Adding paragraph (f)(9);

d. Revising paragraph (g)(1) introductory text;

e. Revising paragraph (g)(2) introductory text;

f. Adding paragraphs (g)(2)(ix) through (xii);

g. Revising paragraph (h)(1) introductory text;

h. Revising ''§ 63.1365(b)(10)(ii)'' to read ''§ 63.1365(b)(11)(iii)'' in paragraph (m).

The revisions and additions read as follows:

§ 63.1368 Reporting requirements.

* * * * *

(e) * * *

(4) For owners and operators complying with the requirements of § 63.1362(g), the pollution prevention demonstration summary required in § 63.1365(g)(1).

* * * * *

(f) * * *

(6) Identification of emission points subject to overlapping requirements described in § 63.1360(i) and the authority under which the owner or operator will comply, and identification of emission sources discharging to devices described by § 63.1362(l).

* * * * *

(9) Records of the initial process units used to create each process unit group, if applicable.

(g) * * *

(1) *Submittal schedule.* Except as provided in paragraphs (g)(1)(i) and (ii) of this section, the owner or operator shall submit Periodic reports semiannually. The first report shall be submitted no later than 240 days after

the date the Notification of Compliance Status report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status report is due. Each subsequent Periodic report shall cover the 6-month period following the preceding period and shall be submitted no later than 60 days after the end of the applicable period.

* * * * *

(2) *Content of periodic report.* The owner or operator shall include the information in paragraphs (g)(2)(i) through (xii) of this section, as applicable.

* * * * *

(ix) Records of process units added to each process unit group, if applicable.

(x) Records of redetermination of the primary product for a process unit group.

(xi) For each inspection conducted in accordance with § 63.1366(h)(2) or (3) during which a leak is detected, the records specify in § 63.1367(h)(4) must be included in the next Periodic report.

(xii) If the owner or operator elects to comply with the provisions of § 63.1362(c) by installing a floating roof, the owner or operator shall submit the information specified in § 63.122(d) through (f) as applicable. References to § 63.152 in § 63.122 shall not apply for the purposes of this subpart.

(h) * * *

(1) Except as specified in paragraph (h)(2) of this section, whenever a process change is made, or any of the information submitted in the Notification of Compliance Status report changes, the owner or operator shall submit the information specified in paragraphs (h)(1)(i) through (iv) of this section with the next Periodic report required under paragraph (g) of this section. For the purposes of this section, a process change means the startup of a new process, as defined in § 63.1361.

* * * * *

10. Table 1 to subpart MMM is amended by:

a. Removing entry ''63.9(i)–(j);'' and

b. Adding the entries ''63.9(i)'' and ''63.9(j)'' in it's place.

The additions read as follows:

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
* *	*	* * * *
63.9(i)	Yes.	
63.9(j)	No	§ 63.1368(h) specifies procedures for notification of changes.
* *	*	* * * *

11. Table 4 to subpart MMM is revised to read as follows:

TABLE 4 TO SUBPART MMM.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1362(K)

Item of equipment	Control requirement [a]
1. Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) Water seal with submerged discharge or barrier to protect discharge from wind.
2. Manhole [b]	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
3. Lift station	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
4. Trench	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
5. Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
6. Oil/water separator	(a) Equip with a fixed roof and route vapors to a process, or equip with a closed-vent system that routes vapors to a control device meeting the requirements of § 63.139(c); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
7. Tank	Maintain a fixed roof and consider vents as process vents. [c]

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.

[b] Manhole includes sumps and other points of access to a conveyance system.

[c] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.

[FR Doc. 02–23260 Filed 9–19–02; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,

September 20, 2002

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2002–03 season.

DATES: This rule is effective on September 21, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2002

On March 19, 2002, we published in the **Federal Register** (67 FR 12501) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 11, 2002, we published in the **Federal Register** (67 FR 40128) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2002–03 duck hunting season. The June 11 supplement also provided detailed information on the 2002–03 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 19–20, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2002–03 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2002–03 regular waterfowl seasons. On July 17, we published in the **Federal Register** (67 FR 47224) a third document specifically dealing with the proposed frameworks for early-season regulations and the final regulatory alternatives for the 2002–03 duck hunting season. On August 23, 2002, we published a final rule in the **Federal Register** (67 FR 54702) which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 29, 2002, we published in the **Federal Register** (67 FR 55624) a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 31 and August 1, 2002, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2002–03 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2002–03 late-season migratory bird hunting regulations on August 16, 2002, in the **Federal Register** (67 FR 53690). We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2002–03 in a September 19, 2002, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2002–03 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under the caption **ADDRESSES.**

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB). The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting

regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner.

We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20,

subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 12, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742a–j, Pub. L. 106–108.

BILLING CODE 4310–55–P

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Tennessee				
Reelfoot Zone	Nov. 9-Nov. 10 & Nov. 30-Jan. 20	Closed	Oct. 26-Dec. 9	Nov. 14-Feb. 28
State Zone	Nov. 23-Nov. 24 & Nov. 30-Jan. 20	Clo sed	Oct. 26-Dec. 9	Nov. 14-Feb. 28
Wisconsin				
North Zone	Sept. 28-Nov. 26	Closed	Sept. 21-Nov. 4	Sept. 28-Nov. 26
South Zone	Oct. 5-Oct. 13 & Oct. 19-Dec. 8	Closed	Sept. 21-Nov. 4	Oct. 5-Oct. 13 & Oct. 19-Dec. 8
* * * * *				
CENTRAL FLYWAY				
* * * * *				
New Mexico (16) (1) Oct. 5-Dec. 13		Closed	Closed	Oct. 5-Jan. 19
* * * * *				
PACIFIC FLYWAY				
Arizona (17)				
North Zone	Closed	Closed	Closed	Oct. 18-Jan. 26
South Zone	Closed	Closed	Closed	Oct. 18-Jan. 26
California	Closed	Closed	Closed	Oct. 19-Feb. 2
* * * * *				
Idaho				
Zone 1	Closed	Closed	Closed	Oct. 5-Jan. 17
Zones 2 & 3	Closed	Closed	Closed	Oct. 12-Jan. 24
* * * * *				
Nevada				
Clark County	Closed	Closed	Closed	Oct. 12-Jan. 24
Rest of State	Closed	Closed	Closed	Oct. 12-Jan. 24
New Mexico(16) (1) Oct. 5-Dec. 13		Closed	Closed	Oct. 5-Jan. 19
* * * * *				

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 55624).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
* * * * *				
Maine	Sept. 2-Nov. 9	Closed	Oct. 1-Oct. 30	Sept. 2-Dec. 14
* * * * *				
Massachusetts (4)	Sept. 2-Nov. 9	Closed	Oct. 17-Oct. 26 & Oct. 28-Nov. 16	Sept. 2-Dec. 14
* * * * *				
Vermont	Closed	Closed	Oct. 5-Nov. 3	Oct. 9-Dec. 15
* * * * *				
MISSISSIPPI FLYWAY				
* * * * *				
Louisiana	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Dec. 18-Jan. 31	Nov. 2-Dec.8 & Dec. 14-Feb. 21
* * * * *				

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 23-Dec. 1 & Dec. 7-Jan. 20	15	30
	* * * * *		
Virginia	Oct. 9-Oct. 12 &	15	30
	Nov. 16-Dec. 7 &	15	30
	Dec. 14-Jan. 25	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 12 &	15	30
	Dec. 2-Jan. 18	15	30
Zone 2	Oct. 1-Oct. 12 &	15	30
	Nov. 25-Jan. 11	15	30
	* * * * *		
MISSISSIPPI FLYWAY			
	* * * * *		
Louisiana	Sept. 21-Sept. 29 &	15	30
	Nov. 9-Jan. 8	15	30
Michigan			
North Zone	Sept. 28-Nov. 24 &	15	30
	Nov. 30-Dec. 1	15	30
Middle Zone	Oct. 12-Dec. 8 &	15	30
	Jan. 4-Jan. 5	15	30
South Zone	Oct. 12-Dec. 8 &	15	30
	Jan. 4-Jan. 5	15	30
Minnesota (2)	Sept. 28-Nov. 26	15	30
	* * * * *		
Tennessee			
Reelfoot Zone	Nov. 9-Nov. 10 &	15	30
	Nov. 30-Jan. 19	15	30
State Zone	Nov. 23-Nov. 24 &	15	30
	Nov. 30-Jan. 19	15	30

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 5-Nov. 22 & Dec. 28-Feb. 23
Zone 2	Closed	Closed	Closed	Oct. 5-Nov. 22 & Dec. 28-Feb. 23
Utah	Closed	Closed	Closed	Oct. 5-Jan. 18
Washington				
East Zone	Closed	Closed	Closed	Oct. 5-Oct. 16 & Oct. 26-Jan. 26
West Zone	Closed	Closed	Closed	Oct. 5-Oct. 16 & Oct. 26-Jan. 26
	* * * * *			

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

* * * * *

(4) In Massachusetts, the sora daily limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

* * * * *

(16) In New Mexico, the rail daily bag and possession limits are 10 and 20, respectively.
(17) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In Section 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Maine, the daily bag limit for eiders is 5, possession 10.
(2) In Massachusetts, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
North Zone	Sept. 28-Nov. 26	10	20
South Zone	Oct. 5-Oct. 13 & Oct. 19-Dec. 8	10	20
	* * * * *		
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Georgia	Nov. 23-Dec. 1 & Dec. 12-Jan. 20	15 15	30 30
	* * * * *		
Maine (1)	Oct. 1-Jan. 19	7	14
Maryland	Oct. 5-Jan. 20	5	10
Massachusetts (2)	Oct. 5-Jan. 20	7	14
	* * * * *		
North Carolina	Oct. 1-Jan. 20	7	14
	* * * * *		
South Carolina	Oct. 6-Jan. 20	7	14
Virginia	Oct. 9-Jan. 20	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware,

	Season Dates	Limits Bag	Limits Possession
Delaware (cont.)			
Rest of State (3)	Oct. 2-Nov. 13 &	15	--
	Nov. 25-Jan. 17 &	15	--
	Jan. 31-Mar. 10	15	--
Brant	Nov. 23-Jan. 31	3	6
Florida			
Ducks:		6	12
Pintails	Nov. 23-Dec. 1 &		
	Dec. 7-Dec. 27		
Other ducks	Nov. 23-Dec. 1 &		
	Dec. 7-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (4)	Nov. 23-Jan. 30	5	10
Light Geese (5)	Nov. 23-Dec. 1 &	15	--
	Dec. 7-Jan. 26	15	--
Georgia			
Ducks:		6	12
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 23-Dec. 1 &		
	Dec. 7-Jan. 26		
Mergansers	Nov. 23-Dec. 1 &	5	10
	Dec. 7-Jan. 20	5	10
Coots	Nov. 23-Dec. 1 &	15	30
	Dec. 7-Jan. 20	15	30
Canada Geese (special season)	Nov. 23-Dec. 1 &	3	6
	Dec. 7-Jan. 31	3	6
Light Geese	Same as for Canada geese	2	4
Brant	Closed	--	--
Maine			
Ducks (6):		4	8
North Zone:			
Pintails	Oct. 1-Nov. 4		
Other ducks	Oct. 1-Dec. 9		
South Zone:			
Pintails	Oct. 1-Oct. 19 &		
	Nov. 4-Nov. 18		
Other ducks	Oct. 1-Oct. 19 &		
	Nov. 4-Dec. 23		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	5	10
Canada Geese:			
North Zone	Oct. 1-Dec. 9	2	4
South Zone	Oct. 1-Nov. 2 &	2	4
	Nov. 18-Dec. 23	2	4
Light Geese	Oct. 1-Jan. 31	15	--
Brant	Oct. 1-Nov. 27	2	4

	Season Dates	Limits Bag	Limits Possession
Connecticut			
Ducks (1):		6	12
North Zone:			
Pintails	Oct. 9-Oct. 19 &		
	Nov. 15-Dec. 7		
Other ducks	Oct. 9-Oct. 19 &		
	Nov. 15-Jan. 11		
South Zone:			
Pintails	Oct. 9-Oct. 16 &		
	Nov. 26-Dec. 21		
Other ducks	Oct. 9-Oct. 16 &		
	Nov. 26-Jan. 25		
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
NAP Zone:			
L-Unit	Oct. 1-Oct. 31 &	3	6
	Nov. 26-Jan. 14	3	6
H-Unit			
North Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 26-Jan. 14	2	4
South Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 26-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	5	10
AP Unit	Nov. 1-Nov. 9 &	2	4
	Nov. 23-Jan. 4	2	4
Light Geese:			
North Zone	Oct. 10-Feb. 8	15	--
South Zone	Oct. 10-Feb. 8	15	--
Brant:			
North Zone	Nov. 4-Jan. 11	3	6
South Zone	Nov. 18-Jan. 25	3	6
Delaware			
Ducks :		6	12
Pintails	Oct. 2-Oct. 5 &		
	Nov. 1-Nov. 11 &		
	Nov. 25-Dec. 13		
Other ducks (2)	Oct. 2-Oct. 5 &		
	Nov. 1-Nov. 11 &		
	Nov. 25-Jan. 17		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 25-Dec. 7 &	1	2
	Dec. 11-Jan. 17	1	2
Light Geese:			
Bombay Hook NWR Zone (2)	Oct. 14-Jan. 17 &	15	--
	Feb. 3-Mar. 7	15	--

	Season Dates	Limits Bag	Limits Possession
Massachusetts (cont.)			
Coastal Zone	Same as for ducks &	15	30
	Jan. 20-Feb. 15	15	30
Brant:			
Western & Central Zone	Closed	--	--
Coastal Zone	Nov. 11-Jan. 18	2	4
New Hampshire			
Ducks :		6	12
Inland Zone:			
Pintails	Oct. 2-Oct. 31		
Other ducks	Oct. 2-Nov. 5 &		
	Nov. 27-Dec. 21		
Coastal Zone:			
Pintails	Oct. 3-Oct. 20 &		
	Nov. 27-Dec. 8 &		
Other ducks	Oct. 3-Oct. 20 &		
	Nov. 27-Jan. 7		
Mergansers	Same as ducks	5	10
Coots	Same as ducks	15	30
Canada Geese:			
Inland Zone	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Coastal Zone	Oct. 3-Oct. 20 &	2	4
	Nov. 27-Jan. 7	2	4
Light Geese:			
Inland Zone	Oct. 2-Dec. 21	15	--
Coastal Zone	Oct. 3-Jan. 7	15	--
Brant:			
Inland Zone	Oct. 2-Nov. 5 &	3	6
	Nov. 27-Dec. 21	3	6
Coastal Zone	Oct. 3-Oct. 20 &	3	6
	Nov. 27-Jan. 7	3	6
New Jersey			
Ducks (10):		6	12
North Zone:			
Pintails	Nov. 16-Nov. 30 &		
	Dec. 14-Jan. 2		
Other ducks	Oct. 12-Nov. 2 &		
	Nov. 16-Jan. 2		
South Zone:			
Pintails	Oct. 19-Oct. 26 &		
	Nov. 5-Nov. 30		
Other ducks	Oct. 19-Nov. 30 &		
	Dec. 13-Jan. 8		
Coastal Zone:			
Pintails	Nov. 2-Nov. 12 &		
	Dec. 7-Dec. 31		
Other ducks	Nov. 2-Nov. 12 &		
	Nov. 28-Jan. 25		
Mergansers	Same as ducks	5	10

	Season Dates	Limits Bag	Limits Possession
Maryland			
Ducks (7):		5	10
Pintails	Oct. 5-Oct. 12 &		
	Dec. 31-Jan. 25		
Other ducks	Oct. 5-Oct. 12 &		
	Nov. 9-Nov. 29 &		
	Dec. 17-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
RP Zone	Nov. 15-Nov. 29 &	5	10
	Dec. 12-Jan. 14	5	10
AP Zone	Nov. 19-Nov. 29 &	1	2
	Dec. 17-Jan. 25	1	2
Light Geese (8)	Oct. 17-Nov. 29 &	15	--
	Dec. 9-Jan. 31 &	15	--
	Feb. 1-Mar. 10	15	--
Brant	Nov. 9-Nov. 29 &	3	6
	Dec. 3-Jan. 20	3	6
Massachusetts			
Ducks (9):		6	12
Western Zone:			
Pintails	Oct. 15-Nov. 18		
Other ducks	Oct. 15-Dec. 23		
Central Zone:			
Pintails	Oct. 15-Nov. 18		
Other ducks	Oct. 15-Nov. 30 &		
	Dec. 21-Jan. 11		
Coastal Zone:			
Pintails	Oct. 15-Oct. 26 &		
	Nov. 23-Dec. 14		
Other ducks	Oct. 15-Oct. 26 &		
	Nov. 23-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
NAP Zone			
Central Zone:	Oct. 15-Nov. 30 &	2	4
	Dec. 21-Jan. 11	2	4
(special season)	Jan. 18-Feb. 15	2	4
Coastal Zone:	Oct. 15-Oct. 26 &	2	4
	Nov. 23-Jan. 18	2	4
(special season)	Jan. 26-Feb. 15	5	10
AP Zone	Oct. 26-Nov. 30 &	1	2
	Dec. 16-Dec. 31	1	2
Light Geese:			
Western Zone	Same as for ducks	15	30
Central Zone	Same as for ducks &	15	30
	Jan. 18-Feb. 15	15	30

	Season Dates	Limits Bag	Limits Possession
New York (cont.)			
Saint Lawrence (RP) Zone	Oct. 26-Jan. 3	5	10
Northeast (AP) Zone	Oct. 26-Dec. 9	2	4
East Central (AP) Zone	Oct. 26-Nov. 16 &	2	4
	Dec. 7-Dec. 29	2	4
West Central (AP) Zone	Oct. 26-Nov. 16 &	2	4
	Dec. 27-Jan. 18	2	4
Southwest (SJBP) Zone	Oct. 26-Jan. 3	2	4
South Central (RP)	Oct. 26-Jan. 3	5	10
(special season)	Feb. 8-Feb. 14	5	10
Light Geese:			
Long Island Zone	Oct. 5-Oct. 23 &	15	--
	Nov. 22-Dec. 1 &	15	--
	Dec. 23-Mar. 10	15	--
Lake Champlain Zone	Oct. 9-Dec. 27 &	15	--
	Feb.24-Mar. 10	15	--
Northeastern Zone	Oct. 5-Jan. 4 &	15	--
	Feb. 24-Mar. 10	15	--
Southeastern Zone	Oct. 12-Jan. 11 &	15	--
	Feb. 24-Mar. 10	15	--
Western Zone	Oct. 19-Jan. 18 &	15	--
	Feb. 24-Mar. 10	15	--
Brant:			
Long Island Zone	Nov. 22-Dec. 1 &	3	6
	Dec. 8-Jan. 26	3	6
Lake Champlain Zone	Oct. 26-Dec. 9	3	6
Northeastern Zone	Oct. 5-Dec. 3	3	6
Southeastern Zone	Oct. 12-Dec. 10	3	6
Western Zone	Oct. 12-Dec. 10	3	6
North Carolina			
Ducks (12):		6	12
Pintails	Dec. 23-Jan. 25		
Other ducks	Oct. 2-Oct. 5 & Nov. 9-Nov. 30 & Dec. 14-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Nov. 9-Nov. 30 &	5	10
	Dec. 14-Jan. 25	5	10
Southern James Bay Hunt Zone	Oct. 12-Oct. 26 &	2	4
Northeast Hunt Zone	Closed		
Light Geese	Oct. 21-Oct. 31 &	15	--
	Nov. 18-Mar. 10	15	--
Brant	Nov. 23-Jan. 31	3	6
Pennsylvania			
Ducks:		6	12
North Zone:			
Pintails	Oct. 5-Oct. 19 & Nov. 12-Nov. 30		

	Season Dates	Limits Bag	Limits Possession
New Jersey (cont.)			
Coots	Same as for Other ducks	15	30
Canada Geese:			
North Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 13-Jan. 18	2	4
South Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 13-Jan. 18	2	4
Coastal Zone	Nov. 28-Jan. 18	2	4
(special season)	Jan. 20-Feb. 15	5	10
Light Geese:			
North Zone	Oct. 12-Feb. 13	15	--
South Zone	Oct. 19-Oct. 26 &	15	--
	Nov. 14-Mar. 10	15	--
Coastal Zone	Oct. 2-Feb. 3	15	--
Brant:			
North Zone	Same as for Other ducks	3	6
South Zone	Same as for Other ducks	3	6
Coastal Zone	Same as for Other ducks	3	6
New York			
Ducks (11):		6	12
Long Island Zone:			
Pintails	Nov. 22-Dec. 1 & Dec. 8-Dec. 27		
Other ducks	Nov. 22-Dec. 1 & Dec. 8-Jan. 26		
Lake Champlain Zone:			
Pintails	Oct. 9-Oct. 13 & Oct. 22-Nov. 15		
Other ducks	Oct. 9-Oct. 13 & Oct. 22-Dec. 15		
Northeastern Zone:			
Pintails	Oct. 5-Nov. 3		
Other ducks	Oct. 5-Nov. 17 & Nov. 23-Dec. 8		
Southeastern Zone:			
Pintails	Oct. 12-Oct. 20 & Nov. 9-Nov. 29		
Other ducks	Oct. 12-Oct. 20 & Nov. 9-Dec. 29		
Western Zone:			
Pintails	Oct. 19-Nov. 17		
Other ducks	Oct. 19-Dec. 5 & Dec. 27-Jan. 7		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Western Long Island (NAP)	Nov. 22-Jan. 30	3	6
Eastern Long Island (NAP)	Nov. 22-Dec. 1 &	2	4
	Dec. 8-Jan. 26	2	4
Lake Champlain (AP) Zone	Oct. 26-Dec. 9	2	4

	Season Dates	Limits Bag	Possession
South Carolina (cont.)			
Other ducks	Nov. 27-Nov. 30 & Dec. 12-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (special season)	Nov. 27-Nov. 30 &	5	10
	Dec. 12-Feb. 15	5	10
Light Geese	Same as for ducks	5	10
Brant	Dec. 12-Jan. 26	3	6
Vermont			
Ducks:		6	12
Lake Champlain Zone:			
Pintails	Oct. 9-Oct. 13 & Oct. 22-Nov. 15		
Other ducks	Oct. 9-Oct 13 & Oct. 22-Dec. 15		
Interior Zone:			
Pintails	Oct. 9-Nov. 7		
Other ducks	Oct. 9-Nov. 14 & Nov. 23-Dec. 15		
Connecticut River Zone:			
Pintails	Oct. 2-Oct. 31		
Other ducks	Oct. 2-Nov. 5 & Nov. 27-Dec. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese			
Lake Champlain Zone:	Oct. 26-Dec. 9	2	4
Interior Zone:	Oct. 26-Dec. 9	2	4
Connecticut River Zone:	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Light Geese			
Lake Champlain Zone:	Oct. 9-Dec. 27 &	15	–
	Feb. 24-Mar. 10	15	–
Interior Zone:	Oct. 9-Dec. 27 &	15	–
	Feb. 24-Mar. 10	15	–
Connecticut River Zone:	Oct. 2-Dec. 21	15	–
Brant			
Lake Champlain Zone:	Oct. 9-Dec. 7	2	4
Interior Zone:	Oct. 9-Dec. 7	2	4
Connecticut River Zone:	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Virginia			
Ducks (14):		5	10
Pintails	Dec. 23-Jan. 25		
Pennsylvania (cont.)			
Other ducks	Oct. 5-Oct. 19 & Nov. 12-Jan. 4		
South Zone:			
Pintails	Oct. 5-Oct. 12 & Nov. 15-Dec. 11		
Other ducks	Oct. 5-Oct. 12 & Nov. 15-Jan. 15		
Northwest Zone:			
Pintails	Oct. 5-Oct. 19 & Nov. 9-Nov. 28		
Other ducks	Oct. 5-Oct. 19 & Nov. 9-Jan. 2		
Lake Erie Zone:			
Pintails	Oct. 28-Nov. 16 & Nov. 25-Dec. 7		
Other ducks	Oct. 28-Nov. 16 & Nov. 25-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 15-Nov. 30 &	2	4
	Dec. 16-Jan. 20	2	4
(late season area)	Nov. 15-Nov. 30 &	5	10
	Dec. 10-Jan. 14	5	10
SJBP Zone	Nov. 15-Dec. 31	2	4
(special season)	Jan. 15-Feb. 15	5	10
Pymatuning Zone	Nov. 15-Dec. 25	1	2
Resident (RP) Zone	Nov. 15-Nov. 30 &	5	10
	Dec. 13-Feb. 15	5	10
Special Late Season (portion of AP Zone)	Jan. 15-Feb. 15	5	10
Light Geese	Nov. 7-Mar. 10	15	--
Brant	Oct. 5-Dec. 13	3	6
Rhode Island			
Ducks:		6	12
Pintails	Dec. 28-Jan. 26		
Other ducks	Oct. 11-Oct. 14 & Nov. 20-Nov. 24 & Dec. 7-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 16-Nov. 24 &	2	4
	Dec. 7-Jan. 26	2	4
(special season)	Jan. 30-Feb. 15	5	10
Light Geese	Oct. 12-Jan. 26	15	--
Brant	Nov. 20-Nov. 24 &	2	4
	Dec. 7-Jan. 26	2	4
South Carolina			
Ducks (13):		6	12
Pintails	Dec. 28-Jan. 26		

(7) In Maryland, the black duck season is closed October 5 through October 12. In addition to the daily bag limit, 1 additional teal may be taken.
(8) In Maryland, the February 1 to March 10 snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(9) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
(10) In New Jersey, the daily bag limit for buffleheads is 6.
(11) In New York, in the Lake Champlain Zone, the daily bag limit may include no more than 4 goldeneyes.
(12) In North Carolina, the season is closed for black ducks October 2 through October 5 and November 9 through November 30. The daily bag limit for Black and Mottled ducks are combined with no more than 1 of either sex allowed in the bag.
(13) In South Carolina, the daily bag limit of 6 may not exceed 1 female mallard and 1 black duck or 1 mottled duck in the aggregate.
(14) In Virginia, the season is closed for black ducks October 9 through October 12.
(15) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for scoters, eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:		6	12
North Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
South Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 14-Jan. 30	2	4
Rest of North Zone	Sept. 28-Oct. 19 &	2	4
	Dec. 14-Jan. 30	2	4
South Zone	Sept. 28-Oct. 19 &	2	4
	Dec. 14-Jan. 30	2	4
Light Geese	Sept. 28-Oct. 19 &	5	5
	Dec. 14-Jan. 30	5	5
Arkansas			
Ducks (1):		5	10
Pintails	Nov. 23-Nov. 29 & Jan. 4-Jan. 26		
Other ducks	Oct. 5-Oct. 12 & Nov. 30-Jan. 3		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 22-Nov. 30 &	1	2
	Dec. 14-Jan. 25	1	2
Western (SJBP) Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 14-Jan. 14	2	4
Western (RP) Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 14-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	4	8
Light Geese	Nov. 6-Mar. 10	15	--
Brant	Nov. 16-Dec. 7 &	3	6
	Dec. 10-Jan. 25	3	6
Virginia (cont.)			
Other ducks	Oct. 9-Oct. 12 &		
	Nov. 16-Jan. 7 &		
	Dec. 14-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Back Bay Area	Closed	--	--
Eastern (AP) Zone	Nov. 22-Nov. 30 &	1	2
	Dec. 14-Jan. 25	1	2
Western (SJBP) Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 14-Jan. 14	2	4
Western (RP) Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 14-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	4	8
Light Geese	Nov. 6-Mar. 10	15	--
Brant	Nov. 16-Dec. 7 &	3	6
	Dec. 10-Jan. 25	3	6
West Virginia			
Ducks (15):		6	12
Zone 1:			
Pintails	Dec. 20-Jan. 18		
Other ducks	Oct. 1-Oct. 12 &		
	Dec. 2-Jan. 18		
Zone 2:			
Pintails	Dec. 13-Jan. 11		
Other ducks	Oct. 1-Oct. 12 &		
	Nov. 25-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 12 &	3	6
	Dec. 5-Jan. 31	3	6
Zone 2	Oct. 1-Oct. 26 &	3	6
	Dec. 19Jan. 31	3	6
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant	Same as for Other ducks	3	6

(1) In Connecticut, the season is closed for black ducks prior to November 16 in the North Zone and prior to November 20 in the South Zone.
(2) In Delaware, the January 31 to March 10 Rest of State snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(3) In Delaware, the February 3 to March 7 Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
(4) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR2, north of the Jim Woodruff Dam, and east of SR271.
(5) In Florida, the light goose season is only open north and west of the Suwannee River.
(6) In Maine, the season is closed for black ducks October 1 through October 4; in addition to the daily bag limit, 2 additional teal may be taken. A possession limit of 12 ducks is permitted provided it includes 4 or more teal.

	Season Dates	Limits Bag	Limits Possession
Illinois (cont.)			
Light Geese (5):			
North Zone	Oct. 17-Jan. 4	20	--
Central Zone	Oct. 24-Jan. 31	20	--
South Zone	Nov. 7-Jan. 31	20	--
Indiana			
Ducks:		6	12
North Zone:			
Pintails	Oct. 12-Oct. 14 & Oct. 26-Nov. 21		
Other ducks	Oct. 12-Oct. 14 & Oct. 26-Dec. 21		
South Zone:			
Pintails	Oct. 26-Nov. 1 & Nov. 23-Dec. 15		
Other ducks	Oct. 26-Nov. 1 & Nov. 23-Jan. 14		
Ohio River Zone:			
Pintails	Oct. 26-Oct. 27 & Nov. 23-Dec. 20		
Other ducks	Oct. 26-Oct. 27 & Nov. 23-Jan. 19		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
SJBP Area	Oct. 12-Oct. 14 & Oct. 26-Dec. 11	2	4
Rest of North Zone	Oct. 12-Oct. 14 & Oct. 26-Dec. 21	2	4
South Zone:	Nov. 23-Nov. 26 & Dec. 7-Jan. 31	2	4
Ohio River Zone:	Dec. 3-Jan. 31	2	4
White-fronted and Brant	Oct. 12-Oct. 14 & Oct. 20-Jan. 31	1	2
Light Geese	Oct. 12-Oct. 14 & Oct. 20-Jan. 31	20	--
Iowa			
Ducks:		6	12
North Zone:			
Pintails	Sept. 21-Sept. 25 & Oct. 12-Nov. 5		
Other ducks	Sept. 21-Sept. 25 & Oct. 12-Dec. 5		
South Zone:			
Pintails	Sept. 21-Sept. 23 & Oct. 19-Nov. 14		
Other ducks	Sept. 21-Sept. 23 & Oct. 19-Dec. 14		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Arkansas (cont.)			
Other ducks	Nov. 23-Dec. 8 & Dec. 14-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Northwest Zone	Oct. 5-Oct. 14 & Jan. 9-Jan. 31	2	4
Remainder of State	Jan. 9-Jan. 31	2	4
White-fronted	Nov. 7-Jan. 31	2	4
Brant	Closed	--	--
Light Geese	Nov. 7-Jan. 31	20	--
Illinois			
Ducks (2):		6	12
North Zone:			
Pintails	Closed		
Other ducks	Oct. 17-Dec. 15		
Central Zone:			
Pintails	Closed		
Other ducks	Oct. 24-Dec. 22		
South Zone:			
Pintails	Closed		
Other ducks	Nov. 7-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (3):			
North Zone:			
Northern Illinois Quota Zone (3)	Oct. 17-Jan. 4	2	10
Rest of North Zone	Oct. 17-Jan. 4	2	10
Central Zone:			
Central Illinois Quota Zone (3)	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	10
Rest of Central Zone	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	10
South Zone:			
Southern Illinois Quota Zone (3)(4)	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	10
Rest of South Zone	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	10
White-fronted (5):			
North Zone	Oct. 17--Jan. 4	2	4
Central Zone	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	4
South Zone	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	4
Brant (5)	Same as for Light Geese	1	2

	Season Dates	Limits Bag	Limits Possession
Louisiana (cont.)			
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (7)	Jan. 18-Jan. 26	1	2
White-fronted and Brant:	Nov. 2-Dec. 8 &	2	4
	Dec. 14-Jan. 31	2	4
Light Geese:	Nov. 2-Dec. 8 &	20	–
	Dec. 14-Jan. 31	20	--
Michigan			
Ducks (8):		6	12
North Zone:			
Pintails	Sept. 28-Oct. 27		
Other ducks	Sept. 28-Nov. 24 &		
	Nov. 30-Dec. 1		
Middle Zone:			
Pintails	Oct. 12-Nov. 10		
Other ducks	Oct. 12-Dec. 8 &		
	Jan. 4-Jan. 5		
South Zone:			
Pintails	Oct. 12-Nov. 10		
Other ducks	Oct. 12-Dec. 8 &		
	Jan. 4-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (3):			
MVP Zone:			
Muskegon Wastewater Goose			
Management Unit (GMU) (3)	Nov. 2-Nov. 14 &	2	4
	Dec. 1-Dec. 12	2	4
Allegan County GMU (3)	Nov. 2-Nov. 10 &	1	2
	Jan. 4-Jan. 19	1	2
Rest of MVP Zone	Sept. 16-Oct. 6	2	4
SJBP Zone:			
Saginaw County GMU (3)	Oct. 12-Nov. 30	1	2
Tuscola/Huron GMU (3)	Oct. 12-Nov. 30	1	2
Rest of SJBP Zone	Sept. 16-Oct. 6 &	2	4
	Dec. 14-Dec. 22	2	4
Special Season:			
Southern Michigan GMU	Jan. 4-Feb. 2	5	10
Central Michigan GMU	Jan. 4-Feb. 2	5	10
White-fronted and Brant	Sept. 16-Dec. 8	1	2
Light Geese	Sept. 16-Dec. 8	10	30
Minnesota			
Ducks:		6	12
Pintails	Sept. 28-Oct. 27		
Other ducks	Sept. 28-Nov. 26		
Mergansers	Same as for Other ducks	5	10
Coots (9)	Same as for Other ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Iowa (cont.)			
Geese:			
Canada:			
North Zone	Sept. 28-Dec. 6	2	4
South Zone	Sept. 28-Oct. 20 &	2	4
	Nov. 9-Dec. 25	2	4
White-fronted:			
North Zone	Same as for Canada geese	2	4
South Zone	Same as for Canada geese	2	4
Brant:			
North Zone	Same as for Canada geese	2	4
South Zone	Same as for Canada geese	2	4
Light Geese	Sept. 28-Jan. 12	20	--
Kentucky			
Ducks:		6	12
West Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
East Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
Mergansers	Same as for Other Ducks	5	10
Coots	Same as for Other Ducks	15	30
Geese:			
Canada (3):			
Western Goose Zone (3):			
Fulton County	Dec. 7-Feb. 15	2	4
Rest of Zone	Dec. 7-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Dec. 13-Jan. 31	2	4
Rest of State	Dec. 13-Jan. 31	2	4
White-fronted	Nov. 28-Feb. 2	2	4
Brant	Nov. 28-Feb. 2	2	4
Light Geese			
Western Goose Zone:			
Fulton County (6):	Nov. 28-Feb. 15	20	–
Rest of Zone:	Nov. 28-Feb. 2	20	–
Rest of State	Nov. 28-Feb. 2	20	--
Louisiana			
Ducks:		6	12
West Zone:			
Pintails	Nov. 9-Dec. 8		
Other ducks	Nov. 9-Dec. 8 &		
	Dec. 21-Jan. 19		
East Zone (including Catahoula Lake):			
Pintails	Nov. 16-Dec. 1 &		
	Dec. 14-Dec. 27		
Other ducks	Nov. 16-Dec. 1 &		
	Dec. 14-Jan. 26		

	Season Dates	Limits Bag	Limits Possession
Missouri (cont.)			
Southeast Zone	Sept. 28-Oct. 6 &	2	4
	Nov. 23-Jan. 26	2	4
Rest of Middle Zone	Sept. 21-Oct. 6 &	3	6
	Nov. 2-Dec. 1 &	2	4
	Dec. 21-Jan. 18	2	4
South Zone	Sept. 28-Oct. 6 &	2	4
	Nov. 23-Jan. 26	2	4
White-fronted:			
North Zone:			
Swan Lake Zone	Oct. 26-Jan. 18	2	4
Rest of North Zone	Oct. 26-Jan. 18	2	4
Middle Zone:			
Southeast Zone	Nov. 2-Jan. 26	2	4
Rest of Middle Zone	Nov. 2-Jan. 26	2	4
South Zone	Nov. 2-Jan. 26	2	4
Brant	Same as for Canada geese	2	4
Light Geese:			
North Zone:			
Swan Lake Zone	Oct. 26-Jan. 18	20	--
Rest of North Zone	Oct. 26-Jan. 18	20	--
Middle Zone:			
Southeast Zone	Nov. 2-Jan. 26	20	--
Rest of Middle Zone	Nov. 2-Jan. 26	20	--
South Zone	Nov. 2-Jan. 26	20	--
Ohio			
Ducks:		6	12
North Zone:			
Pintails	Oct. 19-Nov. 17		
Other ducks	Oct. 19-Nov. 30 &		
	Dec. 7-Dec. 23		
South Zone:			
Pintails	Oct. 26-Nov. 2 &		
	Dec. 14-Jan. 4		
Other ducks	Oct. 26-Nov. 17 &		
	Dec. 14-Jan. 19		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Oct. 19-Oct. 27 &	1	2
	Dec. 7-Jan. 1	1	2
Rest of North Zone	Oct. 19-Nov. 30 &	2	4
	Dec. 7-Jan. 2	2	4
(special season)	Jan. 11-Jan. 29	2	4
South Zone	Oct. 26-Nov. 17 &	2	4
	Dec. 14-Jan. 29	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30

	Season Dates	Limits Bag	Limits Possession
Minnesota (cont.)			
Geese:			
Canada (3):			
West Zone:			
West Central Zone:			
Lac qui Parle Zone (3)	Oct. 5-Nov. 13	1	2
Rest of West Central Zone	Oct. 5-Nov. 13	1	2
Rest of West Zone	Sept. 28-Nov. 6	1	2
(Special season)	Dec. 7- Dec. 16	5	10
Northwest Zone	Sept. 28-Nov. 6	1	2
(Special season)	Dec. 7-Dec. 16	5	10
Southeast Zone	Sept. 28-Dec. 6	2	4
(special season)	Dec. 13-Dec. 22	2	4
Rest of State	Sept. 28-Dec. 6	2	4
(special season)	Dec. 7-Dec. 16	5	10
White-fronted	Sept. 28-Dec. 22	2	4
Brant	Sept. 28-Dec. 22	1	2
Light Geese	Sept. 28-Dec. 22	20	40
Mississippi			
Ducks:		6	12
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 23-Nov. 24 &		
	Nov. 29-Dec. 24 &		
	Dec. 26-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 23-Jan. 26	3	6
White-fronted	Nov. 23-Jan. 26	2	4
Brant	Nov. 23-Jan. 26	2	4
Light Geese	Nov. 23-Jan. 26	20	--
Missouri			
Ducks and Mergansers:		6	12
North Zone:			
Pintails	Oct. 26-Nov. 24		
Other ducks/mergansers	Oct. 26-Dec. 24		
Middle Zone:			
Pintails	Nov. 2-Dec. 1		
Other ducks/mergansers	Nov. 2-Dec. 31		
South Zone:			
Pintails	Nov. 23-Dec. 22		
Other ducks/mergansers	Nov. 23-Jan. 21		
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Swan Lake Zone	Oct. 26-Dec. 1&	2	4
	Dec. 21-Jan. 18	2	4
Rest of North Zone	Sept. 21-Oct. 6 &	3	6
	Oct. 26-Nov. 24 &	2	4
	Dec. 21-Jan. 18	2	4
Middle Zone:			

Southern Illinois Quota Zones in Illinois, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective Zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(4) In Illinois, shooting hours for geese in the Southern Illinois quota Zone through January 28 shall close at 3 p.m.

(5) In Illinois, white-fronted goose, light goose, and brant seasons will close with Canada goose seasons if the season closes early due the quota being reached.

(6) In Kentucky, in Fulton County, if the Canada goose season closes after January 31 and before February 15, the season for light geese will close with the Canada goose season.

(7) In Louisiana, during the Canada goose season, a special permit is required by the State.

(8) In Michigan, the daily bag limit includes no more than 1 hen mallard.

(9) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(10) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits: Bag	Limits: Possession
Colorado			
Ducks:		6	12
Pintails	Sept. 28-Oct. 20 & Nov. 2-Nov. 17		
Other ducks	Sept. 28-Oct. 20 & Nov. 2-Nov. 29 & Dec. 13-Jan. 26		
Coots	Same as for Other ducks	15	30
Mergansers	Same as for Other ducks	5	10
Dark Geese:			
Northern Front Range Unit	Sept. 28-Oct. 9 &	5	10
	Nov. 16-Feb. 16	5	10
South Park/San Luis Valley Unit (1)	Sept. 28-Oct. 9 &	3	6
	Nov. 16-Feb. 16	3	6
North Park Unit (1)	Sept. 28-Oct. 9 &	3	6
	Nov. 16-Feb. 16	3	6
Arkansas Valley Unit (2)	Nov. 16-Feb. 16	5	10
Pueblo County	Dec. 7-Feb. 16	2	4
Rest of State in Central Flyway	Nov. 16-Feb. 16	5	10
Tennessee			
Ducks:		6	12
Reelfoot Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 9-Nov. 10 & Nov. 30-Jan. 26		
State Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 23-Nov. 24 & Nov. 30-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (10):			
Northwest Zone	Dec. 7-Feb. 15	2	4
Southwest Zone	Dec. 13-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Dec. 13-Jan. 31	2	4
Rest of State (10)	Oct. 5-Oct. 16 &	2	4
	Nov. 30-Jan. 26	2	4
White-fronted	Nov. 22-Feb. 15	2	4
Brant	Dec. 2-Jan. 31	2	4
Light Geese	Nov. 16-Mar. 2	20	--
Wisconsin			
Ducks:		6	12
North Zone:			
Pintails	Sept. 28-Oct. 27		
Other ducks	Sept. 28-Nov. 26		
South Zone:			
Pintails	Oct. 5-Oct. 13 & Oct. 19-Nov. 8		
Other ducks	Oct. 5-Oct. 13 & Oct. 19-Dec. 8		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	10	20
Geese:			
Canada (3):			
Horicon Zone	Sept. 16-Dec. 18	Tag System--See State Regulations	
Collins Zone	Sept. 16-Nov. 22	Tag System--See State Regulations	
Exterior Zone:			
Rock Prairie Subzone	Sept. 28-Oct. 13 &	1	2
	Oct. 19-Jan. 2	1	2
Mississippi River Subzone	Sept. 28-Oct. 13 &	1	2
	Oct. 19-Dec. 11	1	2
Brown County Subzone	Sept. 21-Dec. 23	1	2
Rest of Exterior Zone:			
North Duck Zone	Sept. 21-Dec. 23	1	2
South Duck Zone	Sept. 28-Oct. 13 &	1	2
	Oct. 19-Jan. 2	1	2
White-fronted and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	30

(1) In Arkansas, the daily bag limit may include no more than three mallards, only one of which may be a hen.

(2) In Illinois, the daily bag limit cannot include more than one hen mallard. The season on Pintails is closed.

(3) Harvests of Canada geese will be limited by quotas established in the September19, 2002, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and

	Season Dates	Limits Bag	Limits Possession
Nebraska (cont.)			
Low Plains:			
Zones 1 and 2:			
Pintails	Oct. 12-Oct. 13 & Oct. 19-Nov. 24		
Other ducks	Oct. 12-Oct. 13 & Oct. 19-Dec. 29		
Zones 3 and 4:			
Pintails	Sept. 28-Oct. 6 & Oct. 12-Nov. 10		
Other ducks	Sept. 28-Oct. 6 & Oct. 12-Dec. 15		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Oct. 29-Jan. 31	3	6
East Unit	Sept. 28-Oct. 13 &	3	6
	Nov. 2-Jan. 19	3	6
North Central Unit	Sept. 28-Dec. 31	3	6
Platte River Unit	Oct. 29-Jan. 31	3	6
White-fronted	Sept. 28-Dec. 22	2	4
Light Geese:			
Rainwater Basin Area - East	Sept. 28-Jan. 10	20	--
Rainwater Basin Area - West	Sept. 28-Jan. 10	20	--
Rest of State	Sept. 28-Jan. 10	20	--
New Mexico			
Ducks and Mergansers (5):		6	12
North Zone:			
Pintails	Oct. 5-Oct. 27 & Nov. 8-Nov. 23		
Other ducks/mergs.	Oct. 5-Oct. 27 & Nov. 8-Jan. 19		
South Zone:			
Pintails	Dec. 12-Jan. 19		
Other ducks/mergs.	Oct. 16-Jan. 19		
Coots	Same as for Other ducks	15	30
Dark Geese (6):			
Middle Rio Grande Valley Unit (6)	Dec. 28-Jan. 19	1 per season	
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	80
North Dakota			
Ducks:		6	12
High Plains:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 1 & Dec. 7-Dec. 29		
Remainder of State:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 1		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada Geese (7):			

	Season Dates	Limits Bag	Limits Possession
Colorado (cont.)			
Light Geese:			
Northern Front Range Unit	Nov. 16-Feb. 16	20	--
South Park/San Luis Valley Unit (1)	Nov. 16-Feb. 16	3	6
North Park Unit (1)	Nov. 16-Feb. 16	3	6
Arkansas Valley Unit (2)	Nov. 16-Feb. 16	20	--
Pueblo County	Nov. 16-Feb. 16	20	--
Rest of State in Central Flyway	Nov. 2-Feb. 16	20	--
Kansas			
Ducks (3):		6	12
High Plains:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Jan 7 & Jan. 18-Jan. 26		
Low Plains:			
Early Zone:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Dec. 15 & Dec. 24-Jan. 1		
Late Zone:			
Pintails	Oct. 26-Nov. 3 & Nov. 9-Dec. 8		
Other ducks	Oct. 26-Nov. 3 & Nov. 9-Jan. 12		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese (4):			
Canada	Oct. 19-Oct. 20 &	3	6
	Nov. 2-Feb. 2	3	6
White-fronted	Oct. 19-Oct. 20 &	2	4
	Nov. 2-Jan. 24	2	4
Light Geese	Oct. 19-Feb. 2	20	--
Montana			
Ducks:		6	12
Zone 1:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Jan. 2		
Zone 2:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Jan. 2		
Mergansers	Sept. 28-Jan. 2	5	10
Coots	Sept. 28-Jan. 2	15	30
Dark Geese	Sept. 28-Jan. 10	4	8
Light Geese	Sept. 28-Jan. 10	5	10
Nebraska			
Ducks:		6	12
High Plains:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Dec. 8 & Dec. 13-Jan. 5		

	Season Dates	Limits Bag	Limits Possession
South Dakota (cont.)			
Power Plant Area	Sept. 28-Nov. 30 &	3	6
	Dec. 1-Dec. 15	2	4
Rest of Unit	Sept. 28-Dec. 15	3	6
Unit 4	Oct. 26-Dec. 22 &	3	6
	Jan. 11-Jan. 19	3	6
Light Geese	Sept. 28-Dec. 22	20	--
Texas			
Ducks:		6	12
High Plains:			
Pintails	Dec. 12-Jan. 19		
Other ducks	Sept. 23-Sept. 29 &		
	Oct. 26-Jan. 22		
Low Plains:			
North Zone:			
Pintails	Dec. 19-Jan. 26		
Other ducks	Nov. 9-Nov. 10 &		
	Nov. 16-Jan. 26		
South Zone:			
Pintails	Dec. 12-Jan. 19		
Other ducks	Nov. 2-Dec. 1 &		
	Dec. 7-Jan. 19		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
East Tier:			
Canada and brant	Oct. 26-Jan. 19	2	4
White-fronted	Oct. 26-Jan. 19	2	4
Light Geese			
North Zone	Oct. 26-Jan. 26	20	--
South Zone	Oct. 26-Jan. 19	20	--
West Tier:			
Dark Geese:		5	10
Canada geese and Brant	Oct. 26-Feb. 9	5	10
White-fronted	Oct. 26-Feb. 9	1	2
Light Geese	Oct. 26-Feb. 9	20	--
Wyoming			
Ducks:		6	12
Zone 1:			
Pintails	Oct. 5-Oct. 20 &		
	Oct. 26-Nov. 17		
Other ducks	Oct. 5-Oct. 20 &		
	Oct. 26-Jan. 14		
Zone 2:			
Pintails	Sept. 21-Oct. 20 &		
	Oct. 26-Nov. 3		
Other ducks	Sept. 21-Oct. 20 &		
	Oct. 26-Dec. 8		
	Dec. 14-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese:			
Area 1	Oct. 5-Jan. 18	5	10

	Season Dates	Limits Bag	Limits Possession
North Dakota (cont.)			
High Plains Unit	Sept. 21-Dec. 1 &	3	6
	Dec. 7-Dec. 21	3	6
Rest of State	Sept. 21-Dec. 15	3	6
White-fronted (7)	Sept. 21-Dec. 15	2	4
Light Geese (7)	Sept. 21-Dec. 15	20	--
Oklahoma			
Ducks:		6	12
High Plains:			
Pintails	Dec. 8-Jan. 15		
Other ducks	Oct. 12-Jan. 15		
Low Plains:			
Zone 1:			
Pintails	Nov. 30-Dec. 8 &		
	Dec. 14-Jan. 12		
Other ducks	Oct. 26-Dec. 8 &		
	Dec. 14-Jan. 12		
Zone 2:			
Pintails	Dec. 19-Jan. 26		
Other ducks	Nov. 9-Dec. 8 &		
	Dec. 14-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 9-Dec. 8 &	3	6
	Dec. 14-Feb. 16	3	6
White-fronted	Nov. 9-Dec. 8 &	2	4
	Dec. 14-Feb. 7	2	4
Light Geese	Nov. 9-Dec. 8 &	20	--
	Dec. 14-Feb. 16	20	--
South Dakota			
Ducks:		6	12
High Plains:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Jan. 2		
Low Plains:			
North Zone:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 3		
Middle Zone:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Dec. 10		
South Zone:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Dec. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
White-fronted	Sept. 28-Dec. 22	2	4
Canada:			
Unit 1	Sept. 28-Dec. 27	3	6
Unit 2	Oct. 26-Jan. 28	3	6
Unit 3:			

	Season Dates	Limits Bag	Limits Possession
Arizona (cont.)			
Geese:			
Dark (2):			
GMU 22 & 23	Nov. 15-Jan. 26	3	3
GMU 1 & 27	Dec. 1-Jan. 26	3	3
Balance of State	Oct. 18-Jan. 26	3	3
Light (2):			
GMU 22 & 23	Nov. 15-Jan. 26	3	3
Rest of State	Oct. 18-Jan. 26	3	3
California			
Ducks:		7	14
Northeastern Zone:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 5		
Colorado River Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 18-Jan. 26		
Southern Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Nov. 2-Jan. 26		
Southern San Joaquin Valley Zone:			
Pintails	Oct. 19-Oct. 25 & Dec. 5-Jan. 26		
Other ducks	Oct. 19-Nov. 10 & Nov. 23-Jan. 26		
Balance-of-State Zone:			
Pintails	Oct. 26-Nov. 10 & Dec. 14-Jan. 26		
Other ducks	Oct. 26-Nov. 17 & Nov. 30-Jan. 26		
Coots and moorhens:			
Northeastern Zone	Same as for Other ducks	25	25
Colorado River Zone	Same as for Other ducks	25	25
Southern Zone	Same as for Other ducks	25	25
Southern San Joaquin Valley Zone	Oct. 19-Jan 26	25	25
Balance-of-State Zone	Oct. 26-Jan. 26	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 12-Jan. 19	2	4
Small Canada Geese (3)	Oct. 12-Jan. 19	1	2
White-fronted Geese	Oct. 12-Jan. 19	2	4
Light Geese	Oct. 12-Jan. 19	3	6
Colorado River Zone:		5	10
Canada Geese	Oct. 18-Jan. 26	3	6
White-fronted Geese	Oct. 18-Jan. 26	3	6
Light Geese	Oct. 18-Jan. 26	3	6
Southern Zone:		5	10
Dark Geese:		3	6
Canada geese	Oct. 19-Jan. 26	3	6
Small Canada Geese (3)	Oct. 19-Jan. 26	1	2
White-fronted Geese	Oct. 19-Jan. 26	3	6
Light Geese	Oct. 19-Jan. 26	3	6
Balance-of-State Zone:		3	6

	Season Dates	Limits Bag	Limits Possession
Wyoming (cont.)			
Area 2	Oct. 18-Jan. 31	5	10
Area 3	Sept. 28-Oct. 20 & Oct. 26-Jan. 16	5	10
Area 4(8):	Oct. 5-Oct. 20 & Nov. 16-Feb. 13	5	10
Light Geese	Oct. 5-Dec. 31 & Jan. 27-Feb. 13	10	40

(1) In Colorado, in the North Park and South Park/San Luis Valley Units, the bag limit for the November 16 through February 16 period is 3 geese. The possession limit is twice the daily bag limit.
(2) In Colorado, in the Arkansas Valley Unit, shooting hours are one-half hour before sunrise to noon November 16 through November 24.
(3) In Kansas, the daily bag limit may include no more than 2 scaup and 1 hen mallard.
(4) See State regulations for additional restrictions.
(5) In New Mexico, the daily bag limit consists of no more than 5 mallards (of which only 2 may be female mallards), 2 redheads, 2 scaup, 2 wood ducks, 1 hooded merganser, and 1 northern pintail (see dates by zone).
(6) In New Mexico, the season for dark geese is closed in Bernalillo and Sandoval Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(7) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 26 and until 2 p.m. the remainder of the season, except that during October 2 through December 21, shooting hours are one-half hour before sunrise to sunset on Saturdays and Wednesdays.
(8) In Wyoming, the shooting hours for dark geese in Goshen County are one-half hour before sunrise to 1 p.m., except during the period October 5 through October 20 and on all Saturdays and Wednesdays after December 18 until the close of the dark goose season, when shooting hours are until sunset. In Platte County, shooting hours for dark geese in the area east of Interstate Highway 25 and north of Wyoming Highway 160 are 1/2 hour before sunrise to sunset. In the remainder of Platte County, shooting hours for dark geese are 1/2 hour before sunrise to 1 p.m. except during the period October 5 through October 20 and on all Saturdays and Wednesdays after December 18 until the close of the dark goose season, when shooting hours are until sunset.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 1 pintail, 2 redheads, and 4 scaup. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

	Season Dates	Limits Bag	Limits Possession
Arizona			
Ducks (1):		7	14
North Zone			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 18-Jan. 26		
South Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 18-Jan. 26		
Coots and moorhens	Oct. 18-Jan. 26	25	25

	Season Dates	Limits Bag	Limits Possession
Montana			
Ducks:		7	14
Pintails	Sept. 28-Nov. 26		
Other ducks	Sept. 28-Jan. 10		
Coots	Sept. 28-Jan. 10	25	25
Geese (5):			
Dark	Sept. 28-Jan. 10	4	8
Light	Sept. 28-Jan. 10	3	6
Nevada			
Ducks:		7	14
Lincoln & Clark Counties:			
Pintails	Oct. 12-Oct. 13 & Nov. 28-Jan. 24		
Other ducks	Oct. 12-Jan. 24		
Rest of State:			
Pintails	Oct. 12-Oct. 13 & Nov. 30-Jan. 25		
Other ducks	Oct. 12-Jan. 25		
Coots and moorhens	Same as for Other ducks	25	25
Dark Geese:			
Lincoln & Clark Counties	Nov. 2-Jan. 24	2	4
Scripps/Washoe Lake Zone	Oct. 12-Jan. 25	3	6
Rest of State	Oct. 12-Jan. 25	3	6
Light Geese:			
Lincoln & Clark Counties	Nov. 2-Jan. 24	3	6
Scripps/Washoe Lake Zone	Oct. 12-Jan. 25	3	6
Rest of State (6)	Oct. 12-Jan. 25	3	6
New Mexico			
Ducks (7):		7	14
Pintails	Oct. 7-Dec. 5		
Other ducks	Oct. 7-Jan. 19		
Coots and Moorhens	Same as for Other ducks	12	24
Dark Geese (8):			
North Zone	Sept. 28-Oct. 27& Nov. 11-Jan. 19	3 3	6 6
South Zone	Oct. 12-Jan. 19	3	6
Light Geese:			
North Zone	Sept. 28-Oct. 27 & Nov. 11-Jan. 19	1 1	2 2
South Zone	Oct. 12-Jan. 19	1	2

	Season Dates	Limits Bag	Limits Possession
California (cont.)			
Dark Geese :		2	4
Canada:			
Del Norte & Humboldt	Nov. 23-Nov. 27	--	--
Sacramento Valley Area	Closed	--	--
San Joaquin Valley Area	Closed	--	--
Rest of Zone:			
Canada geese	Nov. 2-Jan. 26	2	4
White-fronted:			
Sacramento Valley Closure	Nov. 2-Dec. 14	2	4
Rest of Zone	Nov. 2-Jan. 26	2	4
Light Geese	Nov. 2-Jan. 26	3	6
Brant	Nov. 10-Dec. 9	2	4
Colorado			
Ducks:		7	14
Pintails	Sept. 28-Oct. 13 & Oct. 30-Dec. 12		
Other ducks	Sept. 28-Oct. 13 & Oct. 30-Jan. 26		
Coots	Same as for Other ducks	25	25
Geese:	Sept. 28-Oct. 8 & Oct. 30-Jan. 26	3 3	6 6
Idaho			
Ducks:		7	14
Zone 1:			
Pintails	Oct. 5-Dec. 3		
Other ducks	Oct. 5-Jan. 10		
Zone 2:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 24		
Zone 3:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 24		
Coots	Same as for Other ducks	25	25
Geese:			
Zone 1 (4):		4	8
Dark	Oct. 19-Jan. 24	4	8
Light	Oct. 6-Oct. 17 & Oct. 27-Jan. 20	3 3	6 6
Zone 2:		3	6
Dark	Oct. 19-Jan. 24	4	8
Light	Oct. 19-Jan. 24	3	6
Zone 3:		3	6
Dark	Oct. 19-Jan. 24	3	6
Light	Oct. 19-Jan. 24	3	6
Zone 4:			
Dark	Oct. 6-Oct. 17 & Oct. 27-Jan. 20	4 4	8 8
Light	Oct. 6-Oct. 17 & Oct. 27-Jan. 2	3 3	6 6
Zone 5:			
Dark	Oct. 5-Jan. 10	4	8
Light	Oct. 5-Jan. 10	3	6

	Season Dates	Limits Bag	Limits Possession
Utah (11)			
Ducks:		7	14
Zone 1:			
Pintails	Oct. 5-Nov. 7		
	Dec. 25-Jan. 18		
Other ducks	Oct. 5-Jan. 18		
Zone 2:			
Pintails	Oct. 5-Nov. 7		
	Dec. 25-Jan. 18		
Other ducks	Oct. 5-Jan. 18		
Coots	Same as for Other ducks	25	25
Geese:			
Light	Oct. 5-Jan. 18	3	6
Dark:			
Washington County (12)	Oct. 12-Jan. 25	3	6
Rest of State	Oct. 5-Jan. 18	3	6
Washington			
Ducks:		7	14
East Zone:			
Pintails	Oct. 5-Oct. 11 &		
	Oct. 26-Dec. 17		
Other ducks	Oct. 5-Oct 16 &		
	Oct. 26-Jan. 26		
West Zone (13):			
Pintails	Oct. 5-Oct. 11 &		
	Oct. 26-Dec. 17		
Other ducks	Oct. 5-Oct 16 &		
	Oct. 26-Jan. 26		
Coots	Same as for Other ducks	25	25
Geese (14):		4	8
Management Area 1:			
Light Geese	Oct 5-Jan. 5		
Dark Geese	Oct 5-Oct. 24 &		
	Nov. 9-Jan. 26		
Management Area 2A (15)	Nov. 9-Jan. 26		
Dusky Canada geese	Nov. 9-Jan. 26	1 per season	
Late-Season Canada Geese	Feb. 1-Mar. 9	4	8
Dusky Canada geese	Feb. 1-Mar. 9	1 per season	
Management Area 2B (15)	Nov. 9-Dec. 29		
Dusky Canada geese	Nov. 9-Dec. 29	1 per season	
Management Areas 3, 4, & 5 (16)	Oct. 5-Oct. 24 &	4	8
	Nov. 9-Jan. 26	4	8
Brant (17)	Nov. 23-Nov. 29 &	2	4
	Jan. 18-Jan. 26	2	4
Wyoming			
Ducks:		7	14
Pintails	Sept. 21-Nov. 19		
Other ducks	Sept. 21-Jan. 4		
Coots	Same as for Other ducks	25	25
Dark Geese	Sept. 28-Jan. 4	4	8

	Season Dates	Limits Bag	Limits Possession
Oregon			
Ducks:		7	14
Zone 1:			
Columbia Basin Unit:			
Pintails	Oct. 12-Oct. 20 &		
	Oct. 23-Dec. 12		
Other ducks	Oct. 12-Oct. 20 &		
	Oct. 23- Jan. 26		
Rest of Zone 1:			
Pintails	Oct. 12-Oct. 20 &		
	Oct. 23-Dec. 12		
Other ducks	Oct. 12-Oct. 20 &		
	Oct. 23- Jan. 26		
Zone 2:			
Pintails	Oct. 5-Dec. 3		
Other ducks	Oct. 5-Dec. 3 &		
	Dec. 13- Jan. 26		
Coots	Same as for Other ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 12-Jan. 12	4	8
Light Geese	Oct. 12-Jan. 12	3	6
Northwest Special Permit Zone (9):			
Dark Geese	Oct. 27-Nov. 7 &	4	8
	Nov. 23-Jan. 19 &	4	8
	Feb. 8-Mar. 2	4	8
Dusky Canada geese		1 per season	
Light Geese	Oct. 27-Nov. 7 &	3	6
	Nov. 23-Jan. 19	3	6
Southwest General Zone (8):			
Dark Geese	Oct. 12-Dec. 10 &	4	8
	Dec. 20-Jan. 26	4	8
Light Geese	Oct. 12-Dec. 10 &	6	
	Dec. 20-Jan. 26	3	6
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 5-Dec. 3 &	4	8
	Dec. 20-Jan. 26	4	8
Cackling Canada geese		1	2
Light Geese	Oct. 5-Dec. 3 &	3	6
	Dec. 20-Jan. 26	3	6
Remainder of Eastern Zone:			
Dark Geese	Oct. 12-Dec. 10 &	4	8
	Dec. 20-Jan. 26	4	8
Cackling Canada geese		1	2
White-fronted geese		4	8
Light Geese	Oct. 12-Dec. 10 &	3	6
	Dec. 20-Jan. 26	3	6
Brant	Nov. 2-Nov. 15	2	4

	Season Dates
* * * * *	
Massachusetts	
Ducks, mergansers, coots, and geese	Oct. 12 & 14
* * * * *	
New York	
Ducks, coots, mergansers, and Canada geese:	
Long Island Zone	Nov. 9 & 10
Lake Champlain Zone	Sept. 28 & 29
Northeastern Zone	Sept. 28 & 29
Southeastern Zone	Sept. 28 & 29
Western Zone	Oct. 5 & 6
* * * * *	
North Carolina	
Ducks, mergansers, and coots	Feb. 1
* * * * *	
South Carolina	
Ducks and geese	Feb. 1 & 2
* * * * *	
Virginia	
Ducks, mergansers, coots, moorhens, gallinules, and Canada geese (10)	Oct. 19
* * * * *	
MISSISSIPPI FLYWAY	
* * * * *	
Arkansas	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Feb. 1 & 2
Illinois	
Ducks, mergansers, coots, and geese (10):	
North Zone	Oct. 12 & 13
Central Zone	Oct. 19 &20
South Zone	Oct. 26 & 27
Indiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
North Zone	Oct. 5 & 6
South Zone	Nov. 9 & 10
Ohio River Zone	Nov. 9 & 10

(1) In Arizona, the daily limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 female mallards and Mexican-like ducks, in the aggregate, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, small Canada geese are cackling and Aleutian Canada geese.
(4) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(5) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(6) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(7) In New Mexico, the daily bag limit for ducks and mergansers may include no more than 5 mergansers (only 1 of which may be a hooded merganser).
(8) In New Mexico, the season for dark geese is closed in Bernalillo and Sandual Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(9) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(10) In Oregon, those portions of Coos and Curry Counties south of Bandon and west of US 101 are closed to all Canada goose hunting.
(11) In Utah, the shooting hours are 8:00 a.m. to sunset on October 6 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties, and November 3 statewide.
(12) In Utah, the season in Washington County is for Canada geese only.
(13) In Washington, the daily bag limit in the West Zone may include no more than 4 scoters and 4 oldsquaws, with the possession limit twice the daily bag limit. The daily bag and possession limit for harlequins is 1.
(14) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(15) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 3 and 5, hunting is everyday. See State regulations for details, including shooting hours.
(17) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks (except Pintails), mergansers, coots, and geese	Nov. 9 & 11
* * * * *	
Florida	
Ducks, mergansers, coots, moorhens, and geese (9)	Feb. 1 & 2

	Season Dates
Texas	
Ducks, mergansers, and coots:	
High Plains	Oct. 19 & 20
Low Plains:	
North	Oct. 26 & 27
South	Oct. 26 & 27f
* * * * *	
PACIFIC FLYWAY	
California	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 28 &29
Colorado River Zone	Feb. 1
Southern Zone	Feb. 1 & 2
Southern San Joaquin Valley	Feb. 1 & 2
Balance-of-State Zone	Feb. 1 & 2
Colorado	
Ducks, dark and light geese, mergansers, and coots	Oct. 26 & 27
* * * * *	
Nevada	
Lincoln and Clark Counties	Jan. 25 & 26
Rest of State	Sept. 28

* * * * *

(5) In Kansas, the adult accompanying the youth and nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

* * * * *

(9) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR 2, north of Jim Woodruff Dam, and east of SR271. The light goose season is only open north and west of the Suwannee River.
(10) In Illinois and Virginia, the daily bag limit for Canada geese is 1.

4. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23, 2002, Federal Register (67 FR 54702).

Note: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

	Season Dates
* * * * *	
Louisiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
West Zone	Nov. 2 & 3
East Zone	Nov. 9 & 10
* * * * *	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 1 & 2
Missouri	
Ducks, coots, and geese:	
North Zone	Oct. 19 & 20
Middle Zone	Oct. 26 & 27
South Zone	Nov. 16 & 17
Ohio	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Oct. 12 & 13
Tennessee	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 1 & 2
* * * * *	
CENTRAL FLYWAY	
* * * * *	
Kansas (5)	
Ducks, dark geese, mergansers and coots:	
High Plains	Oct. 5 & 6
Low Plains	
Early Zone	Oct. 5 & 6
Late Zone	Oct. 12 & 13
* * * * *	
Oklahoma	
Ducks, mergansers, coots, and geese:	
High Plains	Oct. 5 & 6
Low Plains:	
Zone 1	Oct. 19 & 20
Zone 2	Nov. 2 & 3
* * * * *	

	Season Dates	Limits Bag	Possession
Utah (3)(5)	Oct. 5-Dec. 8	1 swan per season	

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) All harvested swans and tags must be checked or registered within 3 days of harvest.
(4) All harvested swans and tags must be checked or registered within 5 days of harvest.
(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits.

Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
* * * * *	
Ducks, mergansers, and coots	Jan. 21-Mar. 10
Brant	Jan. 21-Mar. 10
Florida	
* * * * *	

	Season Dates	Limits Bag	Possession
CENTRAL FLYWAY			
* * * * *			
Oklahoma (1)	Nov. 9-Feb. 9	3	6
* * * * *			
Texas (1):			
Zone A	Nov. 9-Feb. 9	3	6
Zone B	Nov. 30-Feb. 9	3	6
Zone C	Dec. 21-Jan. 19	2	4

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Oct. 21-Jan. 31	1 tundra swan per season	
Virginia	Dec. 2-Jan 31	1 tundra swan per season	
CENTRAL FLYWAY (1)			
Montana	Sept. 28-Jan. 2	1 tundra swan per season	
North Dakota	Sept. 28-Dec. 1	1 tundra swan per season	
South Dakota	Sept. 28-Dec. 22	1 tundra swan per permit	
PACIFIC FLYWAY (1)(2)			
Montana (3)	Oct. 12-Dec. 1	1 swan per season	
Nevada (4)(5)	Oct. 19-Jan. 5	1 swan per season	

	Extended Falconry Dates
New Jersey (cont.)	
South Zone	Oct. 1-Nov. 15 & Dec. 1-Dec. 22 & Jan. 1-Jan. 15
Ducks:	
North Zone	Oct. 1-Oct. 11 & Nov. 4-Nov. 15 & Jan. 3-Jan. 31
South Zone	Oct. 1-Oct. 18 & Dec. 2-Dec. 12 & Jan. 9-Jan. 31
Coastal Zone	Oct. 1-Nov. 1 & Nov. 13-Nov. 27 & Jan. 27-Jan. 31
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1-Nov. 21 & Dec. 2-Dec. 7 & Jan. 27-Jan. 31
Northeastern Zone	Oct. 1-Oct. 4 & Nov. 18-Nov. 22 & Dec. 9-Dec. 31
Southeastern Zone	Oct. 1-Oct. 11 & Oct. 21-Nov. 8 & Dec. 30-Dec. 31
Western Zone	Oct. 1-Oct. 18 & Dec. 6-Dec. 26
Pennsylvania	
Mourning doves	Oct. 7-Nov. 1 & Dec. 2-Dec.17
Ducks:	
North Zone	Oct. 21-Nov. 9 & Jan. 6-Jan. 15 & Feb. 17-Mar. 10
South Zone	Oct. 14-Nov. 13 & Feb. 17-Mar. 10
Northwest Zone	Oct. 21-Nov. 8 & Jan. 3-Jan. 14 & Feb. 17-Mar. 10
Lake Erie Zone	Nov. 18-Nov. 23 & Jan. 13-Jan. 14 & Jan. 25-Mar. 10
Canada Geese:	
SJBP Zone	Mar. 3-Mar. 10
Pymatuning Zone	Jan. 15-Mar. 10
AP Zone	Mar. 3-Mar. 10
RP Zone	Feb. 25-Mar. 10

	Extended Falconry Dates
Florida (cont.)	
Ducks, light geese and coots (6)	Oct. 30-Nov. 12 & Feb. 3-Feb. 28
Georgia	
Sea Ducks	Nov. 16-Nov. 22 & Dec. 2-Dec. 6 & Jan. 27-Feb. 15
Ducks, mergansers, gallinules, and coots	Nov. 16-Nov. 22 & Dec. 2-Dec. 6 & Jan. 27-Feb. 15
Maine	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 10-Jan. 31
South Zone	Jan. 7-Feb. 28
Maryland	
* * * * *	
Ducks	Oct. 1-Oct. 4 & Jan. 26-Mar. 8
Brant	Jan. 26-Mar. 9
Massachusetts	
Ducks, mergansers, and coots:	
Western Zone	Oct. 5-Oct. 14 & Dec. 11-Jan. 20
Central Zone	Oct. 5-Oct. 14 & Dec. 2-Dec. 20 & Jan. 13-Jan. 20
Coastal Zone	Oct. 5-Oct. 14 & Oct. 28-Nov. 22 & Jan. 20
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 6-Nov. 26 & Dec. 22-Jan. 14
Coastal Zone	Jan. 25-Mar. 10
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 16 & Nov. 11-Jan. 15

	Extended Falconry Dates
Kentucky	
Ducks, mergansers, and coots	Nov. 5-Nov. 27 & Jan. 27-Feb. 2
Canada Geese:	
Western Goose Zone	
Fulton County	Nov. 6-Dec. 6
Rest of Zone	Nov. 5-Dec. 6
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 12
Rest of State	Nov. 5-Dec. 12
White-fronted geese and brant	Nov. 5-Nov. 27
Light geese	Nov. 5-Nov. 27
Michigan	
* * * * *	
Ducks, mergansers, coots, and moorhens:	
North Zone	Sept. 7-Sept. 27 & Nov. 25-Nov. 29 & Mar. 1-Mar. 10
Middle Zone	Sept. 7-Oct. 11 & Dec. 9-Dec. 10 & Mar. 1-Mar. 10
South Zone	Sept. 7-Oct. 11 & Dec. 9-Dec. 10 & Mar. 1-Mar. 10
Minnesota	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 27-Jan. 11
Mississippi	
Mourning Doves	Nov. 30-Dec. 22 & Jan. 12-Feb. 4
Ducks, mergansers and coots	Feb. 3-Mar. 10
Missouri	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 14-Oct. 25 & Dec. 25-Dec. 29
Middle Zone	Sept. 14-Sept. 22 & Sept. 25-Nov. 1
South Zone	Sept. 14-Sept. 22 & Oct. 16-Nov. 1

	Extended Falconry Dates
South Carolina	
Ducks, mergansers, and coots	Oct. 21-Nov. 26 & Dec. 1-Dec. 11
Virginia	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 8-Dec. 13& Jan. 26-Feb. 28
Canada Geese	Dec. 1-Dec. 13 & Feb. 16-Feb. 22
Brant	Nov. 6-Nov. 15 & Dec. 9 only & Jan. 27-Mar. 10
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Dec. 9-Dec. 13 & Jan. 27-Feb. 28
Illinois	
* * * * *	
Ducks, mergansers, and coots	Feb. 3-Mar. 10
Indiana	
* * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 28-Oct. 5 & Feb. 11-Mar. 10
South Zone	Oct. 6-Oct. 13 & Feb. 11-Mar. 10
Ohio River Zone	Oct. 6-Oct. 13 & Feb. 11-Mar. 10
Iowa	
Ducks, mergansers, and coots	Dec. 15-Jan. 26
Dark Geese:	
North Zone	Dec. 7-Jan. 12
South Zone	Oct. 21-Nov. 8 & Dec. 26-Jan. 12

	Extended Falconry Dates
South Dakota	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone	Sept. 4-Sept. 13 & Sept. 16-Sept.20 & Dec. 4-Dec. 19
Middle Zone	Sept. 4-Sept. 13 & Sept. 16-Sept. 27 & Dec. 11-Dec. 19
South Zone	Sept. 4-Sept. 13 & Sept. 16-Oct. 6 &
High Plains	Sept. 4-Sept. 11
Texas	
* * * * *	
Ducks, mergansers, and coots:	
Low Plains North Zone	Jan. 27-Feb. 17
Low Plains South Zone	Jan. 20-Feb. 10
* * * * *	
PACIFIC FLYWAY	
Arizona	
* * * * *	
Ducks and mergansers:	
North Zone	Oct. 13-Oct. 17
South Zone	Jan. 27-Jan. 31
California	
Ducks, mergansers, and coots:	
Northeastern Zone	Jan. 6-Jan. 24
Colorado River Zone	Jan. 27-Jan. 31
Southern Zone	Oct. 19-Nov. 1 & Jan. 27-Jan. 3
Balance-of-State Zone	Nov. 18-Nov. 29 & Jan. 27-Feb. 9
Southern San Joaquin Zone	Nov. 11-Nov. 22 & Jan. 27-Jan. 31
Canada Geese:	
Northeastern Zone	Jan. 20-Jan. 24
Southern Zone	Jan. 27-Jan. 31
Balance-of-State Zone (5)	Oct. 26-Nov. 1 & Jan 27-Feb. 9
Southern San Joaquin Zone	Oct. 19-Nov. 1 & Jan. 27-Jan. 31

	Extended Falconry Dates
Ohio	
Ducks, mergansers, and coots	Sept. 7-Sept. 15 & Oct. 12-Oct. 13 & Jan. 20-Feb. 24
Tennessee	
* * * * *	
Ducks, mergansers, and coots	Sept. 19-Oct. 28
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Duck Zone	Sept. 1-Sept. 27 & Nov. 27-Dec. 16
South Duck Zone	Sept. 1-Oct. 4 & Oct. 14-Oct. 18 & Dec. 9-Dec. 16
Woodcock	Sept. 1-Sept. 20 & Nov. 5-Dec. 16
Ducks, mergansers, and coots	Sept. 21-Sept. 22 & Jan. 25-Mar. 10
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone	Feb. 16-Mar. 9
Late Zone	Feb. 16-Mar. 9
Montana (2)	
Ducks, mergansers, and coots:	
Zone 1	Sept. 18-Sept. 27
Zone 2	Sept. 18-Sept. 27
* * * * *	
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zone 1	Dec. 9-Dec. 13 & Jan. 13-Jan. 29
Zone 2	Dec. 9-Dec. 13 & Jan. 27-Feb. 12

	Extended Falconry Dates
California (cont.)	
White-fronted Geese:	
Northeastern Zone	Jan. 20-Jan. 24
Southern Zone	Jan. 27-Jan. 31
Balance-of-State Zone	Oct. 26-Nov. 1 & Jan. 27-Feb. 9
Southern San Joaquin Zone	Oct. 19-Nov. 1 & Jan. 27-Jan. 31
Brant	
Northeastern Zone	Oct. 12-Nov. 9 & Dec. 10-Jan 24
Southern Zone	Nov. 2-Nov. 9 & Dec. 10-Jan. 31
Balance-of-State Zone	Oct. 26-Nov. 9 & Dec. 10-Feb. 9
Southern San Joaquin Zone	Oct. 19-Nov. 9 & Dec. 10-Jan. 31
Light Geese:	
Northeastern Zone	Jan. 20-Jan. 24
Southern Zone	Jan. 27-Jan. 31
Balance-of-State Zone	Oct 26-Nov. 1 & Jan. 27-Feb. 9
* * * * *	
New Mexico	
* * * * *	
Rails	
Dark Geese:	Dec. 14-Jan. 19
North Zone	Nov. 4-Nov. 10
South Zone	Oct. 5-Oct. 11
Light Geese:	
North Zone	Nov. 4-Nov. 10
South Zone	Oct. 5-Oct. 11
* * * * *	

(2) In Montana, the bag limit is 2 and the possession limit is 6.

* * * * *

(4) In Maine, the daily bag and possession limits for black ducks are 1 and 2, respectively.
(5) In California, the falconry season for Canada geese is closed in the Del Norte and Humboldt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(6) In Florida, light geese may only be taken north and west of the Suwannee River.

[FR Doc. 02–23804 Filed 9–19–02; 8:45 am]
BILLING CODE 4310–55–C

Federal Register

Friday,
September 20, 2002

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002–03 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 21, 2002.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the July 29, 2002, **Federal Register** (67 FR 49176), we proposed special migratory bird hunting regulations for the 2002–03 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the March 19, 2002, **Federal Register** (67 FR 12501), we requested that tribes desiring special hunting regulations in the 2002–03 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit the level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the July 29, 2002, proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the August 29 **Federal Register** (67 FR 55660). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 29, 2002, proposed rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2002–03 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 20 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on July 29, 2002, closed on August 8, 2002, however, we did not receive any comments.

We received one comment regarding the notice of intent published on March 19, 2002, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. We responded to this comment in the August 29 final rule.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)'' was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address

indicated under the caption **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the same address.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *''. Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under the caption **ADDRESSES.**

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866. A cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Small Business Regulatory Enforcement Fairness Act

The annual migratory bird hunting regulations constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this series of rules has an annual effect on the economy of $100 million or more. However, because these rules establish hunting seasons, we do not plan to defer the effective date of this rule under the exemption contained in 5 U.S.C. 808 (1), and this rule will be effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, the annual migratory bird hunting rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more

restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), November 6, 2000, (3 CFR 2000 Comp., p. 304), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the March 19, 2002, request for proposals and the July 29, 2002, proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and nontribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. Law 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.110 is amended by revising paragraphs (a), (b), (f), (h), (i), (k), (l), (o), (p), (q), and (s) and by adding paragraphs (t) through (bb) to read as set forth below. (Current § 20.110 was published at 67 FR 55660, August 29, 2002.)

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 2002; then open November 16, 2002, close January 13, 2003.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (Including Mergansers)

Season Dates: Open October 11, 2002, close January 25, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two redheads, two hen mallards, four scaup, two goldeneyes, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open November 10, 2002, close January 19, 2003.

Daily Bag and Possession Limits: Four geese, including no more than two dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is eight, but could include no more than six white geese or four dark geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 14, close October 20, 2002.

Daily Bag and Possession Limits: Three and six, respectively.

Doves

Season Dates: Open September 1, close October 31, 2002.

Daily Bag and Possession Limits: 15 and 30, respectively.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Ducks

Pintail: Open October 5, close December 3, 2002.

Other ducks: Open October 5, close December 17, 2002.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two

female mallards), two redheads, one pintail (when open), three scaup, and two wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 19, 2002, close January 21, 2003.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open September 28, close December 22, 2002.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 28, 2002, close January 2, 2003.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

* * * * *

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 21, 2002, close January 26, 2003. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays and for a continuous period in the months of October and November. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2002, close September 15, 2002, and open October 1, 2002, close January 26, 2003. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 20, 2002, close January 26, 2003.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2002, close January 31, 2003.

Daily Bag and Possession Limits: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20 and including the possession of a validated Migratory Bird Hunting and Conservation Stamp.

* * * * *

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 28, close December 5, 2002.

Daily Bag and Possession Limits: Six ducks, including no more than four mallards (only one of which may be a hen), three scaup, one black duck, two redheads, two wood ducks, and one pintail. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit, only two of which can be hooded mergansers.

Coots and Common Moorhens (Common Gallinules)

Season Dates: Open September 28, close December 5, 2002.

Daily Bag and Possession Limits: 15 coots and common moorhens (common gallinules), singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, close September 15, 2002, early season, then open September 28, close December 5, 2002, regular season, and open January 1, close February 8, 2003, late season.

Daily Bag and Possession Limits: Five geese in the early and late seasons and two geese in the regular portion of the season. The possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 28, 2002, close December 5, 2002.

Daily Bag and Possession Limits: Five and ten, respectively.

Rails, Snipe, and Woodcock

Season Dates: Open September 15, close November 14, 2002.

Daily Bag and Possession Limits: 8 rails, 8 snipe, and 3 woodcock. Possession limits for snipe and woodcock would be twice the daily bag limit. The possession limit for rails would be 25.

Mourning Doves

Season Dates: Open September 15, close November 14, 2002.

Daily Bag and Possession Limits: 10 and 20, respectively.

General

A. All tribal members will be required to obtain a valid tribal resource card and 2002–03 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on

the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 20, 2002, close January 20, 2003.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 wood ducks, 1 pintail, 1 hooded merganser, and 1 canvasback. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2002, close January 20, 2003.

Daily Bag and Possession Limits: 5 and 10, respectively.

White-fronted Geese, Brant, and Snow Geese

Season Dates: Open October 1, 2002, close November 30, 2002.

Daily Bag and Possession Limits: 5 and 10, respectively.

Sora Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2002.

Daily Bag and Possession Limits: Five rails, five snipe, and five woodcock.

General: Possession limits are twice the daily bag limits.

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(k) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 2002.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2002.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails: Open September 21, 2002, close November 19, 2002.

Other ducks: Open September 21, 2002, close January 5, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

Dark Geese

Season Dates: Open September 21, 2002, close January 5, 2003.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Ducks (Including Mergansers)

Season Dates: Open September 28, close November 30, 2002.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), five wood ducks, one redhead, and one hooded merganser. The seasons on canvasbacks and pintails are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close December 31, 2002.

Daily Bag Limit: Three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time. The possession limit is twice the daily bag limit.

Woodcock

Season Dates: Open September 14, close November 15, 2002.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

* * * * *

(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Pintails

Season Dates: The season on pintails is the same as those established by the State of Washington, under final Federal frameworks, to be announced.

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2002, and close February 28, 2003.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads. The season on canvasbacks is closed.

Geese

Season Dates: Open September 15, 2002, and close February 28, 2003.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2002, through February 28, 2003.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Pintails

Season Dates: The season on pintails is the same as that established by the State of Washington, under final Federal frameworks, to be announced.

Other ducks: Open October 12, 2002, close January 26, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when

open), four scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively

Geese

Season Dates: Open October 19, 2002, close January 26, 2003.

Daily Bag and Possession Limits: Four geese, including four dark geese but no more than three light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 11, 2003, close January 26, 2003.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 14, 2002, close February 28, 2003.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(p) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Pintails

Season Dates: Open November 1, 2002, close December 30, 2002.

Ducks

Season Dates: Open November 1, 2002, close February 8, 2003.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open November 1, 2002, close February 8, 2003.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open November 1, 2002, close February 8, 2003.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are 10 and 7, respectively.

Mourning Dove

Season Dates: Open September 1, end December 31, 2002.

Daily Bag Limit: 12 mourning dove.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR.

(q) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Teal

Season Dates: Open October 19, 2002, close January 31, 2003.

Daily Bag Limit: Six Teal.

Ducks

Season Dates: Open October 28, 2002, and close February 24, 2003.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and one hen eider. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 28, 2002, and close February 24, 2003.

Daily Bag Limit: Seven ducks including no more than four of any one species.

Geese

Season Dates: Open September 14, 2002, and close September 21, 2002, and open November 1, 2002, close February 28, 2003.

Daily Bag Limit: 5 Canada geese during the first period, 3 during the second, and 15 snow geese during both periods.

Woodcock

Season Dates: Open October 19, 2002, and close November 30, 2002.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

* * * * *

(s) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 4, close September 18, 2002.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 4, close September 18, 2002.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Pintails

Season Dates: Open October 12, 2002, close December 11, 2002.

Other Ducks

Season Dates: Open October 12, 2002, close January 26, 2003.

Daily Bag and Possession Limits: Four ducks, including no more than three mallards (including no more than one hen mallard), two redheads, and one pintail. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 12, 2002, close January 26, 2003.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, the area open to waterfowl hunting in the above seasons

consists of: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2002–03 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2002–03 season.

(t) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Nontribal Hunters)

Ducks

Pintails (For Nontribal Hunters Only) Open September 28, 2002, close October 27, 2002.

Other ducks: Open September 28, 2002, close November 26, 2002, except shooting hours on opening day and for every hunting day for the remainder of the season would be one-half hour before sunrise and continue to one-half hour after sunset for tribal members. Nontribal shooting hours will go from one-half hour before sunrise to sunset on reservation.

Daily Bag Limits and Possession Limits: The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, and 2 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

The Band's Conservation Department regulates nontribal harvest limits under the following regulations: (1) Nontribal hunters must be accompanied at all times by a Band Member guide; (2) Nontribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) Nontribal hunters and Band Members must have only Service-approved nontoxic shot in possession at all times; (4) Nontribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

(u) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

Ducks (Including Mergansers)

Pintail: Open September 21–22, 2002, for Youth Waterfowl Season only, and open September 28, close November 26, 2002.

Other ducks: Open September 28, 2002, close January 10, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), four scaup, and two redheads. The season on canvasback is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open September 28, 2002, close January 10, 2003.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open September 28, 2002, close January 10, 2003.

Daily Bag and Possession Limits: Three and six geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 21–22, 2002.

Daily Bag and Possession Limits: Same as ducks but includes one pintail.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(v) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Ducks (Mergansers)

Season Dates: Open October 5, close November 30, 2002.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, two redheads, and four scaup. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 5, close November 30, 2002.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(w) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Open October 1, 2002, close January 28, 2003.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines.

(x) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Tribal Members

Pintail

Season Dates: Open October 5, 2002, close November 19, 2002.

Other Ducks (Including Mergansers and Coots)

Season Dates: Open October 5, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, and one pintail (when open). The season on canvasbacks is closed. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one

hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 19, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 19, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 19, 2002, close March 10, 2003.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 28, close September 29, 2002.

Daily Bag and Possession Limits: Same as above.

Nontribal Hunters

Pintail

Season Dates: Open October 5, 2002, close November 19, 2002.

Other Ducks (Including Mergansers and Coots)

Season Dates: Open October 5, 2002, close January 9, 2003.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, and one pintail (when open). The season on canvasbacks is closed. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 19, 2002, close January 21, 2003.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 19, 2002, close January 21, 2003.

Daily Bag and Possession Limits: Two geese and four, respectively.

Light Geese

Season Dates: Open October 19, 2002, close January 21, 2003, and February 27, 2003, close March 10, 2003.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 28, close September 29, 2002.

Daily Bag and Possession Limits: Same as above.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(y) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Pintails

Season Dates: Open October 5, 2002, close December 3, 2002.

Ducks

Season Dates: Open October 5, 2002, close January 17, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail (when open), one scaup, and two redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

Geese

Season Dates: Open October 5, 2002, close January 10, 2003.

Daily Bag and Possession Limits: Four geese, including not more than three light geese or two white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(z) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

Pintails

Season dates: Open October 1, 2002, close November 30, 2002.

Ducks (Including Mergansers)

Season Dates: Open October 1, 2002, close January 31, 2003.

Daily Bag and Possession Limits: 10 including no more than five hen mallards, two pintail, seven scaup, and five redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively. The daily bag limit on brant is three.

Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(aa) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Off Reservation

Ducks (Including Mergansers)

Season Dates: Open September 21, 2002, close February 25, 2003.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (Including Mergansers)

Season Dates: Open September 15, 2002, close March 9, 2003.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(bb) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Pintails

Season Dates: Open October 12, close November 19, 2002.

Other ducks: Open October 12, close December 24, 2002.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (no more than two hen mallards), two redheads, one pintail (when open), three scaup, and two wood ducks. The season on canvasbacks is closed. The daily bag limit for mergansers is five, of which no more than one can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Dark Geese

Season Dates: Open October 29, 2002, close January 31, 2003.

Daily Bag and Possession Limits: Three geese, including no more than one white-fronted goose or brant. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2002, close January 31, 2003.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions:

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 12, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23805 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Friday,

September 20, 2002

Part V

Department of Transportation

Research and Special Programs Administration

Preemption Determination No. PD–22(R); New Mexico Requirements for the Transportation of Liquefied Petroleum Gas; Notices

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7092 (PDA–22(R)]

Preemption Determination No. PD–22(R); New Mexico Requirements for the Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), Transportation.

ACTION: Administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Applicant: American Trucking Associations, Inc. (ATA).

State Laws Affected

—5 New Mexico Statutes Annotated (NMSA) 70–5–7(A), containing examination requirement for persons who transport or dispense liquefied petroleum (''LP'') gas.
—5 NMSA 70–5–7(C), containing examination fee requirement for persons who transport or dispense LP gas.
—5 NMSA 70–5–9(A), requiring payment of a reasonable annual license fee.
—5 NMSA 70–5–9(C), requiring payment of a reasonable safety inspection fee.
—5 NMSA 70–5–10, requiring the deposit of fees into the State general fund.
—19 New Mexico Annotated Code (NMAC) 15.4.9.1, establishing examination requirement for persons who transport or dispense LP gas.
—19 NMAC 15.4.9.2, requiring identification card.
—19 NMAC 15.4.9.3, prohibiting persons from working without an identification card.
—19 NMAC 15.4.9.4, establishing identification card annual renewal and reasonable fee requirements.
—19 NMAC 15.4.9.5, requiring re-examination.
—19 NMAC 15.4.10.1, requiring annual vehicle safety inspection.
—19 NMAC 15.4.14.3(C), establishing cargo tank inspection and reinspection fees.
—19 NMAC 15.4.15.1, establishing license classification and fee for wholesale sale, transport, or delivery of LP gas.
—19 NMAC 15.4.15.12, establishing annual identification card renewal fee.
—19 NMAC 15.4.15.13, establishing examination fee.
—19 NMAC 15.4.15.14, establishing re-examination fee.

Applicable Federal Requirements: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Modes Affected: Highway.

SUMMARY: Federal hazmat law preempts New Mexico's cargo tank inspection requirement, as applied to vehicles based outside the State, because the requirement causes unnecessary delay in the transportation of hazardous materials. On the other hand, Federal hazmat law does not preempt New Mexico's cargo tank inspection requirement, as applied to vehicles based in the State, because there is no evidence in the record that the requirement causes unnecessary delay in the transportation of hazardous materials by those carriers.

Federal hazmat law also preempts New Mexico's employee examination and identification card requirements, as applied to non-domiciled, LP gas carrier personnel, because the HMR specifically provide that State training requirements may not apply to drivers domiciled outside the State. However, Federal hazmat law does not preempt New Mexico's employee examination and identification card requirements, as applied to domiciled, LP-gas carrier personnel, because the HMR specifically provide that State training requirements may apply to drivers domiciled within the State.

Finally, Federal hazmat law preempts New Mexico's LP gas transporter license fee requirements applicable to intrastate and interstate motor carriers that move, load, or unload hazardous materials in commerce because the fee paid to obtain the license is neither fair nor used for hazardous material transportation purposes. Federal hazmat law also preempts New Mexico's vehicle inspection fee, employee examination fee, and identification card fee requirements because the record does not support a finding that the fees are used for hazardous materials transportation purposes. Federal hazmat law does not preempt the New Mexico provisions that require the payment of reasonable licensing, vehicle inspection, and employee examination fees and the deposit of those fees into the State general fund.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001; telephone no. (202) 366–0273; e-mail address: *nancy.machado@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2000, ATA applied for a determination that Federal hazmat law preempts certain licensing, vehicle inspection, and employee testing requirements applicable to intrastate and interstate carriers under New Mexico's 1978 ''LPG and CNG Act,'' 5 New Mexico Statutes Annotated, Chapter 70 (5 NMSA 70), and in the corresponding regulations contained in the Petroleum Gas Standards issued by the Construction Industries Division (CID) of New Mexico's Regulations and Licensing Department, 19 New Mexico Annotated Code, Chapter 15, Part 4 (19 NMCA 15.4).

New Mexico requires each main and branch office of a motor carrier operating within the State to hold a license in order to wholesale, transport, or deliver LP gas. New Mexico imposes an annual $125 license fee. New Mexico also requires annual vehicle inspections for all vehicles transporting LP gas within the State. The inspections are conducted by employees of the New Mexico Liquefied Petroleum Gas Bureau (the ''Bureau''). The annual inspection fee is $37.50.

Furthermore, New Mexico requires all employees who transport or dispense LP gas in the State to prove, by passing an examination, that they are familiar with minimum safety standards and practices regarding the handling of LP gas. A person who passes the examination must carry an identification card. A person who has not passed the New Mexico examination may not transport or dispense LP gas within the State. New Mexico charges a $25 examination fee and a $10 identification card fee per employee.

All fees collected under the provisions of the LPG and CNG Act are deposited into the State general fund.

On March 31, 2000, the Research and Special Programs Administration (''RSPA'' or ''we'') published a public notice and invitation to comment on ATA's application (63 FR 17335). The notice set forth the text of ATA's application. Comments were submitted by the Hazardous Materials Advisory Counsel (HMAC, now known as the Dangerous Goods Advisory Council), the National Propane Gas Association (NPGA), the National Tank Truck Carriers, Inc. (NTTC), the New Mexico Propane Gas Association (NMPGA), and the CID. We received no rebuttal comments.

II. New Mexico's Statutory and Regulatory Requirements

In its application, ATA asserts that New Mexico's LP gas requirements go beyond the HMR, create confusion, and impose burdens on transporters and, thus, are obstacles to accomplishing the objectives of Federal hazmat law and the HMR. Specifically, ATA argues that the following New Mexico statutory and regulatory requirements are preempted by Federal hazmat law:

(1) *5 NMSA 70–5–7(A) and (C),* which authorize the Bureau to establish examination requirements for employees who transport or dispense LP gas and to assess an examination fee. Those subsections read as follows:

70–5–7. Requiring competent employees in transporting, dispensing, installation, service or repair.

A. The bureau may require each person, firm or corporation that transports or dispenses LP gas or that installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission.

* * * * *

C. The bureau shall set a reasonable fee for administering an examination.

(2) *5 NMSA 70–5–9(A) and (C),* which require persons transporting LP gas within the State to pay annual license and vehicle inspection fees. Those subsections read as follows:

70–5–9. Annual License Fees; Inspection Fees.

A. For the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable fees as set, classified and defined by the bureau for each operating location. Provided, the total annual fees charged any one licensee for a combination of LP gas activities at one location and subject to licensure under this section shall not exceed three hundred fifty dollars ($350) and the fee charged for any single activity or operation as set, classified and defined by the bureau shall not exceed one hundred and fifty dollars ($150).

* * * * *

C. In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. The fee shall be set by the bureau and shall not be assessed more frequently than once in each twelve months. The bureau may also charge a reasonable fee for late payment of any fees.

(3) *5 NMSA 70–5–10,* which requires that all fees collected under the LPG and CNG Act be deposited into the State general fund. That section reads as follows:

70–5–10. All fees and money collected under the provisions of the LPG and CNG Act * * * shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. * * *

(4) *19 NMAC 15.4.9,* which requires personnel who transport or dispense LP gas to pass a safety examination. Persons who pass the examination must pay a fee to obtain an identification card from the Bureau. The Bureau reissues the cards annually and charges a fee. Persons who have not passed the examination may not transport or dispense LP gas within the State. That section reads as follows:

9. Examination

No licensee or employee of a licensee shall install or modify any appliance or piping system until he has proved his knowledge of acceptable minimum standards by passing an examination required by the Bureau.

9.1 All personnel whose duties require that they transport or dispense LP Gas shall prove by passing an examination, as required by the Bureau, that they are familiar with minimum safety standards and practices with regard to the handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination by the Bureau.

9.2 An identification card shall be issued to each person who passes the examination required by the LP Gas Bureau. The identification card shall contain pertinent information such as examinee's name, address and classification(s) for which examinee is certified, and may also provide space for listing violations of the LP Gas Act.

9.3 No licensee or employee shall perform the work he has examined for until he has received an identification card for that classification from the Bureau.

9.4 An identification card shall only be valid while employed by a licensee. The identification card shall be renewed annually with payment of a reasonable fee to the Bureau on the anniversary date of the employer's license. The renewal fee shall be paid with the licensee's renewal for all listed qualifying parties.

9.5 An identification card holder not employed by a licensee for a period of two (2) years shall retest before being qualified.

(5) *19 NMAC 15.4.10.1,* which requires annual safety inspections of vehicles transporting bulk quantities of LPG. That section reads as follows:

10. Annual Inspections

10.1 There shall be an annual safety inspection, made by an inspector of the Bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection.

* * * * *

(6) *19 NMAC 15.4.14.3(C),* which establishes a $37.50 fee for vehicle safety inspections and re-inspections. That subsection reads as follows:

14. Printed Forms, Permits and Fees

* * * * *

14.3 Printed forms listed below by number or name are hereby adopted and their use for the purpose stated:

* * * * *

14.3.C LP Gas Visual Cargo Tank and Equipment Inspection Form.—$37.50

(Shall not be assessed more than one time in each 12 month period)

Re-inspection of Cargo Tank and Equipment and additional charge for re-inspection.—$37.50

Licensee must obtain Form prior to inspection of vehicle or placing a new vehicle in service. Bureau inspector will complete Form upon inspection. Corrections after inspection will require a Correction Form and re-inspection. To expedite inspections, vehicle licensee will be notified by the LP Gas Bureau that vehicle annual inspection is due during the first month of the inspection quarter.

* * * * *

(7) *19 NMAC 15.4.15.1,* which establishes a $125 annual license fee for persons wholesaling, transporting, or delivering LP gas in the State. That section reads as follows:

15.1 LP–1 Wholesale Sale or Delivery of LP Gas—$125.00

A licensee under this classification is authorized to wholesale, transport and/or deliver gas in vehicular units into or out of any location except that of an ultimate consumer. This classification will allow delivery to the ultimate consumer whose facilities require a bulkhead.

(8) *Sections 12, 13, and 14 of 19 NMAC 15.4.15,* which impose examination, re-examination, and identification card fees. Those sections read as follows:

* * * * *

15.12 Annual renewal fee per qualifying party identification card—$10.00

15.13 Licensing examination fee—$25.00

15.14 Licensing re-examination fee—$25.00

III. Federal Preemption

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation (''DOT'') greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' Pub. L. 93–633 § 102, 88 Stat. 2156, presently codified as revised in 49 U.S.C. 5101. The HMTA ''replace[d] a patchwork of state and

federal laws and regulations * * * with a scheme of uniform, national regulations.'' *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n,* 909 F.2d 352, 353 (9th Cir. 1980). On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified, and enacted ''without substantive change'' by Public Law 103–272, 108 Stat. 745. The Federal hazardous material transportation law is now found in 49 U.S.C. Chapter 51. The HMR carry out the direction in 49 U.S.C. 5103(b)(1) that DOT ''shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce.''

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, a Federal Court of Appeals found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

The 1990 amendments to the HMTA codified the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings before 1990.[1] The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 83 S. Ct. 1210 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151, 98 S. Ct. 988 (1978). As now set forth in 49 U.S.C. 5125(a), these criteria provide that, in the absence of a waiver of preemption by DOT under 49 U.S.C. 5125(e) or unless it is authorized by another Federal law, ''a requirement of a State, political subdivision of a State, or Indian tribe'' is explicitly preempted if:

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out of this chapter or a regulation prescribed under this chapter.

In the 1990 amendments to the HMTA, Congress also added additional preemption provisions on certain ''covered subject'' areas that must be ''substantively the same as'' a provision of Federal hazmat law or the HMR and with regard to fees imposed by a State, political subdivision, or Indian tribe on the transportation of hazardous material. 49 U.S.C. 5125(b)(1).

Section 5125(g)(1) of Federal hazmat law, 49 U.S.C. 5125(g)(1), provides that a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.73(d)(2); 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 5125(f).

Preemption determinations do not directly address issues of preemption arising under the Commerce Clause of the Constitution, except that, as discussed in more detail in section IV.C.1, below, RSPA considers that Commerce Clause standards are relevant to a determination whether a fee related to the transportation of hazardous material is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). Preemption determinations also do not address statutes other than the Federal hazmat law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local, or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d at 1581, n. 10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999). Section 4(A) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Discussion

A. New Mexico Vehicle Inspection Requirements

1. The New Mexico Requirements

New Mexico requires annual safety inspections of vehicles transporting bulk quantities of LP gas within the State. 19 NMAC 15.4.10.1. The inspections are conducted by the Bureau. *Id.* Each vehicle that passes the required inspection must display a State-issued decal.

In its application, ATA challenges the New Mexico safety-inspection requirement at 19 NMAC 15.4.10.1 and states that neither the NMSA nor NMAC set forth procedures for how these annual safety inspections are to be conducted. Moreover, ATA states that at least one of its carrier members has been required to present each of its LP gas vehicles to New Mexico inspectors at a preset date and location, without regard to its principal place of business. In addition, ATA submits that motor carriers are already subject to Federal annual and random roadside inspections, in accordance with 49 CFR part 396 of the Motor Carrier Safety Regulations, and to inspection, repair and maintenance requirements for cargo tanks, in accordance with 49 CFR part 180 of the HMR. Consequently, ATA asserts that the New Mexico requirements are redundant with the Federal requirements, disrupt motor carrier operations, and cause unnecessary delay.

In support of its application, ATA submitted the affidavit of Mr. Lloyd Dean, Vice President of Operations and the Chief Operating Officer of Basin Western, Inc., an interstate motor carrier. Basin Western is located in Roosevelt, Utah, and provides transportation services throughout the Western United States inter-mountain region, including New Mexico. In his

[1] While advisory in nature, RSPA's inconsistency rulings were ''an alternative to litigation for a determination of the relationship of Federal and State or local requirements'' and also a possible ''basis for an application * * * [for] a waiver of preemption.'' Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas Intended to be used by a Public Utility, 44 FR 75566, 76657 (Dec. 20, 1979).

affidavit in support of ATA's application, Mr. Lloyd Dean of Basin Western states,

> Basin Western does not know in advance which of its vehicles will be used to transport LPG into or through the State of New Mexico. Consequently, to be in compliance, Basin Western must annually submit each of its 45 vehicles engaged in LP gas transportation in New Mexico for inspections by the State. Appointments for vehicle inspections are made by informing the Division prior to the date of entry into the State. At that time, a representative of the State informs Basin Western as to the location and time of the inspection. If however, no inspector is available on the date, Basin Western is prohibited from transporting LP gas to destinations within or through the State in that vehicle and must rearrange its schedule for delivery of the product and later inspection of the vehicle or risk penalty of non-compliance. Twice, Basin Western has tried but been unable to schedule inspections in time to meet scheduled deliveries.

Mr. Dean also indicates that Basin Western complies with the Federal annual and daily vehicle inspection requirements. Moreover, he asserts that Basin Western's vehicles are subject to an average of 112 roadside inspections per year, conducted by various State agencies.

NTTC, HMAC, and NPGA support ATA's argument and state that New Mexico's inspection requirements create a time-consuming, impractical, and costly process that impacts drivers, and operational and administrative personnel. Moreover, NTTC submits that Part 180 of the HMR is the standard for cargo tank testing and inspections and that it sets the benchmark by which to measure whether delays in hazardous materials transportation are ''necessary'' and acceptable. NTTC concludes that the New Mexico inspection requirement should be preempted because the requirement is contrary to the mandate in 49 CFR 177.800(d) that all shipments of hazardous materials be transported without unnecessary delay.

ATA also argues that the interstate transportation of hazardous materials would come to a halt if every jurisdiction required that trucks operating within the State undergo a separate, duplicative, fee-supported inspection. ATA submits that RSPA has erred in not considering the impact of multiple, fee-supported State inspections on the interstate transportation of hazardous materials. ATA asserts that, in determining whether the New Mexico safety inspection requirement is preempted, RSPA should apply the ''internal consistency'' test set forth by the Supreme Court in *Oklahoma Tax Comm'n* v. *Jefferson Lines,* 514 U.S. 175; 115 S. Ct. 1331, 1338 (1995), which weighs a law's impact on interstate commerce in the context of its impact if every other jurisdiction imposed an identical requirement.

ATA asserts that a review under the ''internal consistency'' test would find that allowing a proliferation of New Mexico-like inspection and fee requirements would result in unreasonable transportation delays. ATA concludes that the New Mexico vehicle inspection requirements are contrary to the HMR's mandate in section 49 CFR 177.800(d) that shipments of hazardous materials be transported without unnecessary delay, present an obstacle to the purposes and objectives of Federal hazmat law and the HMR and, thus, should be preempted.

In response to ATA's application, CID argues that the LPG and CNG Act, and corresponding regulations, neither impair nor interfere with the statutory or regulatory authority of DOT involving interstate commerce. CID also argues that the New Mexico requirements are not obstacles to the accomplishment of Federal hazmat law but instead complement it. CID asserts that the ability to comply with the New Mexico requirements is ''within the capability of any entity who desires to deliver and transfer liquefied petroleum gas and compressed natural gas product (gases) or, to sell or offer to sell, or provide any such related merchantable item within the jurisdictional authority of the State of New Mexico.'' CID states that the prudent protection of New Mexico's citizens, and their health and property, is both the State's obligation and its right.

Also, CID indicates that carriers performing loading and unloading activities regulated under the HMR are not subject to the State's vehicle inspection or licensing requirements. It notes, however, that loading and unloading activities not subject to the HMR requirements are within New Mexico's jurisdiction and must be accomplished in accordance with State-adopted standards. CID relates that New Mexico has not experienced a hazardous materials transfer incident in the last ten years and attributes that safety record to the State's adoption of National Fire Protection Association (NFPA) Standard 58 and the State's licensing and enforcement program. In conclusion, CID asserts that the New Mexico requirements should not be preempted. NMPGA, in its comments, supports the New Mexico requirements challenged by ATA.

2. The ''Obstacle'' Test

The HMR require that ''all shipments of hazardous materials * * * be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.'' 49 CFR 177.800(d). Consequently, a non-Federal inspection requirement is preempted as an obstacle to the accomplishment and execution of Federal hazmat law and the HMR when, as applied and enforced, it creates unnecessary delay in the transportation of hazardous material. Preemption Determination (''PD'')–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933, 48941 (Sept. 20, 1993).

RSPA rejects ATA's argument that we should not only consider ''unnecessary delay'' in ascertaining whether the New Mexico inspection requirement is preempted but should also apply the Supreme Court's ''internal consistency'' test, which measures the impact of a requirement on commerce. As we have stated before in response to similar arguments,

> The obstacle criterion for preemption in 49 U.S.C. 5125(a)(2) is a different standard for preemption than whether there is an improper burden on interstate commerce. If the two standards were meant to be equivalent, Congress would have said so, and it would not require RSPA to make a finding with regard to the burden on commerce in considering whether to waive preemption, under § 5125(e), or to consider whether a non-Federal fee is 'fair' or not under 5125(g)(1).

PD–13(R), Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases, Decision on Reconsideration, 65 FR 60238, 60243 (Oct. 10, 2000).

In prior preemption determinations and inconsistency rulings, RSPA has explained why it is concerned with unnecessary delays in hazardous materials transportation. For example, in discussing a requirement to obtain a permit for each shipment of liquefied natural gas and liquefied propane gas, RSPA has indicated:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation. Given that the materials are hazardous and their transportation is not risk-free, it is an important safety aspect of the transportation that the time between loading and unloading is minimized.

IR–2 (Rhode Island), 44 FR at 75571.

In discussing restrictions on the use of city streets by trucks carrying hazardous

materials, RSPA found that ''[t]he mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or be prepared for a sudden, possibly permanent, change in traffic patterns.'' IR–3, City of Boston Rules Governing Transportation of Certain Hazardous Materials by Highway Within the City, 46 FR 18918, 18921 (March 26, 1981).

As for what constitutes ''unnecessary delay,'' RSPA has found that a delay of hours or days waiting for the arrival of an inspector from another location is ''unnecessary, because it substantially increases the time [hazardous materials] are in transportation, increasing exposure to the risks of hazardous materials without corresponding benefit.'' PD–4(R) (California), 58 FR at 48941.

On the other hand, in PD–4(R) RSPA reaffirmed decisions that ''the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its 'turn' for an inspector to finish inspecting another vehicle that arrived earlier at the same facility is not unnecessary delay.'' PD–4(R) (California), 58 FR at 48941, quoted in PD–13(R) (Nassau County), 63 FR 45283, 45286 (Aug. 25, 1998), Decision on Reconsideration, 65 FR at 60243; *See also,* IR–17, Illinois Fee on Transportation of Spent Nuclear Fuel, 51 FR 2120926, Decision on Appeal, 52 FR 36200, 36205 (Sept. 25, 1987) (delay of 1.5 to 2 hours during which a State inspection is conducted is reasonable and ''presumptively valid'').

RSPA has also found that a State's annual inspection requirement applied to vehicles or tanks that operate solely within the State is presumptively valid because it would not create the potential for delays ''associated with entering the State or being rerouted around'' the State. PD–4(R) (California), Decision on Reconsideration, 60 FR at 8803, quoted in PD–13(R) (Nassau County), 63 FR at 45286. A carrier whose vehicles are based within the inspecting jurisdiction should be able to schedule an inspection at a time that does not disrupt or unnecessarily delay deliveries, and such inspections are consistent with the traditional authority of a State or political subdivision to license, inspect, and otherwise regulate a motor vehicle based within its jurisdictional boundaries. PD–13(R) (Nassau County), Decision on Reconsideration, 65 FR at 60243.

Conversely, RSPA has recently determined that non-Federal vehicle inspection requirements have an inherent potential to cause unnecessary delays in the transportation of hazardous materials when the requirement is applied to vehicles based outside the inspecting jurisdiction. *See* PD–28(R), Town of Smithtown, New York, Ordinance on Transportation of Liquefied Petroleum Gas, 67 FR 15276 (March 29, 2002). In PD–28(R) (Smithtown), RSPA found that ''the 'call and demand' nature of common carriage makes it (1) impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and (2) impractical to have all vehicles inspected every year or, alternatively, have a few vehicles inspected in order to be 'dedicated' to the inspecting jurisdiction.'' *Id.* at 15279. Consequently, the applicant in PD–28(R) (Smithtown) was not required to present more specific evidence of the local inspection requirement's effect on the movement of hazardous materials in vehicles based outside the State in order for RSPA to determine that the requirement was preempted as an obstacle to accomplishing and carrying out the HMR.

In discussing New Mexico's vehicle inspection requirements, Basin Western—an interstate carrier based in Utah—asserts that twice it has tried but been unable to obtain inspections in time to meet scheduled deliveries. In those instances, under New Mexico's regulations, Basin Western was prohibited from transporting LP gas to its destination within or through New Mexico in the uninspected vehicle and was forced to rearrange its schedule for delivery of the product and later inspection of the vehicle. ATA and HMAC note that New Mexico's inspection requirement results in deviation of hazardous materials shipments from their destination route in order to fulfill the inspection provision or, where obtaining a timely inspection is not possible, rerouting of the hazardous materials shipments through other States in order to avoid penalties for noncompliance; both scenarios result in unnecessary delays.

As noted above, neither Federal hazmat law nor the HMR preclude a State from inspecting vehicles traveling within or through the State. Under the principles announced in PD–4(R) (California), a State generally may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries but only if it can actually conduct an ''on the spot'' inspection upon the truck's arrival within the jurisdiction. The State cannot require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of hazardous materials for several hours in order for an inspection to be conducted. In its comments, New Mexico did not address its ability to conduct ''on the spot'' inspections.

For the reasons set forth above, RSPA finds that, as applied and enforced, NMAC 15.4.10.1 creates an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside of the State. Accordingly, Federal hazmat law preempts 19 NMAC 15.4.10.1 with respect to trucks that are based outside New Mexico. Based on the lack of information in the record regarding how the New Mexico inspection requirements are applied and enforced with respect to trucks that are based within the State, RSPA finds that Federal hazmat law does not preempt New Mexico's vehicle inspection requirement at 19 NMAC 15.4.10.1 with respect to trucks based within the State.

B. New Mexico Employee Examination and Identification Card Requirements

1. The New Mexico Requirements

The LPG and CNG Act gives the Bureau the authority to require persons that transport or dispense LP gas to pass an appropriate examination based on the safety requirements of the Construction Industries Commission (the ''Commission''), 5 NMSA 70–5–7(A). The Bureau's implementing regulations require that all personnel who transport or dispense LP Gas prove, by passing an examination, that they are familiar with minimum safety standards and practices regarding the handling of LP Gas. 19 NMAC 15.4.9.1 and 15.4.9.5. A licensee or employee may not transport or dispense LP gas until he has passed the examination and received an identification card from the Bureau. 19 NMAC 15.4.9.1, 15.4.9.2, and 15.4.9.3. The identification card must be renewed annually. 19 NMAC 15.4.9.4.

In its application, ATA asserts that New Mexico requires any person who operates, loads, or unloads an LP gas transport vehicle, including drivers in interstate commerce, to take a safety examination before being allowed to perform those functions within the State. ATA further asserts that the New Mexico examination is scheduled at various times at different locations throughout the State and that all applicants, whether domiciled within the State or not, must take the test at one of the designated locations. ATA alleges that the testing requirement is in addition to the training and testing requirements in the HMR and imposes costs and other burdens on transporters of LP gas.

ATA notes that while the HMR permit States to impose more stringent training requirements on hazmat drivers, a State may only do so if the requirements (1) do not conflict with the training requirements in 49 CFR part 172 Subpart H and in 49 CFR part 177, and (2) do not apply to drivers domiciled outside the State. ATA asserts that New Mexico's testing requirements are more stringent than those under the HMR and apply to drivers domiciled outside the State. Consequently, ATA argues that the New Mexico training requirements are an obstacle to accomplishing the objectives of Federal hazmat law and the HMR.

Basin Western and other industry commenters support ATA's position. Basin Western states that its drivers must take time to prepare for the New Mexico examination and then must travel to San Juan Community College in Farmington, New Mexico, on the second Saturday of a given month to take a written examination. Basin Western states that it not only must pay a $25 examination fee and $10 identification card fee but also must cover travel expenses, driver wage-related costs, and lost business income for each of its drivers who must take the examination. Basin Western indicates that its drivers hold Commercial Driver's Licenses with appropriate hazardous material and tank vehicle endorsements and are trained in accordance with the HMR. Consequently, Basin Western asserts that the New Mexico training requirements are ''needlessly redundant'' and should be preempted.

2. HMR Training Requirements for Motor Vehicle Operators

The HMR establish general training requirements for persons who package, offer, or transport hazardous materials. 49 CFR part 172, subpart H. The training requirements apply to hazmat employees, including those who operate a vehicle used to transport hazardous material. 49 CFR 171.8 (definition of ''hazmat employee''), 172.702(b). At least every three years, a hazmat employer is required to train and test its hazmat employees to ensure that they have ''familiarity with the general provisions of the HMR, [are] able to recognize and identify hazardous materials, [have] knowledge of specific requirements of the HMR applicable to functions performed by the employee[s], and [have] knowledge of emergency response information, self-protection measures and accident prevention methods and procedures.'' 49 CFR 172.700(b). Moreover, a hazmat employer is required to maintain records showing that it has trained and tested each of its hazmat employees as required under the HMR.

In addition, the HMR impose training requirements for individual modes of transportation, including highway transportation. For example, 49 CFR 177.816(a) requires that motor vehicle operators receive training in a number of areas, including: the requirements of the Federal Motor Carrier Safety Regulations, 49 CFR parts 390 through 397 (incorporated into the HMR by 49 CFR 177.804); pre-trip safety inspection requirements; use of vehicle controls and equipment, including emergency equipment; vehicle operation; vehicle attendance, parking, smoking, routing and incident reporting requirements; and hazardous material loading and unloading procedures, including compatibility and segregation, package handling, and load securement.

In addition to the above training requirements, a person who operates a cargo tank or a vehicle with a portable tank having a capacity of 1,000 gallons or more must have the appropriate State-issued Commercial Driver's License required by 49 CFR part 383. They also must receive specialized training in the following: operation of emergency control features of the cargo tank or portable tank; special vehicle handling characteristics; loading and unloading procedures; the properties and hazards of the material transported; and retest and inspection requirements for cargo tanks. 49 CFR 177.816(b).[2]

The HMR provide that the training requirements set forth above are minimum training requirements for the transportation of hazardous material. 49 CFR 172.701. However, a State may impose more stringent training requirements on motor vehicle drivers only if those requirements: (1) Do not conflict with the training requirements of 49 CFR subpart H and part 177; and (2) apply only to drivers domiciled in that State. 49 CFR 172.701(a) and (b). State training requirement that violate 49 CFR 172.701 are an obstacle as a matter of law. PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, Decision on Reconsideration, 60 FR 10419, 10420 (Feb. 24, 1995) citing PD–7(R) (Maryland), 59 FR 28913, 28919 (June 3, 1994).[3]

The record reflects that New Mexico's training requirements are more stringent than those imposed under the HMR. Specifically, any person who operates, loads, or unloads an LP gas transport vehicle in New Mexico—regardless of that person's domicile—must appear at a designated time and at a designated place in New Mexico to pay a fee and take a written examination.[4] The HMR do not require persons who operate, load, or unload LP gas transport vehicles to take a government-administered examination or to pay an examination fee to the government. Moreover, a person may not transport or dispense LP gas in New Mexico until he has passed the examination and received an identification card from the Bureau, which must be renewed every year for a fee. The HMR do not require an operator to obtain an identification card, as proof of training and examination, from a governmental body prior to engaging in hazardous materials transportation activities. The record is clear that the New Mexico training requirements go beyond the HMR training requirements. *See* PD–7(R) (Maryland), 60 FR 10420 (requirement to obtain a certificate of training from a State is ''more strict'' than the HMR); *see also Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d at 1581 (requirement to submit proof of training goes beyond HMR).

In summary, it is clear from the record that New Mexico's training requirement at 5 NMSA 70–5–7(A), and the implementing regulations at 19 NMAC 15.4.9.1 through 15.4.9.5, are more stringent than the HMR training requirements. While there is no evidence in the record that the substance of the New Mexico training requirements conflicts with the HMR training requirements, the record does support ATA's assertion that the New Mexico training requirements are being applied to motor vehicle operators domiciled outside the State.

Consequently, New Mexico's training requirements at 5 NMSA 70–5–7(A), and the implementing regulations at 19 NMAC 15.4.9.1 through 15.4.9.5, violate 49 CFR 172.701(b) and, as applied to non-domiciled operators, are preempted as an obstacle to accomplishing the goals of Federal hazmat law and the HMR.

[2] The training requirements in 49 CFR 177.816(a) and (b) may be satisfied by compliance with the current requirements for a Commercial Driver's license with a tank vehicle or hazardous materials endorsement. 49 CFR 177.816(c).

[3] The authority granted to States to impose stricter requirements on their domiciled operators ''recognizes the traditional regulation by States of their own resident drivers.'' PD–7(R) (Maryland), 59 FR at 28919.

[4] There is no specific information in the record regarding the substance of the New Mexico safety examination. Basin Western, however, characterizes the New Mexico testing requirements for LP gas transportation as ''needlessly redundant'' with the HMR training requirements.

As applied to operators domiciled in New Mexico, the New Mexico training requirements are more stringent than those imposed under the HMR. However, as noted above, there is no evidence in the record that the substance of the New Mexico training requirements conflicts with the HMR training requirements. Accordingly, as applied to operators domiciled in New Mexico, the New Mexico training requirements at 5 NMSA 70–5–7(A) and at 19 NMAC 15.4.9.1 through 15.4.9.5 are not preempted.

C. Fees

1. LP Gas License Fee Requirement

a. The New Mexico Requirements

New Mexico requires a person to obtain a license from the State prior to transporting LP gas within the State. 5 NMSA 70–5–6(A). The LPG and CNG Act directs the Bureau to issue a license only after it has determined that an applicant meets all safety requirements provided for under that act and under the regulations of the Commission, and after the Bureau finds that an applicant is fit and able to perform the work for which a license is requested. *Id.* The LPG and CNG Act also authorizes the Bureau to establish a reasonable licensing fee. 5 NMSA 70–5–9(A). Fees collected under the LPG and CNG Act must be deposited into the State general fund. 5 NMSA 70–5–10.

In its application, ATA challenges the authority given to the Bureau in 5 NMSA 70–5–9(A) to establish reasonable licensing fees but does not challenge the general licensing requirement in 5 NMSA 70–5–6(A). ATA also challenges the implementing regulation at 19 NMAC 15.4.15.1, which imposes a $125 licensing fee. ATA states that motor carriers who transport LP gas in New Mexico are in category ''LP–1'' and subject to an annual flat fee of $125 that is not apportioned to the level of a motor carrier's presence or activities in the State and, thus, is discriminatory and violates the Commerce Clause.

ATA argues that the privilege of conducting LP gas transportation in New Mexico is inherently more valuable to intrastate carriers that conduct all of their operations in the State than to carriers that operate predominantly in interstate commerce. Consequently, ATA concludes that imposing a flat fee to cover regulatory costs places a disproportionate share of those costs on interstate motor carriers. ATA contends that the $125 licensing fee imposed on interstate carriers by New Mexico is discriminatory and violates the Commerce Clause, citing *American Trucking Associations, Inc.* v. *Scheiner,* 483 U.S. 266, 107 S. Ct. 2829 (1987). ATA also states that the fee violates the Commerce Clause and, thus, is not fair and is preempted under section 5125(g)(1) of Federal hazmat law, in accordance with RSPA's decision in PD–21(R), Tennessee Hazardous Waste Transporter Fee and Reporting Requirements, 64 FR 54474 (Oct. 6, 1999).[5]

Mr. Dean, in his affidavit in support of ATA's application, states that Basin Western transports various types of petroleum products and has a 45-vehicle fleet dedicated to LP gas transportation. Mr. Dean states that for the last two years Basin Western has paid a $125 fee in order to obtain an LP–1 license to transport LP gas into and through New Mexico. Mr. Dean argues that fees imposed by New Mexico, including the licensing fee, would be prohibitive if replicated by other States.

NTTC supports ATA's application and states that, because of the '''flat tax' nature of the State fees, preemption is mandated.'' NPGA argues that New Mexico's imposition of a license fee on all LP gas transporters in the State, regardless of where they are domiciled, creates an obstacle to achieving the HMR's goal of uniformity regarding the movement of hazardous materials in commerce. NPGA also asserts that New Mexico's licensing fee is a flat fee and that such fees have been struck down by the courts. NPGA also notes that RSPA has issued preemption determination decisions, such as PD–21(R) (Tennessee), finding that flat fees are preempted by Federal hazmat law.

HMAC also strongly supports ATA's application and agrees with ATA's conclusion that New Mexico's $125 assessment against interstate carriers is unfair because, if enacted by other States or jurisdictions, it would lead to assessments on interstate carriers many times the rate paid by local carriers for the same number of miles.

Finally, ATA asserts that the $125 assessment is deposited into the State general fund and is not earmarked for purposes related to the transportation of hazardous materials. Consequently, ATA argues that the fee is preempted because it is neither fair nor used for hazardous materials transportation purposes as required under section 5125(g)(1) of Federal hazmat law, 49 U.S.C. 5125(g)(1).

b. The Fairness Test

ATA asserts, and the record supports, that New Mexico requires interstate and intrastate carriers to obtain a license, at a cost of $125 annually, in order to move LP gas in commerce within the State. On the other hand, while the New Mexico licensing requirement states that it applies to persons who ''dispense'' LP gas, CID denies that carriers who are subject to the HMR's loading and unloading requirements must obtain a license from New Mexico to perform those activities within the State.[6]

A New Mexico license authorizes a carrier to perform certain transportation-related and non-transportation-related activities within the State upon payment of a fixed annual fee. In essence, a New Mexico license is a permit to conduct those activities within the State. Permit requirements do not, *per se,* make it impossible to comply with Federal hazmat law or HMR requirements, or create an obstacle to accomplishing and carrying out Federal hazmat law or the HMR. *See* PD–9(R), Los Angeles County, California Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8785 (Feb. 15, 1995) [7]. Whether or not a permit

[5] Complaint for judicial review filed Dec. 3, 1999 (No. C–3–99–1126, M.D. Tenn.). On February 27, 2001, the District Court rejected a magistrate-judge's recommendation that sovereign immunity bars a determination of preemption. Tennessee has appealed the District Court's decision to the U.S. Court of Appeals for the Sixth Circuit (No. 01–5373).

[6] Motor carrier personnel who load or unload a hazardous material incidental to the material's movement in intrastate or interstate commerce are subject to the HMR's loading and unloading requirements. *See* 49 CFR 177.834.

[7] On February 15, 1995, RSPA simultaneously issued preemption decisions in PD–8(R), PD–9(R), PD–10(R), and PD–11(R) regarding certain California and Los Angeles County requirements. 60 FR 8774. Those collectively-issued decisions are known as the ''Four-Pack'' decisions. Five petitions for reconsideration of those decisions are pending. RSPA deferred issuing a decision on reconsideration until its completion of a rulemaking, RSPA docket HM–223. 61 FR 38513 (July 24, 1996). Both the petitions for reconsideration and RSPA Docket HM–223 raise issues regarding the on-site handling and transportation of hazardous materials and whether certain transportation and unloading activities are regulated under the HMR. *Id.* RSPA deferred action on the petitions for reconsideration in order not to prejudge matters that are more appropriately handled through notice-and-comment rulemaking. *Id.*

On June 3, 2000, two petitioners for reconsideration—The Chlorine Institute and the Chemical Manufacturers' Association (now known as the American Chemistry Council)—withdrew their joint petition for reconsideration of the Four-Pack decisions. On June 7, 2000, they filed a complaint in the U.S. District Court for the District of Columbia challenging RSPA's determination that Federal hazmat law does not preempt certain California and Los Angeles County requirements applicable to the movement of hazardous materials exclusively within the confines of a private facility and to certain storage and unloading activities at those facilities. *See,* Civil Action No. 00–1312

requirement is preempted depends on the steps required to obtain the permit. *Id.; See also* IR–28, City of San Jose, California, Restrictions on Storage of Hazardous Materials, 55 FR 8884 (Mar. 8, 1990); IR–20, Triborough Bridge and Tunnel Authority Regulations Governing Transportation of Radioactive Materials and Explosives, 52 FR 24396 (June 30, 1987); IR–3 (City of Boston), Decision on Appeal, 47 FR 18457 (Apr. 29, 1982); IR–2 (Rhode Island), 44 FR 75566; *New Hampshire Motor Transport Ass'n* v. *Flynn,* 751 F.2d 43 (1st Cir. 1984); *Colorado Public Utilities Comm'n* v. *Harmon,* CV 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds,* 951 F.2d 1571 (10th Cir. 1991). To obtain a license to move hazardous materials within or through New Mexico, the applicant must demonstrate that it meets the State safety requirements, the Bureau must find that the applicant is fit and able to perform the work for which a license is sought, and the applicant must pay a $125 annual fee per business location. ATA specifically challenges the regulations implementing New Mexico's licensing fee requirement.

Section 5125(g)(1) of Federal hazmat law provides that a State, a political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if: (1) The fee is fair, and (2) the fee is used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response. ATA cites both *ATA* v. *Scheinner* and PD–21(R) (Tennessee) in support of its argument that the New Mexico license fee is not fair and violates the Commerce Clause. In PD–21(R) (Tennessee), RSPA found, based on the legislative history of section 5125(g)(1), that the ''reasonableness'' test set forth in *Evansville-Vanderburgh Airport Auth. District* v. *Delta Airlines, Inc.,* 405 U.S. 707, 92 S. Ct. 1349 (1972), was ''the most appropriate one for interpreting the fairness requirement in 49 U.S.C. 5125(g)(1).'' 64 FR 54478. *See also* PD–18(R), Broward County, Florida's Requirements on the Transportation of Certain Hazardous Materials to or from Points in the County, 65 FR 81950 (Dec. 27, 2000).

In *Evansville-Vanderburgh,* the Supreme Court held that a State or local fee does not violate the Commerce Clause if it ''is based on some fair approximation of use or privilege for use * * * and is neither discriminatory against interstate commerce nor excessive in comparison with the governmental benefit conferred. * * *'' *Evansville-Vanderburgh,* 405 U.S. at 716. The Court also held that ''a State may impose a flat fee for the privilege of using its roads, without regard to the actual use by particular vehicles, so long as the fee is not excessive.'' *Id.* at 717. Subsequently, in *ATA* v. *Scheinner,* the Court limited this latter holding to situations where a flat tax is the ''only practicable means of collecting revenues from users and the use of a more finely gradated user-fee schedule would pose genuine administrative burdens.'' *Scheinner,* 483 U.S. at 296.

In addition, ATA and some commenters argue that the New Mexico fee is unfair because it would be prohibitive if replicated by other States. RSPA has never relied on the potential cumulative effect of a fee as the basis for a finding of preemption. *See* IR–17 (Illinois), 51 FR 20926, 20934 (June 9, 1986), Decision on Appeal, 52 FR 36200 (Sept. 25, 1987). *See also* PD–21(R), 64 FR at 54478. Also, there is no evidence that the potential for other States to adopt fees, by itself, makes the New Mexico fee unfair. Indeed, the Court in *Scheinner* found that ''even if more than one jurisdiction applies a charge to participants in interstate commerce, the Commerce Clause may be satisfied if the revenue measure maintains state boundaries as a neutral factor in decision making.'' *Scheinner,* 483 U.S. at 283.

The record supports ATA's contention that both intrastate and interstate carriers must pay New Mexico's $125 annual license fee in order to move LP gas in commerce within the State. There is no evidence that this annual fixed fee is apportioned to a carrier based on number of miles traveled within the State, number of pick-ups or deliveries made within the State, size or weight of the vehicle used to transport LP gas within the State, or any other factor that relates the amount of the fee to a carrier's use of State roads or facilities. Consequently, an interstate carrier that travels just one time in New Mexico must pay the same fee as a local carrier that conducts all of its business within the State. Moreover, while interstate and intrastate carriers pay the same fixed fee annually, the privilege of moving LP gas within the State is clearly more valuable to the local transporter than to the interstate transporter. Therefore, New Mexico's assessment of a $125 license fee on a per facility basis, rather than on some approximation of the benefit conferred to licensees, discriminates against interstate commerce.[8] Furthermore, there is no evidence in the record that a more finely gradated fee would pose genuine administrative burdens on the State.

The record is less clear on whether New Mexico's licensing requirement is being applied to intrastate and interstate carriers that load or unload hazardous material within the State. While 19 NMAC 5.4.15.1 states that an LP–1 license holder is authorized to ''wholesale, transport and/or deliver gas in vehicular units,'' CID denies that carriers subject to the HMR's loading and unloading requirements must obtain a license to perform those activities within the State. Regardless, carriers that load or unload a shipment of LP gas within the State presumably moved that shipment within the State and, therefore, are required to obtain a license.

As noted above, Section 5125(g)(1) does not prohibit a State from imposing a fee related to transporting hazardous material, so long as the fee is fair and is actually used for a purpose related to transporting hazardous material. Consequently, the requirement in 5 NMSA 70–5–9(A) that each person, firm, or corporation pay a reasonable license fee as set, classified, and defined by the Bureau, is not preempted.

On the other hand, the Bureau imposes a flat $125 license fee on carriers that move or deliver LP gas in the State. The fee is not a ''reasonable'' fee as defined in *Evansville-Vanderburgh* because it is not based on some fair approximation of a carrier's use of State facilities and because it discriminates against interstate commerce. Thus, under 5125(g)(1) of Federal hazmat law, the fee is not a fair fee. Consequently, the fee imposed on interstate and intrastate carrier movement of LP gas by the Bureau under 19 NMAC 15.4.15.1 violates 49 U.S.C. 5125(g)(1) and is preempted by Federal hazmat law. To the extent that New Mexico imposes its licensing requirement on interstate or intrastate motor carriers performing loading or unloading activities subject to the HMR requirements at 49 CFR 177.834, the licensing requirement, as it applies to

(WBB). On May 6, 2002, the U.S. District Court for the District of Columbia granted RSPA's motion to dismiss on the ground that the Four-Pack decisions are not final and, thus, not ripe for judicial review.

On June 14, 2001, RSPA published an NPRM in Docket HM–223. 66 FR 32420. We expect to publish a final rule by June 2003.

[8] On the question of whether a fee is discriminatory, the Court in *Scheinner* found dispositive prior Supreme Court cases ''which make it clear that the Commerce Clause prohibits a State from imposing a heavier tax burden on out-of-state businesses that compete in an interstate market than it imposes on its own residents who also engage in commerce among States.'' *Scheinner,* 483 U.S. at 282.

intrastate and interstate carriers that ''deliver'' LP gas, is also preempted for the reasons set forth above.

c. The ''Used For'' Test

As discussed above, Federal hazmat law provides that ''[a] State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is * * * used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.'' 49 U.S.C. 5125(g)(1). Consequently, fees levied in connection with the transportation of hazardous materials must be used for a purpose related to the transportation of hazardous materials. Fees that are not used for a purpose related to hazardous materials transportation are preempted. *See* PD–9(R) (Los Angeles), 60 FR 8784; *See also* PD–18(R) (Broward County), 65 FR at 81959; PD–21(R) (Tennessee), 64 FR 54479.

Section 70–5–9(A) of 5 NMSA requires persons transporting LP gas within the State to pay annual license fees ''for the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry * * *.'' Activities subject to the LPG and CNG Act include both transportation-related and non-transportation-related activities, specifically ''the selling, offering for sale, constructing, assembling, repairing, equipping, installing, filling with fuel, storage of fuel within, [and] dispensing of fuel from or transporting fuel'' in certain approved containers. 5 NMSA 70–5–4. Fees collected to administer the LPG and CNG Act are deposited into the State general fund. 5 NMSA 70–5–10.

ATA argues that section 5125(g)(1) of Federal hazmat law preempts the $125 annual licensing fee requirement (and, as discussed below, vehicle-inspection, testing, and other fee requirements) because the fees are deposited in the State's general fund and are not used for hazardous materials transportation purposes. NPGA and HMAC agree with ATA's conclusion. NPGA remarks that the New Mexico law does not indicate that the monies collected will be used for purposes relating to hazardous materials transportation, enforcement and planning, or development and maintenance of emergency response capability. CID, in its comments, is silent on this issue.

The record supports that the Bureau collects licensing fees from intrastate and interstate carriers, for the purpose of administering the LPG and CNG Act, and deposits those fees into the State general fund. While Federal hazmat law does not prohibit a State from directing the deposit of fees into the State's general fund, Federal hazmat law does require that the funds be used for hazardous materials transportation purposes. CID does not rebut ATA's or commenters' assertions that licensing fees deposited into New Mexico's general fund are not earmarked or actually used for hazardous materials transportation purposes as required under 5125(g)(1). Consequently, RSPA cannot find that the licensing fees collected under the LPG and CNG Act are used for purposes related to hazardous materials transportation. Therefore, the licensing fee requirement at 19 NMAC 15.4.15.1 violates 49 U.S.C. 5125(g)(1) and is preempted by Federal hazmat law. Federal hazmat law does not preempt the requirement at 5 NMSA 70–5–10 that the fees be deposited into the State general fund.

2. Vehicle Inspection Fees

Section 70–5–9(C) of 5 NMSA requires persons transporting LP gas within the State to pay annual vehicle inspection fees ''for the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry * * *.'' Activities subject to the LPG and CNG Act include both transportation-related and non-transportation-related activities. 5 NMSA 70–5–4. The cost of New Mexico's annual vehicle safety inspection is $37.50 per vehicle. 19 NMAC 15.4.14.3(C). Like the licensing fees discussed above, the vehicle inspection fees are deposited into New Mexico's general fund. 5 NMSA 7–5–10.

In its application, ATA argues, and the majority of commenters agree, that the annual, per-vehicle inspection fee is preempted because the fee is not used for purposes related to hazardous materials transportation, in violation of 49 U.S.C. 5125(g)(1).

As discussed above, Federal hazmat law provides that ''A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is * * * used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.'' 49 U.S.C. 5125(g)(1). Consequently, fees levied in connection with the transportation of hazardous materials must be equitable and used for a purpose related to the transportation of hazardous materials. Fees that are not used for a purpose related to hazardous materials transportation are preempted. *See* PD–9(R) (Los Angeles), 60 FR at 8784; *See also* PD–18(R) (Broward County), 65 FR at 81959; PD–21(R) (Tennessee), 64 FR at 54479.

The fee at issue appears to be related, in some measure, to the work involved in performing the inspection required under 19 NMAC 15.4.14.3(C). In PD–21(R) (Tennessee), RSPA noted that fees covering the cost of a required inspection ''would be expected to be the same amount for both interstate and intrastate companies'' and have not been found to violate the Commerce Clause. PD–21(R) (Tennessee), 64 FR 54478; *see also* PD–13(R) (Nassau County), Decision on Petition for Reconsideration, 65 FR 60244. Cnsequently, there is no evidence that New Mexico's vehicle inspection fee is unfair.

On the other hand, the record supports that the Bureau collects vehicle inspection fees from intrastate and interstate carriers and deposits those fees into the State's general fund. CID does not dispute ATA's and commenters' assertions that the fees are not earmarked for hazardous materials transportation purposes or actually used for hazardous materials transportation purposes as required under 5125(g)(1). Consequently, RSPA cannot find that the vehicle inspection fees collected under the LPG and CNG Act are used for purposes related to hazardous materials transportation. Therefore, the vehicle inspection fee requirement in 19 NMAC 15.4.14.3(C) violates 49 U.S.C. 5125(g)(1) and is preempted by Federal hazmat law. The general provision mandating the collection of a reasonable fee for safety inspections, set forth at 5 NMSA 70–5–9(C), is not preempted.

New Mexico's Examination and Identification Card Fees

As discussed above, New Mexico requires a person who transports or dispenses LP gas to pass an appropriate examination based on the safety requirements of the Commission, 5 NMSA 70–5–7(A). New Mexico also requires the Bureau to set a reasonable fee for administering the safety examination. 5 NMSA 70–5–7(C). Persons who pass the examination may not transport or dispense LP gas until they have received an identification card from the Bureau. 19 NMAC 15.4.9.3. The Bureau's regulations require that identification cards be renewed annually after payment of a ''reasonable'' fee. 19 NMAC 15.4.9.4. In addition, the Bureau has established a $25 examination/re-examination fee, 19 NMAC 15.4.15.13 and 15.4.15.14, and

an annual $10 identification card renewal fee. 19 NMAC 15.4.15.12.

ATA argues, with the support of the majority of commenters, that New Mexico's examination and identification card fees are preempted because the fees are not used for purposes related to hazardous materials transportation, in violation of 49 U.S.C. 5125(g)(1).

As discussed above, a State, political subdivision of a State, or Indian tribe may impose a fee related to hazardous materials transportation if the fee is fair and used for hazardous materials transportation purposes. 49 U.S.C. 5125(g)(1). Fees that are not fair and used for hazardous materials transportation purposes are preempted. *See* PD–9(R) (Los Angeles), 60 FR 8784; *See also* PD–18(R) (Broward County), 65 FR 81959; PD–21(R) (Tennessee), 64 FR 54479.

Because Federal hazmat law and the HMR specifically allow a State to impose fees related to hazardous materials transportation, under certain conditions, the New Mexico requirements at 5 NMSA 70–5–7(C) and 19 NMAC 15.4.9.4 that the Bureau set ''reasonable'' examination and identification card fees are not preempted. With regard to the Bureau's implementing regulations—19 NMAC 15.4.15.12 through 15.4.15.14—there is no evidence that the fees imposed by the Bureau on employees of interstate and intrastate carriers are disproportionate to the work involved in administering the New Mexico safety examination and in issuing identification cards. Consequently, the fees appear to be fair. On the other hand, CID does not dispute ATA's and commenters' assertions that the fees, which are deposited into the State's general fund, are not earmarked or actually used for purposes related to hazardous materials transportation. As a result, the employee examination and identification card fee requirements in 19 NMAC 15.4.15.12 through 15.4.15.14, fail to satisfy the requirement at 49 U.S.C. 5125(g)(1) and are, thus, preempted.

V. Ruling

For the reasons set forth above, RSPA finds that Federal hazmat law preempts the following New Mexico requirements:

A. *Vehicle inspection requirements as applied to vehicles based outside the State:*

- 19 NMAC 15.4.10.1, requiring annual vehicle safety inspection.

B. *Written examination requirements as applied to non-domiciled drivers:*

- 5 NMSA 70–5–7(A), containing examination requirement for persons who transport or dispense LP gas.
- 19 NMAC 15.4.9.1, establishing examination requirement for persons who transport or dispense LP gas.
- 19 NMAC 15.4.9.2, requiring identification card.
- 19 NMAC 15.4.9.3, prohibiting persons from working without an identification card.
- 19 NMAC 15.4.9.4, to the extent it requires annual identification card renewal.
- 19 NMAC 15.4.9.5, requiring re-examination.

C. *Fees:*

(1) *Licensing fee requirement as applied to intrastate and interstate motor carriers that move, load, or unload LP gas:*

- 19 NMAC 15.4.15.1, establishing license classification and fee for wholesale sale, transport, or delivery of LP gas.

(2) *Vehicle inspection and reinspection fee requirements:*

- 19 NMAC 15.4.14.3(C), establishing vehicle inspection and reinspection fees.

(3) *Written examination fee requirements:*

- 5 NMSA 70–5–7(C), containing examination fee requirement for persons who transport or dispense LP gas.
- 19 NMAC 15.4.9.4, to the extent that it establishes an annual identification card requirement.
- 19 NMAC 15.4.15.12, establishing annual identification card renewal fee.
- 19 NMAC 15.4.15.13, establishing examination fee.
- 19 NMAC 15.4.15.14, establishing re-examination fee.

For the reasons set forth above, RSPA finds that Federal hazmat law does not preempt the following New Mexico requirements:

A. *Vehicle inspection requirements as applied to vehicles based within the State:*

- 19 NMAC 15.4.10.1, requiring annual vehicle safety inspection.

B. *Written examination requirements as applied to domiciled drivers:*

- 5 NMSA 70–5–7(A), containing examination requirements for persons who transport or dispense LP gas.
- 19 NMAC 15.4.9.1, establishing examination requirement for persons who transport or dispense LP gas.
- 19 NMAC 15.4.9.2, requiring identification card.
- 19 NMAC 15.4.9.3, prohibiting persons from working without an identification card.
- 19 NMAC 15.4.9.4, to the extent it requires annual identification card renewal.
- 19 NMAC 15.4.9.5, requiring re-examination.

C. *Fees:*

- 5 NMSA 70–5–7–(C), containing examination fee requirement for persons who transport or dispense LP gas.
- 5 NMSA 70–5–9(A), requiring payment of a reasonable annual license fee.
- 5 NMSA 70–5–9(C), requiring payment of a reasonable safety inspection fee.
- 5 NMSA 70–5–10, requiring deposit of fees into the State general fund.
- 19 NMSA 15.4.9.4, to the extent that it establishes a reasonable annual identification card fee.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), ''[a]ny person aggrieved'' by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on September 13, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–23836 Filed 9–19–02; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday,

September 20, 2002

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Seven Additional Manatee Protection Areas in Florida; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH80

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Seven Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take emergency action to establish seven additional manatee protection areas in Florida.

This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA),base on our determination that there is now substantial evidence that imminent danger of taking one or more manatees at these sites and the emergency designation of refuges and sanctuaries is necessary to prevent taking. In evaluating the need for emergency designation of additional manatee protection areas, we considered the needs of the manatee, the current levels of mortality, and the likelihood of additional take of manatees due to human activity. We are establishing one manatee sanctuary in Citrus County, one manatee sanctuary and one manatee refuge in Pinellas County, and two manatee sanctuaries and two manatee refuges in Hillsborough County. All waterborne activities will be prohibited within the sanctuaries and watercraft will be required to proceed at ''idle speed'' or slow speed,'' as specified within the refuges on a seasonal basis.

EFFECTIVE DATE: September 20, 2002. This emergency rule will remain in effect through January 20, 2003. We anticipate making a final determination of these sites in a final rule for manatee refuges and sanctuaries on or before November 1, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U. S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, Cameron Shaw, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our website at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the population is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20 °Celsius (68 °Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status.

Human activities, and particularly waterborne activities, can result in the take manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2001, 943,611 vessels were registered in the State of Florida. This represents an increase of 42 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered

species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Activities affecting manatees at warm water sites include boat operations, recreational fishing, directed interactions between humans and manatees (including pursuit by swimmers and boats), and other disturbances. Specifically, boats operating within manatee aggregations, anglers casting fishing lines into aggregations, boaters and/or swimmers pursuing manatees, and other disruptions cause animals to disperse and become displaced from warm water refuges. Displaced animals may be exposed to cold water temperatures below known physiological thresholds. Exposure to cold may cause hypothermia or cold stress, conditions known to kill manatees (Worthy 1999). In addition, prolonged, nonlethal exposure to cold may affect calving success and fecundity (Rommel 2002).

Tyson (1998) documented boating and fishing activity in warm water discharges. Observations included anglers maneuvering boats within manatee aggregations, boat operators looking for and petting manatees, boaters attempting to swim with manatees, anglers wading and casting into manatee aggregations, manatees being hooked and maneuvered while entangled, a manatee struck with an anchor, manatees being provided with water, etc. These activities resulted in the displacement of animals, manatees hooked or entangled in fishing line, possible boat strikes, and other adverse interactions. Swimmer interactions were further documented by Wooding (1997) at Three Sisters Springs, Citrus County, Florida. Some manatees left the then unprotected spring area when boats with swimmers approached at the start of the day. Other manatees left when the first swimmers entered the water. Those that remained either ignored swimmers or turned and swam out of reach; a small number sought out physical contact with swimmers. Gorzelany observed manatees being ''crowded out'' (displaced) by large numbers of swimmers searching out encounters with wintering manatees (Mote Marine Laboratory, pers. comm. 2001).

Anglers have been observed casting into manatee aggregations at warm water sites, hooking and entangling manatees. Discarded fishing line, at times caught on water bottoms, plants, and structures, is also known to entangle manatees and is occasionally ingested by manatees. Entangled monofilament fishing line may cut into the manatees' skin; manatees are frequently scarred by these cuts and flippers are occasionally amputated through the cutting effect of the line. There are records of manatees having died from entanglements due to infection and septicemia associated with these injuries. Manatees ingesting fishing line and hooks are known to die from intestinal obstructions, tears in the gut, and other complications.

In 2001, fifteen manatees were rescued from fishing gear, including seven from monofilament line. The number of such incidents has been increasing over time; in the early phases of the program, no more than one or two incidents were documented per year. Recent annual totals have ranged between ten and fifteen reported incidents. Since 1973, a total of 124 gear-associated manatees has been rescued, including 50 from monofilament entanglement and ingestion (U.S. Fish and Wildlife Service, unpubl. data). In addition to these rescues, at least 14 deaths have been attributed to monofilament fishing line and others are suspected (Florida Fish and Wildlife Conservation Commission, unpubl. data.).

Boats operating within and adjacent to warm water aggregations of manatees pose an additional threat to wintering manatees, since manatees are killed or injured as a result of collisions with watercraft. In 2001, at least 25 percent (82 of 325) of known manatee deaths were caused by watercraft. This was the second highest year on record (out of more than 27 years of monitoring) for total number of watercraft-related manatee deaths. Nonlethal injuries are also documented by researchers who monitor the accumulation of scars from boat strikes on individual manatees on an annual basis. As documented by the U.S. Geological Survey's database, most animals that are known to have been struck are struck multiple times. Such nonlethal injuries may reduce calf production and survival in wounded females (O'Shea *et al.* 2002). The likelihood of adverse manatee encounters with watercraft increases in the vicinity of wintering sites because of the greater concentration of animals within these confined areas.

The State of Florida's manatee carcass salvage program has documented the presence of watercraft-killed manatees within the vicinity of warm water discharges. While the presence of a carcass does not necessarily indicate that a collision occurred at that site, there are a few cases where collisions have been documented at warm water sites. In one instance, a tug/barge maneuvering within the approach to a warm-water aggregation site ran over a manatee, crushing and killing the animal between the hull and the water bottom (Florida Fish and Wildlife Conservation Commission, unpubl. data.). In Lee County, two manatees using a secondary warm-water site located at the foot of a navigation lock were struck and killed by watercraft operating nearby (Florida Fish and Wildlife Conservation Commission, unpubl. data.). Researchers monitoring winter manatee aggregations have noted the frequent and regular occurrence of nonlethal, fresh cuts on animals using these sites, particularly at the outset of the winter season (Hartley, Florida Division of Parks and Recreation, pers. comm. 2001; Curtin, U.S. Geological Survey (USGS) Contractor, pers. comm. 2001).

To minimize disturbance at both industrial and natural warm water sites, we and the State of Florida have implemented a series of Federal sanctuaries and State protection areas at and near these sites to ensure that wintering manatees are minimally disturbed during this critical time of year. To date, the majority of known warm water sites used by manatees in Florida have been protected. However, the sites designated in this rule provide additional protection or enhance existing protection areas.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more

manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Manatee Settlement Agreement

A settlement agreement between the Service, the U.S. Army Corps of Engineers, and a coalition of conservation organizations and individuals (*Save the Manatee Club* v. *Ballard*, Civil No. 00–00076 EGS (D.D.C.), January 5, 2001) included a requirement that the we propose a rule for ''new manatee refuges and sanctuaries throughout peninsular Florida * * * to ensure that adequate protected areas are available * * * to satisfy the biological requirements of the species, with a view towards the manatee's recovery * * *.'' We further agreed to ''evaluate the propriety of invocation of [our] emergency sanctuary/refuge authority.''

In a recent court ruling, dated August 16, 2002, related to the Settlement Agreement, the court directed that we conduct an evaluate sites for emergency designation. Based on that evaluation, we have now determined emergency designations of manatee refuges or manatee sanctuaries are warranted for seven sites.

Site Selection Process and Criteria

In our initial evaluation of ''imminent'' threat of take at sites that may warrant protection through our emergency sanctuary/refuge designation authority, which we conducted in 2000–2001, we did not identify any sites where takings met this standard. In evaluating whether these sites required emergency protection, we had to determine whether take would occur in a specific amount of time. For example, large numbers of animals concentrated in a relatively small area are much more likely to become an attraction for humans or may be unable to avoid the passage of boats. We also evaluated whether or not there was a history of harassment or other forms of take at the site and the likelihood of future take, including the type of recent mortality. We further considered whether there were existing protective measures in place to prevent manatee mortality. Finally, we looked at whether the type of take that had occurred would likely be avoided by additional protective measures.

In preparation for making a decision on sites to propose as manatee protection areas, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39); 28 participants specifically opposed and 8 specifically supported the areas. An additional 36 comments were not specific to the topic or discussed other items. Fifteen commentors provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics.

We selected sites to propose as manatee protection areas from the list of sites developed through the preliminary meetings and from information gathered at the public workshops and responses to the advance notice. We based site selection on four factors—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available information, including aerial survey and mortality data and additional information from the Florida Marine Research Institute and the USGS Sirenia Project. These data were supplemented with information from manatee experts, the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing manatee protection areas and the benefits (or lack thereof) to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property entail additional administrative burdens in terms of identifying and providing access to affected residents. Finally, we evaluated the effectiveness of our proposed actions against the likely effectiveness of anticipated similar actions by State and/or local governments. It was our goal to avoid sites that could be most effectively addressed by State or local government and we have made every effort to make our designations consistent with the existing adjacent State or local designations.

Previous Federal Action

On August 10, 2001, we published in the **Federal Register** a proposed rule to establish 16 additional manatee protection areas (66 FR 42318), including the seven areas designated in this emergency rule. In the proposed rule, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News,* on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat,* and on September 4, 2001, in *Florida Today.* The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11,

2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. On January 7, 2002, we published a final rule that established two additional manatee protection areas located within the water bodies commonly known as the Barge Canal and Sykes Creek, in Brevard County (67 FR 680). We will publish in the **Federal Register** a final decision on the manatee protection areas included in this emergency rule and the seven remaining manatee protection areas from the August 10, 2001, proposed rule no later than November 1, 2002. In addition to publishing this rule in the **Federal Register,** we will post it on our website and publish notice in the following newspapers: *Citrus County Chronicle, Orlando Sentinel, St. Petersburg Times, Sarasota Herald-Tribune, Tallahassee Democrat,* and *Tampa Tribune.*

Reasons for Emergency Determination

In deciding to implement this emergency rule, we have carefully assessed the best available information to evaluate manatee and human interactions at these seven sites. We now believe these 7 wintering sites, described in our August 10, 2001, proposed rule to establish 16 additional manatee protection areas in Florida (66 FR 42318), meet the criteria for emergency designation. We believe that there is imminent danger of a take of one or more manatees in these warm-water wintering sites because manatees congregate in these locations seasonally, there is a history of harassment at these and/or similar sites, future take is likely, current regulatory measures are inadequate, and anticipated State or local actions will not have been finalized or implemented to be in effective for the winter season. Emergency designation is appropriate at this time because it will reduce the potential for take to occur before a final designation can be prepared, published and posted for these sites. The nature of taking manatees at these sites is through harassment and injury and/or mortality from human interactions, including boating and fishing within nearby manatee aggregation areas. This type of take has been documented in other warm-water wintering sites in Florida where people have access to congregated manatees without sufficient protective measures. Emergency designation of these warm water wintering sites is consistent with previous Service designations because all previous emergency designations have involved other winter aggregation sites.

Manatee presence at these sites has been closely documented by manatee researchers in more than 30 years of assessing manatee use of these sites (Hartman 1979, Weigle *et al.* 2001, and Wright *et al.* 2002). Researchers have visited the sites to photo-document the individual identities of manatees using these areas (Florida Fish and Wildlife Conservation Commission, unpubl. data). Manatees have been tagged and monitored to better understand use patterns associated with the sites (Weigle *et al.* 2001). Flamm summarized tagged manatee behavior and plotted common use sites and travel corridors. These summaries characterize the Batrow and Big Bend power plant sites as extensively used areas and portray travel corridors adjacent to and between all three power plant sites (pers. Comm., 2002). Also, researchers have surveyed the sites with airplanes and helicopters in an effort to come up with a minimum population estimate of the animals known to use these sites (Ackerman *et al.* 1995, Edwards, pers. comm. 2002). These estimates reveal that these areas are used by significant numbers of manatees during the winter. Researchers have observed 123 manatees at Blue Waters. Researchers have seen as many as 102 manatees using the Bartow effluent and a maximum count of 316 manatees at the Tampa Electric Company's Big Bend power plant (Florida Fish and Wildlife Conservation Commission, unpublished data 2002). Between 25 and 100 manatees have been observed at the Port Sutton site (U.S. Fish and Wildlife Service, 2001).

Harassment has been documented at two of these four sites (Blue Waters and the Tampa Electric Company's Big Bend power plant). At Blue Waters, people and boats in the water have been observed pursuing manatees, and boat operations within the aggregation areas have disrupted resting manatees, causing them to flee (Wells, Mote Marine Laboratory, pers comm. 2000). Anglers have been seen at the Tampa Electric Company's Big Bend power plant, casting into and disrupting resting animals. Boat traffic within this area has also been observed to cause manatees to flee (Florida Fish and Wildlife Conservation Commission, unpubl. data). Researchers documented significant use of the Bartow power plant waters by boats (Flamm, pers. Comm. 2002). Harassment has been documented at other power plants (Tyson 1998). Given the similarities between the Big Bend power plant and the other two power plant sites at Bartow and Port Sutton, and other warm water discharges around the state, there it is highly likely that similar activities will take place at these sites as well.

Observed harassment has taken place despite current protections at these warm water sites. The Blue Waters and surrounding areas are protected under the authority of the State's Florida Manatee Sanctuary Act. This designation requires boat operators to reduce their speeds in proximity to the aggregation site, yet fails to prevent the public from interacting with manatees within the aggregation area. The State similarly protects the Big Bend site—a ''No Entry'' area and slow/idle speed zones have been designated within the area of the power plant. The extent of these protections fails to prevent the public from interacting with manatees and the area of the speed restrictions fails to provide manatees with an adequate protective buffer. Anglers are able to get close enough to cast into manatee aggregations and boats continue to operate at high speeds within manatee travel approaches. A seasonal ''No Motorboat Entry'' zone, designated by Pinellas County, is in effect at the Bartow site. This designation allows public access to the warm-water aggregation area, an area similar to other discharges where manatees have been harassed by anglers, boaters, and swimmers. Port Sutton is currently unprotected and manatees are vulnerable to similar pressures at this site. The State of Florida and other government entities have proposed supplemental protective measures for some of these sites; the State has proposed to better protect the Blue Waters and has included the Port Sutton site in its list of sites in need of protection. Hillsborough County has similarly promised to supplement

protection at the Big Bend site. However, agency implementation of these measures is not scheduled to occur prior to this winter.

Use of our emergency authority to designate manatee refuges and sanctuaries will allow us to expedite protection at these sites. We are working to finalize a rule on the August 10, 2001, proposed areas and we anticipate publication of our final determination on or before November 1, 2002. If we waited until the final rule announcing the agency's final determination were to be published on November 1 to designate the sites, the areas would not be posted until a significant part of the critical wintering period had passed. By using our emergency rulemaking authority, we will be able to expedite designation and posting of these areas. We have discretionary authority, 50 CFR 17.106, to take emergency action when there is ''substantial evidence'' that take of one or more manatees is ''imminent'' and such action ''is necessary to prevent'' this take. The emergency designation is limited to 120 days. The effect of this authority is to allow us to implement manatee protection measures on an accelerated schedule. We interpret ''imminent'' take to be that which would be reasonably certain to occur during the time it would take to propose and finalize a rule designating a site as a refuge or sanctuary. As winter approaches, we now believe the wintering sites in our August 10, 2001, **Federal Register** notice (proposed refuges and sanctuaries rule) qualify for emergency designation. We believe there is imminent danger of a take of one or more manatees in these warm-water wintering sites because manatees congregate in these locations; there is a history of harassment at these sites; future take is likely; there are no protective measures in place or the current protective measures are inadequate; and, the anticipated actions by the state or counties will not be implemented in time for this winter season. In addition higher manatee mortalities indicate that protecting these sites from activities that might affect productivity or survival is more critical than was believed in previous years. Emergency designation is appropriate at this time because it will reduce the potential for take to occur before a proposed and final designation can be prepared and published for these sites. The nature of the danger at these sites is taking of manatees through harassment and injury and/or mortality from human interaction. This interaction typically includes boating or fishing in areas used by the congregated manatees. Therefore, we are establishing these seven manatee protection areas on an emergency basis to prevent the imminent taking of one or more manatees by providing maximum protection for manatees until permanent sanctuaries and refuges are put in place.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553 (d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed under ''Reasons For Emergency Determination,'' we need to establish these manatee protection areas prior to the time when manatees will be seeking warmer waters for the winter. A 30-day delay in making these sites effective would result in further risks of manatee mortality, injury and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees at these seven sites is imminent, we believe good cause exists to make this rule effective upon publication. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553 (b)(3)(B) to issue this rule without notice and public procedure. In a proposed rule of August 10, 2001 (66 FR 42318), we solicited public comment on the seven manatee protection areas established by this rule as required by 5 U.S.C. 553). The time required to complete the standard rule making process would be contrary to the public interest because of the imminent threat to manatees and the need to provide immediate protection through emergency action.

Definitions

''Idle speed'' means the minimum speed needed to maintain watercraft steerage.

''Planing'' means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

''Slow speed'' means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

''Slow speed (channel exempt)'' designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

''Slow speed (channel included)'' means that the slow-speed designation applies to the entire marked area, including within the designated channel.

''Wake'' means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Exceptions

Existing regulations provide regulatory relief for watercraft access to private residences, boat houses, and boat docks located in manatee sanctuaries (50 CFR 17.108). Sanctuaries described in this emergency rule are located in areas adjoining property owned by public and other private property owners. Public and private property owners will be permitted to access and maintain property within respective manatee sanctuaries. From October 1 through March 31, watercraft operations (conducted by appropriately identified vessels) will be restricted to idle speed. Maintenance activities necessary for maintaining property and waterways during this period of time are also allowed, subject to any applicable Federal, State, and/or local government permitting requirements. We believe that these exceptions will ensure that this rule has a minor impact on activities conducted by public and private property owners.

Areas Designated as Manatee Sanctuaries and Refuges by Emergency Rule

Blue Waters Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing 1.7 hectares (ha) (4.1 acres) more or less, at the headwaters of the Homosassa River, adjacent to the Homosassa Springs State Wildlife Park, commonly referred to as the Blue Waters, in Citrus County. All waterborne activities will be prohibited from October 1 through March 31, inclusive.

The headwaters of the Homosassa River are an important wintering site for manatees (U.S. Fish and Wildlife

Service, unpublished data). The site is in close proximity to the Homosassa Spring, a Class 1 magnitude spring, which provides warm water from the Florida aquifer. This warm water is essential to the survival and well-being of a significant number of manatees during cold weather periods. In recent years, animals have been observed at this warm water site as early as October. As many as 123 manatees have been observed on-site during a single day (U.S. Fish and Wildlife Service, unpublished data). Homosassa Springs State Wildlife Park, located directly upstream from the site, is not accessible to the manatees wintering at Blue Waters because the spring head is used to confine and treat distressed manatees.

The presence of manatees, coupled with the shallow clear nature of the water, has attracted an increasingly large number of swimmers and divers to the site. These visitors come to the site to swim with and otherwise engage manatees. The waters of the Homosassa River are currently regulated as an idle speed zone, and the State Park maintains a no-entry zone from a line approximately 61 meters (200 feet) upstream of the confluence of the spring run and the northeast fork of the river. The number of visitors has grown to the point where manatees are observed leaving the site and swimming downstream into colder waters (Gorzelany, Mote Marine Laboratory, pers. comm. 2001). The establishment of a manatee sanctuary at this location will provide wintering manatees with an undisturbed area free from harassment. The public will continue to have opportunities to interact with manatees outside of the proposed sanctuary.

Tampa Bay Manatee Sanctuaries and Refuges

A significant number of manatees from the southwest Florida subpopulation rely on power plant discharges in the Tampa Bay area for warmth during the cold winter months (Florida Fish and Wildlife Conservation Commission, unpublished data). These sites include the Bartow Electric Generating Plant, and the Tampa Electric Company's Big Bend and Gannon electric generating stations. To prevent taking through mortality, injury, and harassment within the Tampa Bay region, we are designating a series of manatee sanctuaries and refuges at these warm water sites. The sanctuaries will minimize harassment within the warm water aggregation sites, specifically targeting adverse interactions between anglers and people wanting to interact with manatees. The designation of manatee refuges will reduce the likelihood of boat collisions with manatees in common areas used to enter and leave the warm water sites. Minimizing disturbance of manatees at these warm water sites during winter months is important to the well-being of these animals and consistent with efforts to recover the Florida manatee.

Bartow Electric Generating Plant Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 73.5 ha (181.5 acres), at the warm water discharge of the Bartow Electric Generating Plant in Tampa Bay, Pinellas County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we are establishing a manatee refuge in the South Gandy Navigation Channel north of the site. We have designated this sanctuary based on observed manatee use patterns documented during cold weather periods (Hartman 1979, Wright *et al.* 2002, Weigle *et al.* 2001) and on observations of takings known to occur at warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 102 manatees on February 25, 1999 (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

Pinellas County recently adopted, through a local ordinance, a no-motor zone, in which only nonmotorized watercraft are permitted in the immediate area of the outflow. While we are encouraged by this initial action, we believe that this designation does not address all types of harassment at this important winter site. For example, anglers will continue to cast into manatee aggregations and people will continue to approach manatees. Establishing a sanctuary at this site will provide manatees with complete, undisturbed use of this warm water discharge site.

South Gandy Navigation Channel Manatee Refuge

We are establishing a seasonal manatee refuge, containing approximately 30.3 ha (74.8 acres), in the South Gandy Navigation Channel north of the Bartow Electric Generating Plant in Pinellas County, with the purpose of regulating watercraft operation to slow speed from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the discharge of the Bartow Electric Generating Plant, because of the greater concentration of animals within these confined areas. Regulating this area used by both manatees and boaters as a slow-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Tampa Electric Company's Big Bend Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 30.8 ha (76.2 acres), at the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we are establishing a manatee refuge in the area south of this sanctuary (see Tampa Electric Company's Big Bend Manatee Refuge below). We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at this (Florida Fish and Wildlife Conservation Commission, unpubl. data.) and other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 316 manatees on January 6, 2001 (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at

this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment of manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

There is currently a seasonal no-entry zone in the immediate vicinity of the Big Bend discharge. The zone is too small, however, to prevent harassment of manatees by fishermen, who cast into the aggregation area. A sanctuary at this site will expand the existing protection area and should adequately protect manatees from harassing fishing activities during the winter months. We have selected this site based on manatee use patterns documented during the winter (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979, Florida Fish and Wildlife Conservation Commission, unpubl. data.).

Tampa Electric Company's Big Bend Manatee Refuge

We are establishing a manatee refuge, encompassing approximately 93.5 ha (231 acres), in the waters adjacent to and south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station in Hillsborough County to provide watercraft ingress and egress to the lagoon and canals in North Apollo Beach. Watercraft activity within this refuge will be regulated to idle speed from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Port Sutton Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, encompassing approximately 1.1 ha (2.7 acres), at the warm water discharge of the Tampa Electric Company's Gannon Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods when the plant was discharging warm water (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant has attracted manatees during cold weather periods. Between 25 and 100 manatees are known to use this site (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish may be attracted to this heated effluent. As such, both anglers and manatee enthusiasts may be attracted to the site, leading to an increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers to disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur: manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

Port Sutton Manatee Refuge

We are designating the Port Sutton area surrounding the proposed manatee sanctuary at the Tampa Electric Company's Gannon Electric Generating Station, in Hillsborough County, as a manatee refuge. The refuge area includes approximately 39.2 ha (96.9 acres). Watercraft will be required to proceed at idle speed within this refuge from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water outfall of the Tampa Electric Company's Gannon Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this emergency rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the emergency rule clearly stated? (2) Does the emergency rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the emergency rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the emergency rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the emergency rule easier to understand?

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

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of four manatee sanctuaries (264.5 acres) in Citrus, Pinellas, and Hillsborough counties and three manatee refuges (402.7 acres) in Pinellas and Hillsborough counties in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of $3.2 billion (2001

dollars) on the protection of the manatee population. This amounts to a per-household value of $18.12. The $3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish seven additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these seven areas. Affected waterborne activities include, but are not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles and dredging and filling activities. Designated areas include four no-entry areas, two idle-speed areas, and one slow-speed area. In all seven areas, waterborne activities will be restricted on a seasonal basis. The economic effect of these designations will be measured by the number of users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida includes 12,000 miles of rivers and streams and 3 million acres of lakes and ponds; the designation of 264.5 acres of sanctuaries and 402.7 acres for refuges is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

For some watercraft users, the inconvenience and extra time required to cross slow- and idle-speed areas will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has 943,611 registered boats, but only those boats and recreationists using the designated sites will potentially be affected. Because Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. Recreationists may be inconvenienced by having to travel to non-designated areas. Currently, no data sources estimate the amount of recreational activity in and around the designated areas. The current designation of these sites will cause some inconvenience, but alternative sites within the proximity of the sites are available for all waterborne activities. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable or similar protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted public hearings and public notice and comment periods to determine activities that might be affected by the creation of these manatee protection areas. Based on the activities that we are aware of being conducted in these areas and the fact that some may be inconvenienced by the need to proceed at slower speeds or use alternate sites, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Citrus, Pinellas, and Hillsborough Counties. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate in per capita income is slower than the State average in Citrus County, but the rate of growth in total personal income is equal to or exceeds the State average except in Pinellas County, where it is slightly lower. Larger households account for the lower per capita income estimates in Citrus and Hillsborough Counties. The proportion of total industry earnings coming from the amusements and recreation sector ranges from 0.8 percent in Citrus and Pinellas Counties to 1.4 percent in Hillsborough County. All of these counties had the service sector as the largest economic contributor followed by retail trade and the real estate sectors. Overall, the affected counties had only a small proportion of earnings coming from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE THREE AFFECTED COUNTIES IN FLORIDA—1997

Affected Florida counties	Employment	Per capita personal income (dollars)	10-year rate of growth (percent)	Personal income ($000)	10-year rate of growth (percent)	Total industry earnings ($000)	Services industry earnings for amuse-ments and recreation ($000)	Percent of total
Citrus	35,663	$18,493	3.9	$2,060,1672	6.9	$793,347	$6,650	0.8
Pinellas	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
Hillsborough	644,694	23,719	5.2	1,558,783	6.6	18,847,236	67,676	1.4
State of Florida	8,032,538	24,799	4.5	363,979,647	6.6	220,985,959	4,255,304	1.9

Source: *http://govinfo.library.orst.edu/cgi-bin/reis-list.*

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE THREE AFFECTED COUNTIES IN FLORIDA—1997

[includes sic codes 09, 44, 59, 79, services, and nec] [1]

Affected Florida counties	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Citrus	8,926	1,044	655	214	95	80
Pinellas	197,842	12,852	7,954	2,344	1,226	1,328
Hillsborough	232,128	12,363	7,316	2,261	1,308	1,478

Source: *http://govinfo.library.orst.edu/cgi-bin/reis-list.*

[1] sic09—Fishing, hunting, and trapping.
sic 44—Water transportation.
sic 59—Miscellaneous retail service divisions.
sic 79—amusement and recreation services non-classifiable establishments division.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

Since the bulk of the acreage proposed (402.7 acres) by this rule is for manatee refuges, which would only require a reduction in speed, we do not believe the minor inconvenience caused by going slower in designated areas will cause more than an insignificant economic effect. The inconvenience may cause some recreationists and charter boats to go to alternative sites, which may cause some loss of income to some small businesses. However, the inconvenience is small so we believe that this will not be a significant economic dislocation. For the four areas designated as sanctuaries (264.5 acres), the restriction on human activity from October 1 to March 31 may cause some recreationists and charter boats to go to alternative sites. However, three of the areas designated are in front of power plants, and the fourth (Blue Waters) is only 4.145 acres. The designated areas are relatively small and part of large water bodies having large areas with no restrictions on human activity. Recreationists and charter boats can pursue waterborne activities in close proximity to the manatee sanctuaries without entering the sanctuaries. For this reason, we believe that there will be an insignificant economic effect from the designation of the four areas as manatee sanctuaries. Without a significant change in recreationists' and charter boats' use patterns, there should be an equally insignificant change in business activity.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience to recreationists and charter boats, but this should not translate into any significant business reductions for the many small businesses in the potentially affected counties. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists and charter boats, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

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. As stated above, this rule may generate some level of inconvenience to recreationists and charter boats because of speed limits, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The seven manatee protection areas are located over State- and privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access and the opportunity to maintain property.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the

relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

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

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, and businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to seasonally avoid four areas (107.1 ha or 264.5 acres) or proceed at slow or idle speeds along three small segments (163 ha or 402.7 acres) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 as follows:

a. Revise the introductory text of paragraph (a);

b. Remove the Kings Bay map from the end of the section and reinsert it following paragraph (a)(7); and add a note to precede the map;

c. Add paragraphs (a)(8) through (a)(11);

d. Revise paragraph (b);

e. Add paragraphs (c)(3) through (c)(5).

The revised and added text reads as follows:

§ 17.108 List of designated manatee protection areas.

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. For areas in paragraphs (a)(1) to (a)(7) of this section, all waterborne activities are prohibited during the period November 15 to March 31 of each year. For areas in paragraphs (a)(8) to (a)(11) of this section, all waterborne activities are prohibited during the period October 1 to March 31 of each year. The areas that will be posted as manatee sanctuaries are described as follows:

* * * * *

(7) * * *

Note: Map for paragraphs (a)(1)–(a)(7) follows:

* * * * *

(8) That part of the Homosassa River, Homosassa, Citrus County, Florida, within Section 28, Township 19 South, Range 17 East, described as the headwaters of the Homosassa River (adjacent to the Homosassa Springs State Wildlife Park), including the main spring and spring run to the point where the run enters the northeast fork of the river along the southeastern shore; to be known as the Blue Waters Manatee Sanctuary, containing approximately 1.7 ha (4.1 acres). Map follows:

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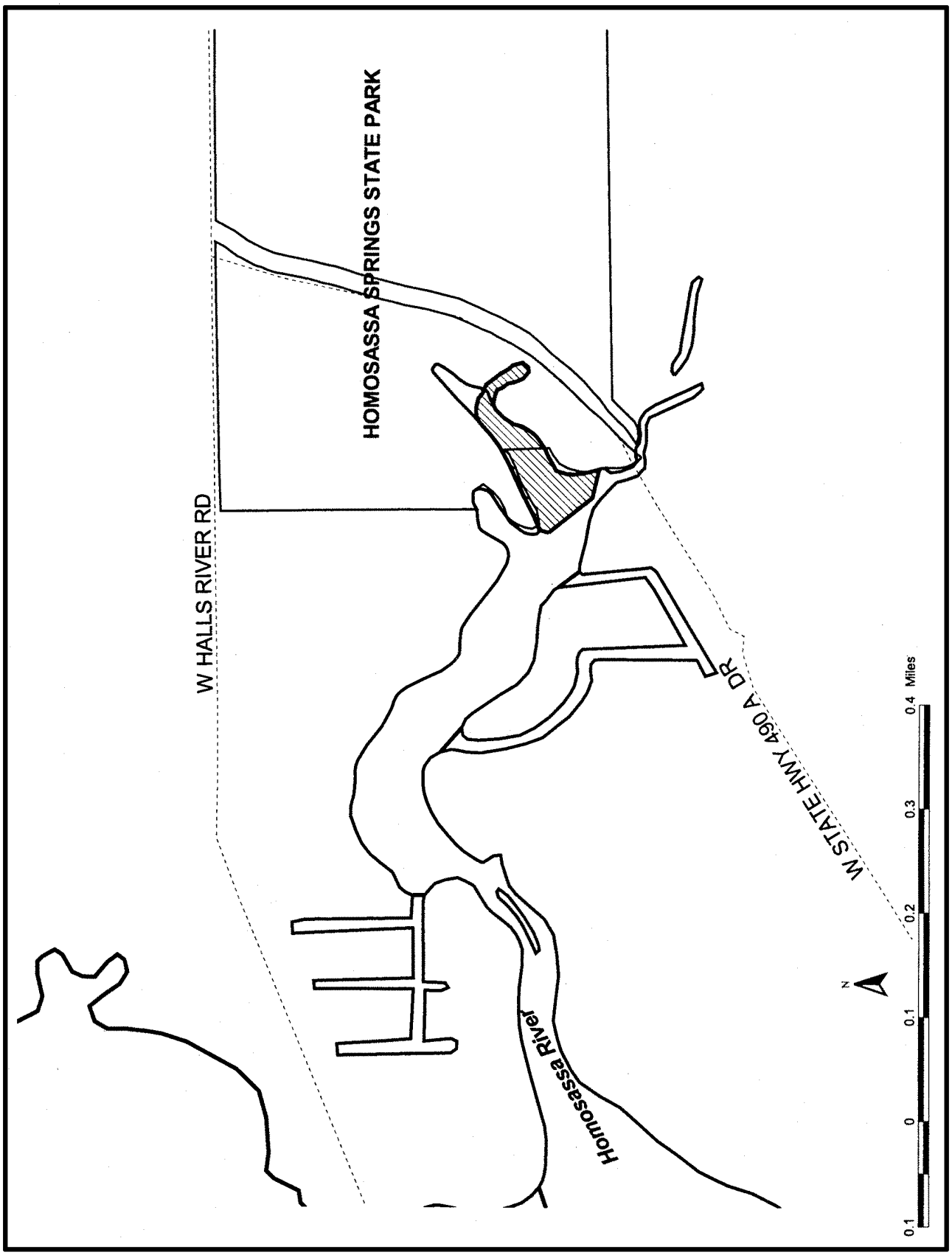
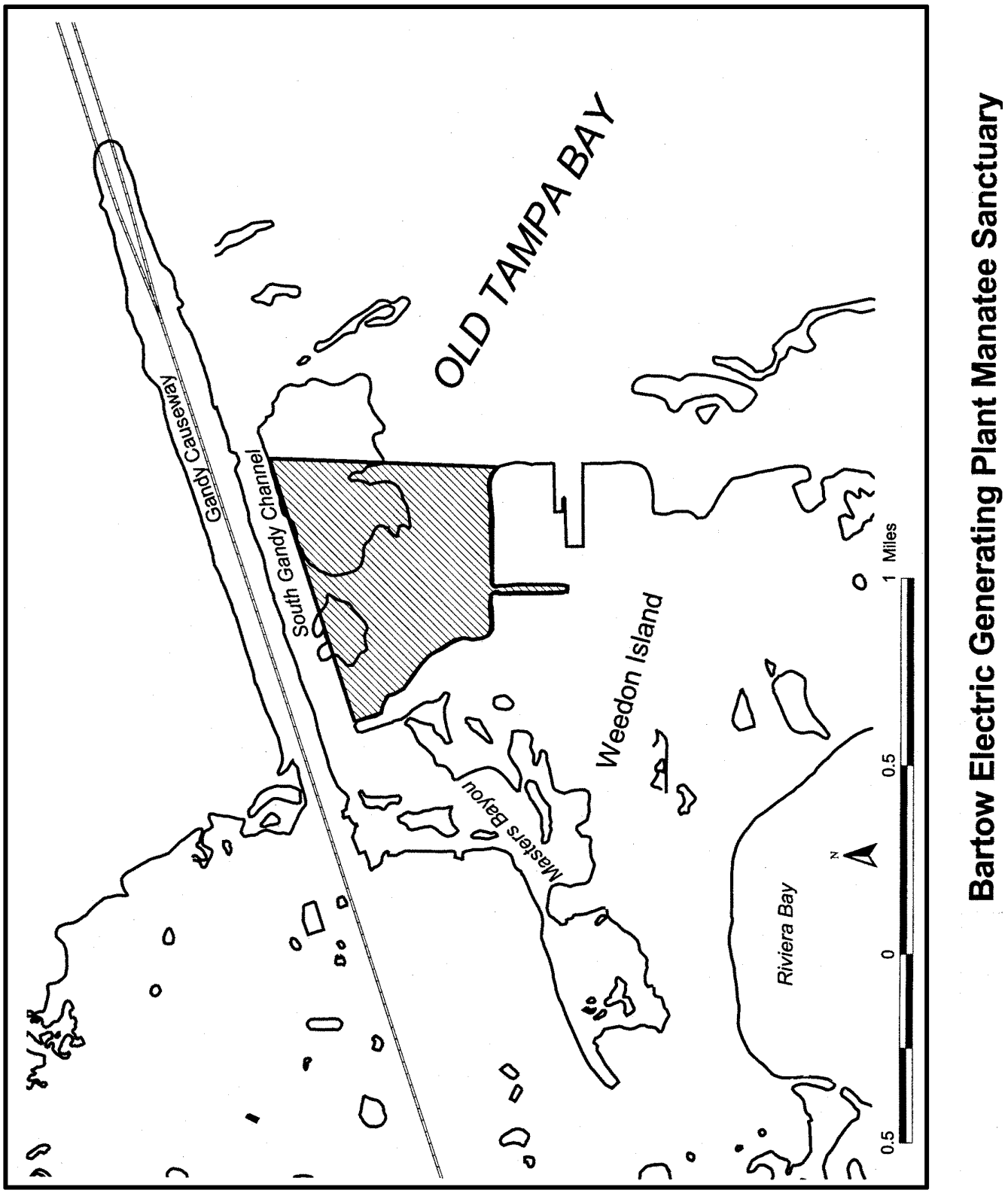


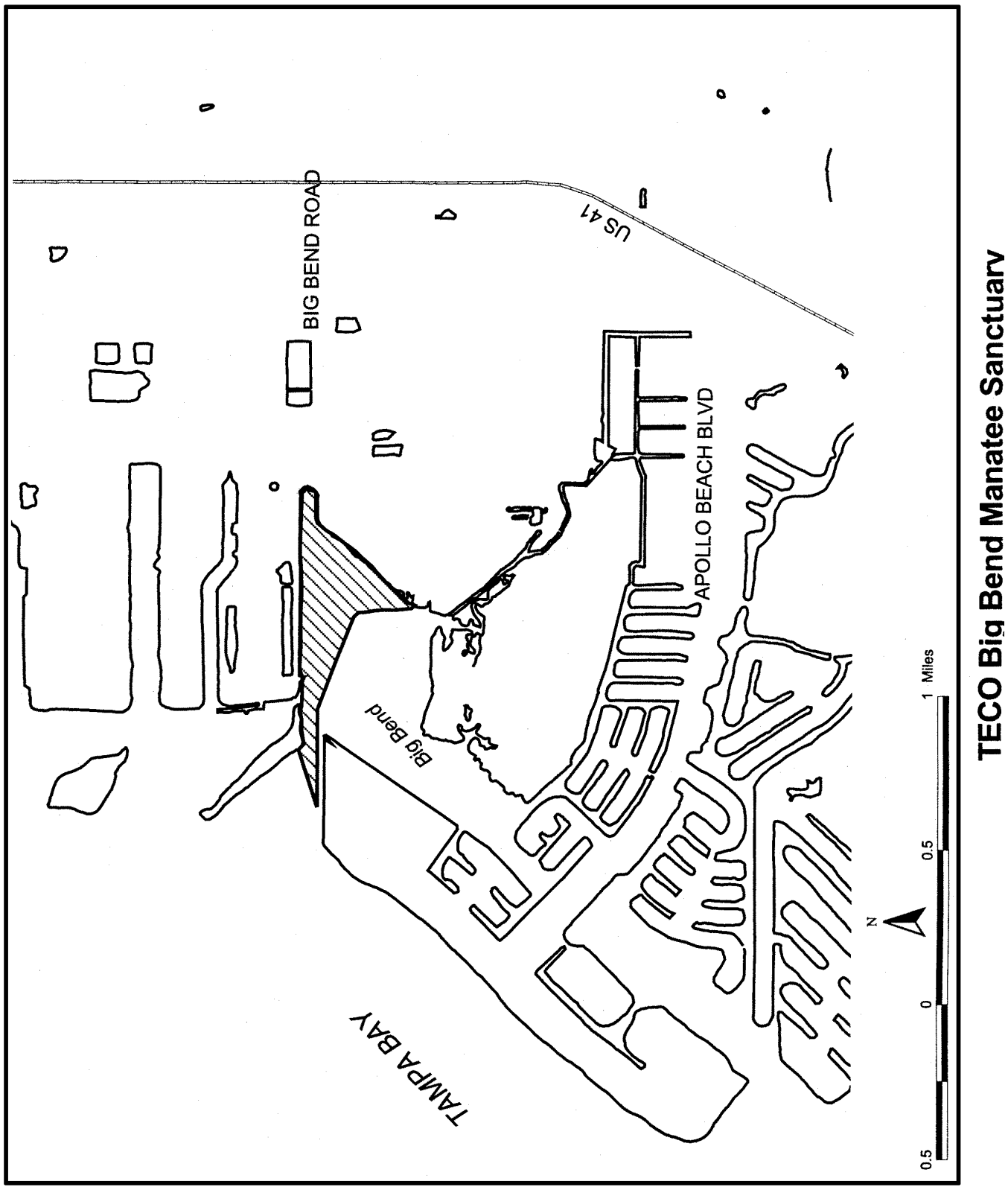
(9) That part of Tampa Bay, St. Petersburg, Pinellas County, Florida, within Sections 16 and 21, Township 30 South, Range 17 East, described as the warm-water outflow of the Bartow Electric Generating Plant located on the

northern shore of Weedon Island, lying along a north-south axis line from the shoreline to, but not including, the South Gandy Navigation Channel on the western shore of Old Tampa Bay; to be known as the Bartow Electric Generating Plant Manatee Sanctuary, containing approximately 73.5 ha (181.5 acres). Map follows:

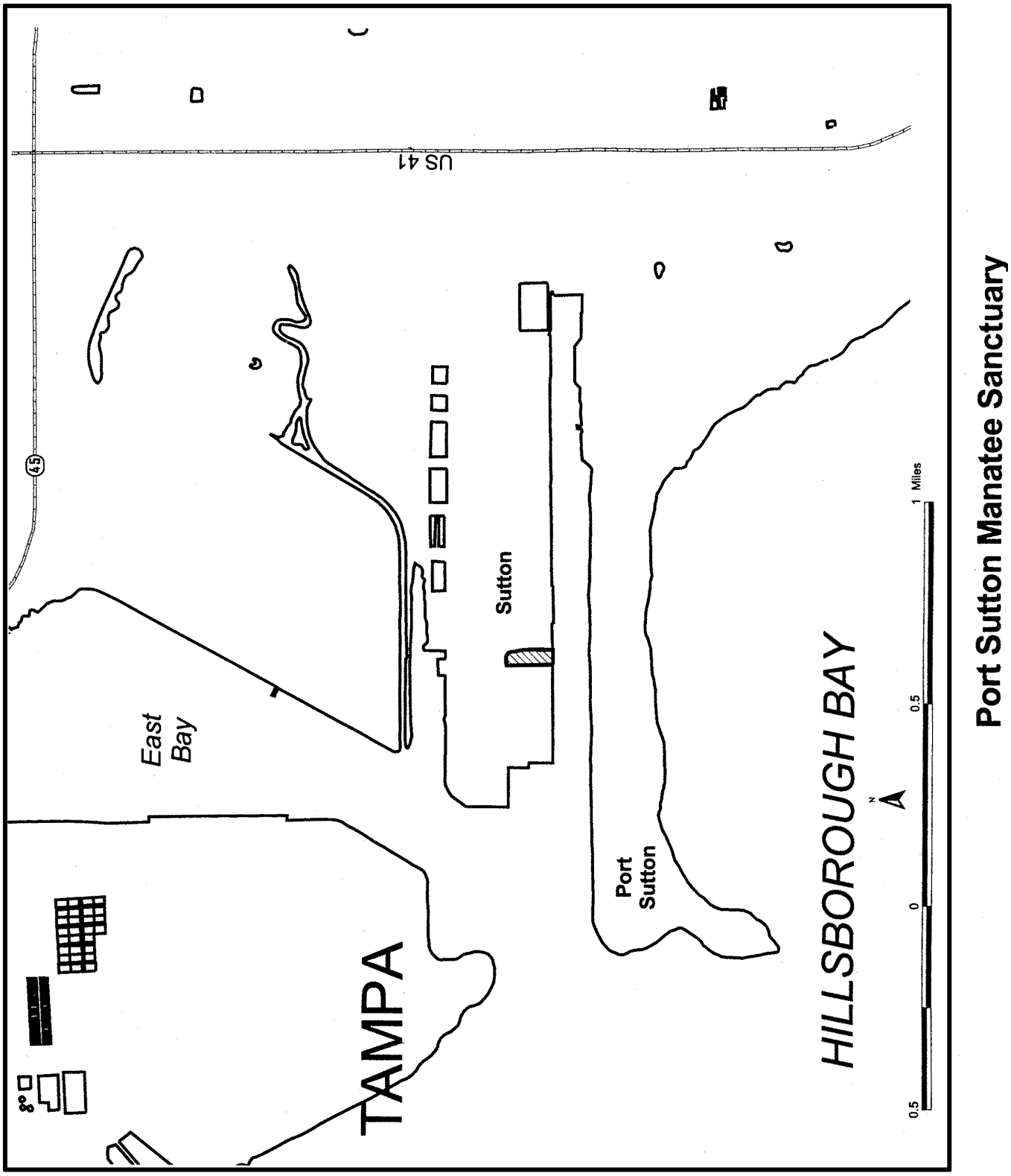


Bartow Electric Generating Plant Manatee Sanctuary

(10) That part of Tampa Bay, Tampa, Hillsborough County, Florida, within Sections 10 and 15, Township 31 South, Range 19 East, described as the waters in and around the warm-water outflow of the Tampa Electric Company Big Bend Electric Generating Station located west of Jackson Branch and including the Big Bend area of eastern Tampa Bay, to be known as the Tampa Electric Company Big Bend Manatee Sanctuary, containing approximately 30.8 ha (76.2 acres). Map follows:



(11) That part of Tampa Bay, Tampa, Hillsborough County, Florida, lying within Section 4, Township 30 South, Range 19 East, described as the warm-water outflow of the Tampa Electric Company Gannon Electric Generating Station, to be known as the Port Sutton Manatee Sanctuary, containing approximately 1.1 ha (2.7 acres). Map follows:



Port Sutton Manatee Sanctuary

(b) *Exceptions.*

(1) *Exception for residents adjoining the areas described in paragraphs (a)(1) to (a)(7) of this section.* Watercraft access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed/no wake. Residents' watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each vessel. Use of the waters within the sanctuaries by watercraft will be only for the purpose of access to residences and the storage of such watercraft in waters adjacent to residences.

(2) *Exception for publicly and privately owned property adjoining the areas described in paragraphs (a)(8) to (a)(11) of this section.* Watercraft access and property maintenance activities within sanctuaries by property owners, their employees, and designees are permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed. Watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each boat or by other means. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(c) * * *

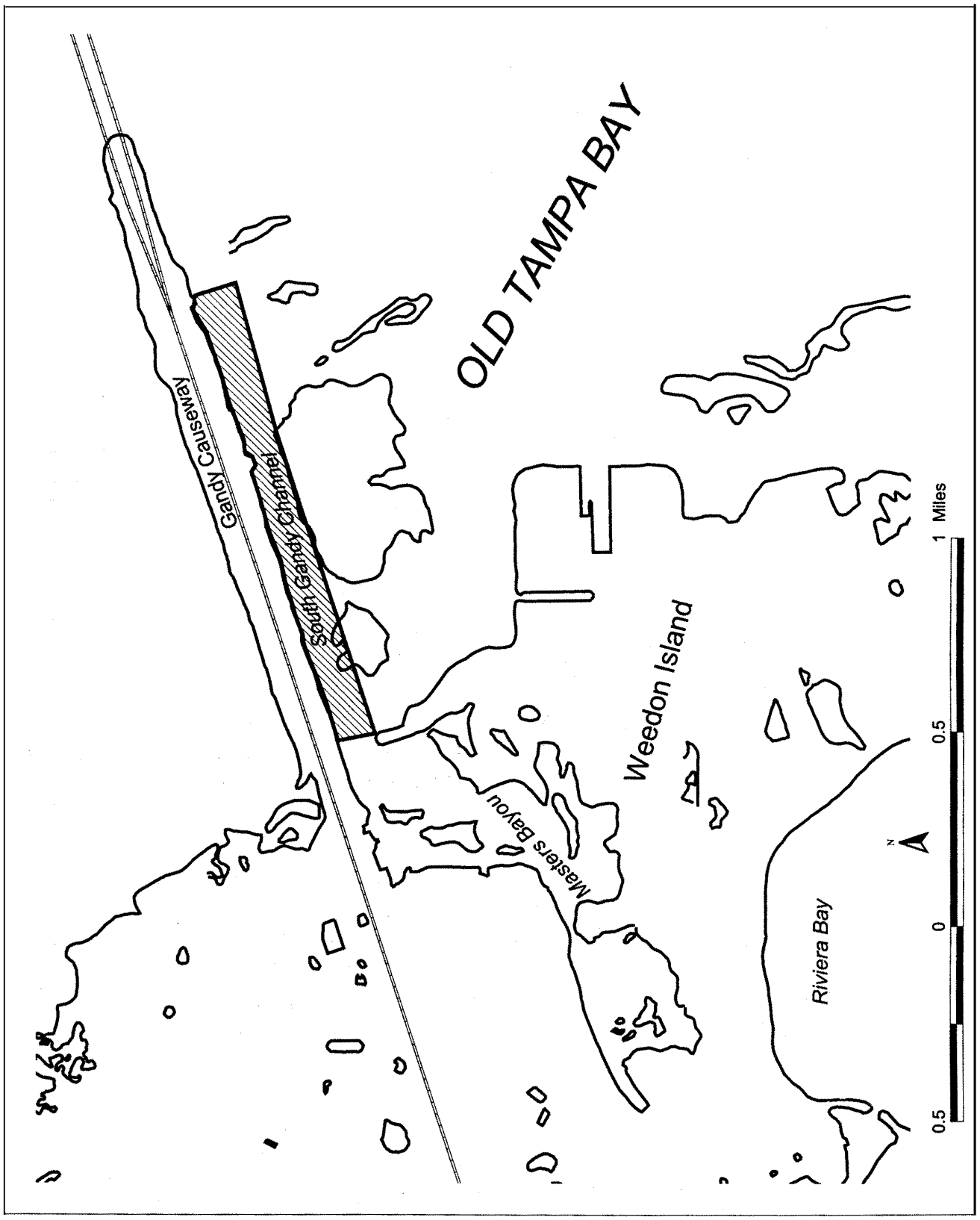
* * * * *

(3) The South Gandy Navigation Channel Manatee Refuge

(i) The South Gandy Navigation Channel Manatee Refuge is described as that portion of the South Gandy Navigation Channel in Pinellas County, Florida, between channel marker ''1'' and the point of land southwest of channel marker ''5''; containing approximately 30.3 ha (74.8 acres).

(ii) Watercraft are required to operate at slow speed from October 1 through March 31 of each year, inclusive. Watercraft are prohibited from operating at speeds in excess of slow speed from October 1 through March 31 of each year, inclusive.

(iii) Map of South Gandy Navigation Channel Manatee Refuge follows:

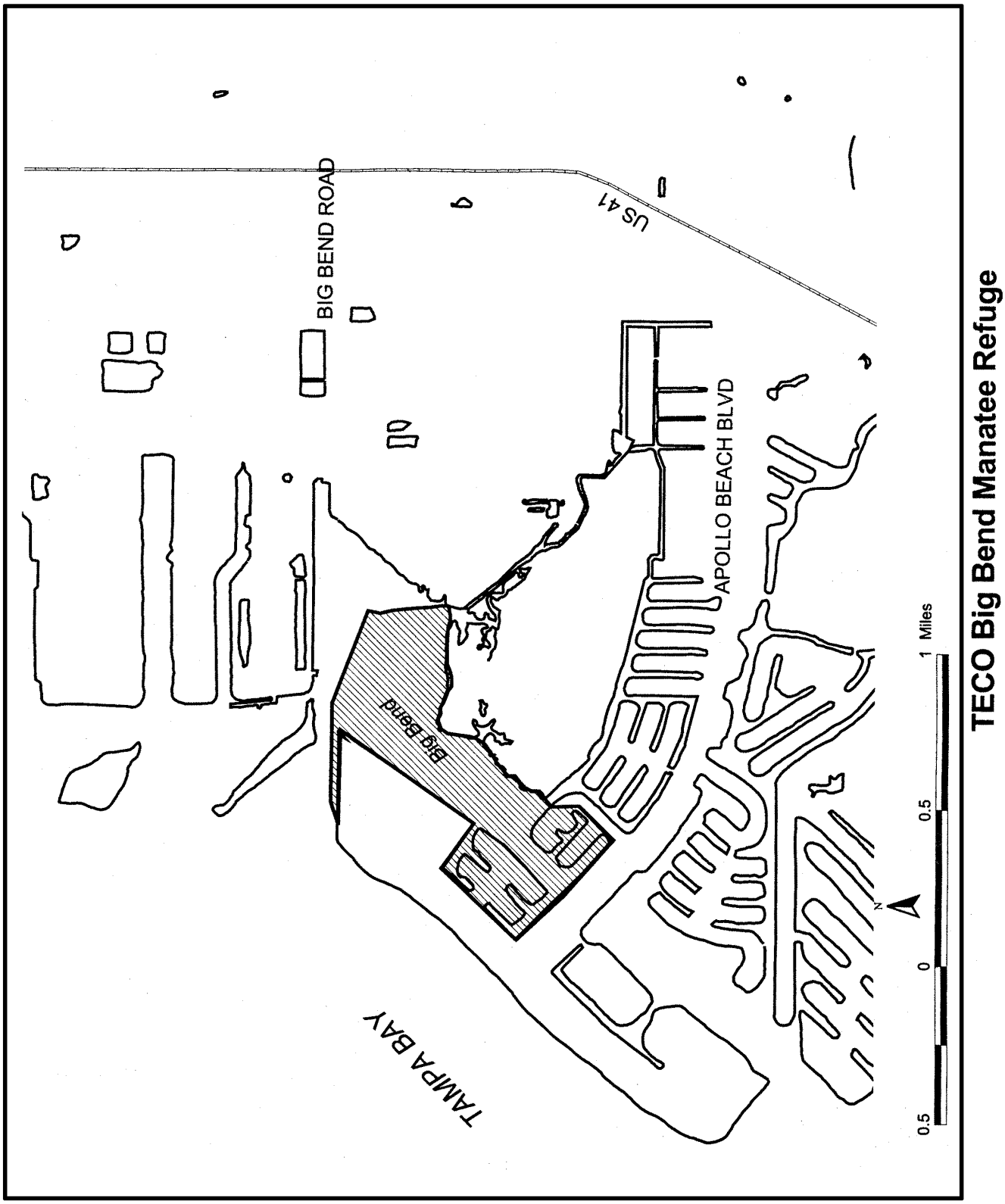


(4) The Tampa Electric Company's Big Bend Manatee Refuge

(i) The Tampa Electric Company's Big Bend Manatee Refuge is described as the entrance channel and those waters south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station within Hillsborough County, Florida; containing approximately 93.5 ha (231 acres).

(ii) Watercraft are required to operate at idle speed from October 1 through March 31, inclusive. Watercraft are prohibited from operating at speeds greater than idle speed from October 1 through March 31, inclusive.

(iii) Map of the Tampa Electric Company's Big Bend Manatee Refuge follows:

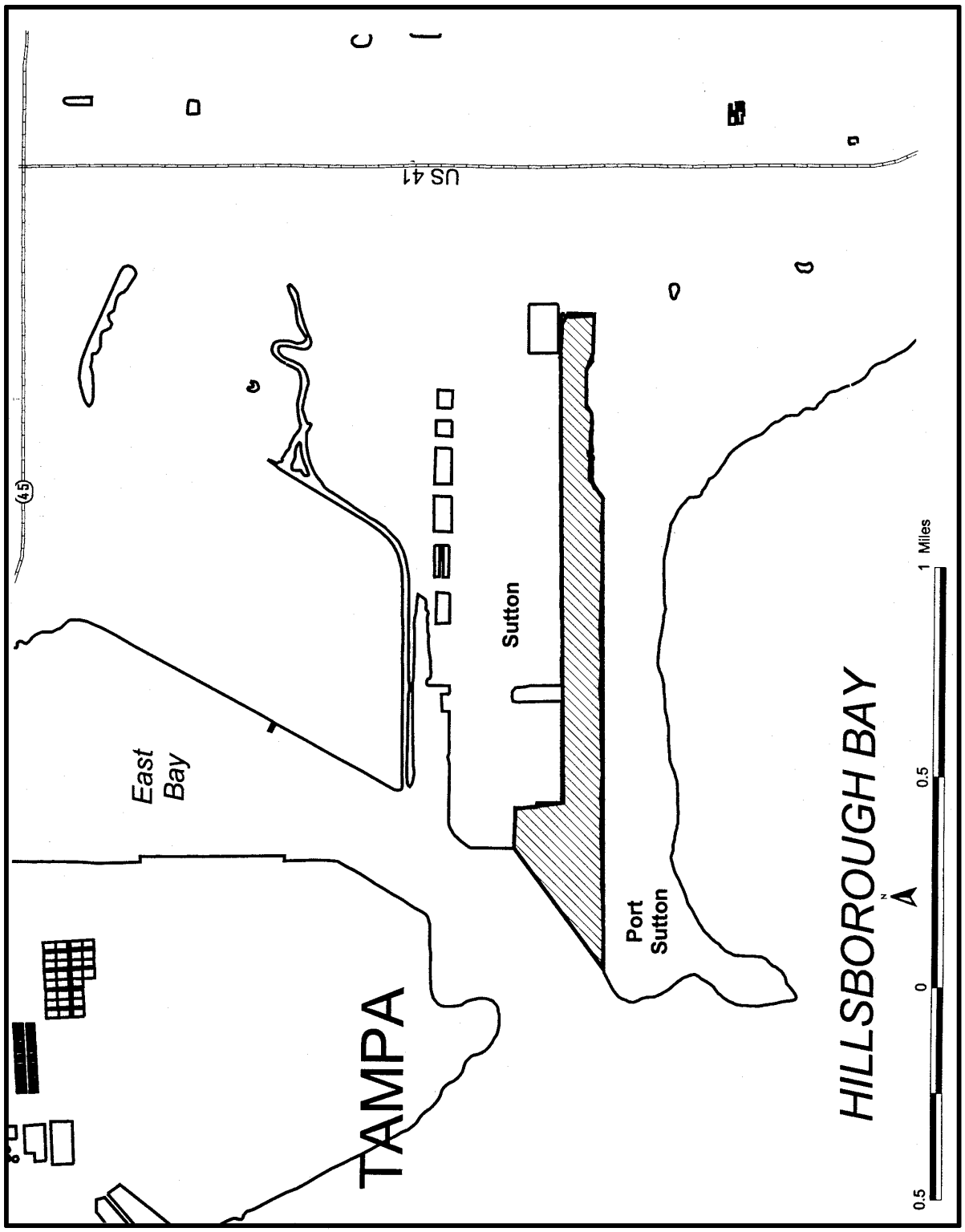


(5) The Port Sutton Manatee Refuge

(i) The Port Sutton Manatee Refuge is described as those waters surrounding the Port Sutton Manatee Sanctuary, including all waters within Port Sutton, Hillsborough County, Florida; containing approximately 39.2 ha (96.9 acres).

(ii) Watercraft are required to operate at idle speed from October 1 through March 31, inclusive. Watercraft are prohibited from operating at speeds greater than idle speed from October 1 through March 31, inclusive.

(iii) Map of Port Sutton Manatee Refuge follows:



Port Sutton Manatee Refuge

Dated: September 12, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23820 Filed 9–17–02; 3:59 pm]

BILLING CODE 4310–55–C

Federal Register

Friday,
September 20, 2002

Part VII

Department of Housing and Urban Development

24 CFR Part 2004

Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2004

[Docket No. FR–4742–P–01]

RIN 2508–AA13

Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of Inspector General, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas, and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party.

DATES: Comment Due Date: November 19, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410. Telephone (202) 708–1613 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services) (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This rule would amend the regulations of the HUD/OIG by updating the current regulations in 24 CFR part 2004. Under the proposed amendments, the Inspector General would delegate to the Counsel to the Inspector General the authority and responsibility for responding to requests and demands for production of OIG records and testimony of OIG employees (§ 2004.20). The proposed amendments also identify the factors that OIG will consider in making determinations in response to such requests and what information requesters must provide (§§ 2004.21 and 2004.22). The proposed rule further specifies when the request should be submitted (§ 2004.22), the time period for review (§ 2004.24), potential fees (§ 2004.29), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of an OIG employee as a witness (§§ 2004.26 and 2004.27). The proposed charges for witnesses are the same as those provided by the Federal courts. The fees related to production of records are the same as those charged under OIG's Freedom of Information Act regulation at 24 CFR part 2002. The proposed charges for time spent by an employee to prepare for testimony and for production of records by OIG are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

Findings and Certifications

Environmental Review

This proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule would not impose a Federal mandate that will result in expenditure by State, local, or tribal governments and the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 2004

Administrative practice and procedure, Courts.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR CH. XII to read as follows:

1. Part 2004 is revised to read as follows:

PART 2004—SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

Subpart A—General Requirements

Sec.

2004.1 Scope and purpose.
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Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.) and 42 U.S.C. 3535(d).

Subpart A—General Requirements

§ 2004.1 Scope and purpose.

(a) This part sets forth the policy for service of a subpoena issued by the Office of Inspector General (OIG), and policies and procedures that you must follow when you submit a demand or request to an employee of the OIG to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The OIG intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving OIG in controversial issues not related to OIG's functions;

(3) Maintain OIG's impartiality among private litigants where OIG is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of OIG.

(c) In providing for these requirements, OIG does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OIG.

This part does not create any right or benefit, substantive or procedural that a party may rely upon in any legal proceeding against the United States.

§ 2004.2 Applicability.

This subpart applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which HUD or OIG is not a named party. However, this subpart does not apply to:

(a) Demands upon or requests for an OIG employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OIG;

(b) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(c) Congressional demands and Congressional requests for testimony or records.

§ 2004.3 Definitions.

Counsel means the Counsel to the Inspector General.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OIG employee that is issued in a legal proceeding.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OIG means the Office of Inspector General, U.S. Department of Housing and Urban Development (HUD).

OIG employee or *employee* means:

(1) Any current or former officer or employee of OIG;

(2) Any other individual hired through contractual agreement by or on behalf of the OIG or who has performed or is performing services under such an agreement for OIG; and

(3) Any individual who served or is serving in any consulting or advisory capacity to OIG, whether formal or informal.

Records or *official records* or *information* means:

(1) All documents and materials which are OIG agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in OIG files; and

(3) All other information or materials acquired by an OIG employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Office of Inspector General Subpoenas

§ 2004.10 Service of an Office of Inspector General subpoena.

Service of a subpoena issued by the OIG may be accomplished as follows:

(a) *Personal service.* Service may be made by delivering the subpoena to the person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

Subpart C—Requests for Testimony and Production of Documents

§ 2004.20 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the Inspector General or the Counsel.

§ 2004.21 Factors OIG will consider.

The Counsel or Inspector General, in their discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Inspector General or the Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) OIG has an interest in the decision that may be rendered in the legal proceeding;

(c) Allowing such testimony or production of records would assist or hinder OIG in performing its statutory duties or use OIG resources where responding to the request will interfere with the ability of OIG employees to do their work;

(d) The records or testimony can be obtained from other sources;

(e) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(f) Disclosure would violate or be inconsistent with a statute, Executive Order or regulation;

(g) Disclosure would reveal confidential, or privileged information, trade secrets or similar, confidential commercial or financial information;

(h) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(i) Disclosure would result in OIG appearing to favor one litigant over another;

(j) Disclosure relates to documents that were produced by another agency;

(k) The demand or request is in conformance with all other applicable rules;

(l) The demand or request is sufficiently specific to be answered; and

(m) For any other good cause.

§ 2004.22 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OIG employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the Counsel. If you serve a subpoena on OIG or on an OIG employee before submitting a written request and receiving a final determination from the Counsel, OIG will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document sufficient to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OIG to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OIG employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OIG employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The OIG reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 30 days before the date that records or testimony are required. Requests submitted less than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 2004.23 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410–4500.

§ 2004.24 Processing demands or requests.

(a) After service of a demand or request to testify, the Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or to produce official records and information.

(b) The OIG will process requests in the order in which they are received. Absent exigent or unusual circumstances, OIG will respond within 30 days from the date that we receive all information necessary to the evaluation of the demand or request. The time for response will depend upon the scope of the request.

(c) The Counsel may grant a waiver of any procedure described in this subpart where a waiver is considered necessary to promote a significant interest of OIG, HUD, and the United States, or for other good cause.

§ 2004.25 Final determination.

The Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the Counsel. The Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the Counsel may impose on the release of records or information, or on the testimony of an OIG employee.

§ 2004.26 Restrictions that apply to testimony.

(a) The Counsel may impose conditions or restrictions on the testimony of OIG employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The OIG may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the Counsel determines such testimony would not be in the best interest of OIG, HUD and the United States; or

(3) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OIG.

This provision does not apply to requests from the United States for expert or opinion testimony.

§ 2004.27 Restrictions that apply to released records.

(a) The Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Counsel. In cases where protective orders or confidentiality agreements have already been executed, OIG may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Counsel so determines, original OIG records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official OIG records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

§ 2004.28 Procedure in the event of an adverse ruling.

If the Counsel declines to approve a demand for records or testimony and the court or other authority rules that the demand must be complied with irrespective of the instructions from the OIG not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen, 340 U.S. 462.*

§ 2004.29 Fees.

(a) *Generally.* The Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OIG.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OIG in its Freedom of Information Act Regulations at 24 CFR part 2002.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay any applicable witness fees for current OIG employees and any records certification fees by submitting to the Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former OIG employees, you must pay applicable fees directly to the former employee in accordance with applicable statutes.

(e) *Waiver or reduction of fees.* The Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony or production of records. Additionally, fees will not be assessed if the total charge would be $10.00 or less.

Dated: August 6, 2002.

Kenneth M. Donohue,

Inspector General.

[FR Doc. 02–23931 Filed 9–19–02; 8:45 am]

BILLING CODE 4210–78–P

Federal Register

Friday,

September 20, 2002

Part VIII

Environmental Protection Agency

40 CFR Parts 60 and 63

Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–7379–3]

RIN 2060–AJ42

Standards of Performance for Bulk Gasoline Terminals and National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On August 18, 1983, we promulgated Standards of Performance for Bulk Gasoline Terminals (1983 New Source Performance Standards (NSPS). The 1983 NSPS limit and control emissions of volatile organic compounds (VOC) that react with other pollutants to form ozone (or smog) that has been linked to respiratory impairments and eye irritation, and that negatively affect vegetation and ecosystems. On December 14, 1994, we promulgated National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). The 1994 National Emission Standards for Hazardous Air Pollutants (NESHAP) limit and control hazardous air pollutants (HAP) that are known or suspected to cause cancer or have other serious health or environmental effects.

The proposed amendments would provide: The opportunity to use alternative leak test procedures for railcars under the 1994 NESHAP, a clarification on monitoring flares and thermal oxidation systems used to comply with the 1994 NESHAP, an alternative recordkeeping requirement for tank trucks and railcars under the 1983 NSPS and 1994 NESHAP, and the use of flare design specifications under the 1983 NSPS by incorporating the allowance in the text of that final rule. The proposed amendments do not change the level of control or compromise the environmental protection achieved by the 1983 NSPS and 1994 NESHAP, but provide clarification and alternatives that enhance the flexibility of the recordkeeping and testing requirements of the two final rules. The scope of the proposed amendments and comment period is limited to the proposed changes to the 1983 NSPS and 1994 NESHAP.

DATES: *Comments.* Submit comments on or before November 19, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 20, 2002, a public hearing will be held on October 18, 2002.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–38, Room M–1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–38, U.S. EPA, 401 M Street, SW, Room M–1500, Washington, DC 20460. EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at the new EPA facility complex in Research Triangle Park, North Carolina or at an alternate facility nearby. You should contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671 to request a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–92–38 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Shedd, U.S. EPA, OAQPS, Emission Standards Division, Waste and Chemical Processes Group (C439–03), Research Triangle Park, North Carolina 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: ''shedd.steve@epa.gov.''

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: ''a-and-r-docket@epa.gov.'' Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect(TM) file format. All comments and data submitted in electronic form must note the docket number: A–92–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Stephen Shedd, c/o OAQPS Document Control Officer, U.S. EPA (C404–02), RTP, NC 27711.

EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held must contact JoLynn Collins of EPA at (919) 541–5671 at least 2 days in advance of the hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the proposed amendments. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and potentially affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, with certain exceptions, will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to the proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed amendments is also available on the

WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated entities. Categories and entities potentially regulated by this action include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	324110 493190 486910 422710	(2911) (4226) (4613) (5171)	Operations at major sources that transfer and store gasoline, including petroleum refineries, pipeline breakout stations, and bulk terminals.
Federal government			
State/local/tribal government			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.500 and 63.420. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. What is the statutory authority for this action?
II. What are we proposing as alternatives for railcar leak testing?
A. What are the current EPA and DOT gasoline railcar leak testing requirements?
B. Why are we making changes to our railcar leak testing requirements?
III. Which specific leak test methods can be used for railcars?
IV. How is a flare defined for purposes of monitoring the presence of a flame instead of flame temperature?
V. Can the flare design specifications be used for compliance with the 1983 NSPS?
VI. Can cargo tank vapor tightness records be kept off-site?
VII. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Regulatory Review

I. What Is the Statutory Authority for This Action?

The statutory authority for this action is provided by sections 101, 111, 112, 114, 116, and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*).

II. What Are We Proposing as Alternatives for Railcar Leak Testing?

The Department of Transportation (DOT) has been regulating railcar shipments for many years. In 1994, EPA promulgated additional requirements to reduce gasoline vapor leakage during the loading and unloading of railcars at certain facilities using gasoline vapor recovery systems (59 FR 64318, December 14, 1994). The additional requirements are in the 1994 NESHAP for gasoline distribution facilities (40 CFR 63.420–63.429). This action proposes to amend the 1994 NESHAP to allow the use of existing DOT and other leak test methods as an alternative to methods specified in the 1994 NESHAP.

In summary, we are proposing the following amendments to the 1994 NESHAP:

- As an alternative to the annual certification test for railcars (40 CFR 63.425(e)) using EPA Method 27 (contained in appendix A of 40 CFR part 60), owners and operators may use certain DOT and other railcar test procedures as specified in the proposed amendments.
- Those alternative DOT and other railcar test procedures may be used only for railcars that do not vapor balance with the end user's vapor collection equipment.
- As an alternative to the pressure limit of 4,500 pascals (18 inches of water column) for vapor collection and liquid loading equipment (40 CFR 60.502(h)) and (i) as cross-referenced in (40 CFR 63.422(a)), railcars may be loaded at higher pressures if the railcar and the facility's vapor collection and processing and liquid loading equipment are designed and leak tested to allow those higher pressures to be maintained.

Gasoline vapor released to the air is a concern since it contains VOC and HAP. The VOC in the presence of heat and sunlight, chemically react with oxides of nitrogen (NO_X) to create an odorless and colorless gas called ozone. Ground-level ozone causes human health problems and damages crops and other vegetation. Also, ground-level ozone is a key ingredient of urban smog. Gasoline vapors contain HAP listed in section 112 of the CAA. The HAP are known or suspected to cause cancer and other serious health and environmental effects. The HAP contained in gasoline vapors include, but are not limited to benzene, toluene, hexane, ethyl benzene, naphthalene, cumene, xylene, and methyl tert-butyl ether.

A. What Are the Current EPA and DOT Gasoline Railcar Leak Testing Requirements?

1. EPA Requirements

Our current vapor leakage requirements for railcars loading gasoline grew out of earlier vapor leakage requirements for gasoline tank truck loading and unloading operations. EPA and the California Air Resources Board (CARB) found in the 1970's that gasoline vapor leakage from controlled transfer operations was a VOC control problem when gasoline was loaded into tank trucks at bulk terminals and plants and when unloaded at gasoline bulk plants and service stations. Those controlled facilities utilize a vapor collection system to collect displaced vapors during gasoline transfers and to pipe them to a vapor processing system such as a thermal oxidation system. Vapor leakage from points in the tank truck and vapor collection system often

allows the VOC and HAP in the gasoline vapors to escape to the atmosphere instead of being recovered by the vapor collection and processing systems. Additionally, the vapor balancing systems at bulk plants and service stations rely on a vapor-tight vessel to help create a vacuum in the truck's tank so that the vapors displaced from the service station or bulk plant storage tank being loaded will be efficiently returned (balanced) into the truck's tank.

To reduce gasoline vapor leakage from tank trucks, the CARB started a regulatory program to require testing and repair of gasoline tank trucks annually using a pressure and vacuum test. We followed that lead and issued a guidance document on gasoline tank truck leakage testing (Tank Truck Control Techniques Guideline, EPA–450/2–78–051, December 1978) for application in State implementation plans for areas not meeting the National Ambient Air Quality Standards for ozone. In August 1983, we promulgated the 1983 NSPS (48 FR 37590, August 18, 1983) which required further reductions in VOC emissions from gasoline tank trucks that load at new, modified, or reconstructed loading racks at bulk gasoline terminals nationwide. The 1983 NSPS include the same annual pressure and vacuum test program for tank trucks as recommended in the Tank Truck CTG. The CARB also continued to update their test program by adding additional components, such as an internal vapor valve test, lower allowable leakage rates, and test requirements and methods for year-round compliance.

In December 1994, we promulgated the 1994 NESHAP to reduce emissions of HAP from large bulk terminals and pipeline breakout stations located separately or collocated at plant sites with other emission sources (such as petroleum refineries). The 1994 NESHAP added gasoline railroad tank cars (railcars) to our Federal vapor recovery and leak test program. It also required the improvements to the leak testing program for gasoline tank trucks that the CARB and local districts made since the 1983 NSPS were promulgated. The rest of the discussion pertains only to the 1994 NESHAP vapor leakage requirements for railcar loading. Those requirements consist of the following four parts: the annual pressure and vacuum leak test, year-round testing, reporting and recordkeeping, and pressure limits for the vapor collection and liquid loading systems at bulk terminals.

The first part of the 1994 NESHAP requirements for gasoline railcars is the annual pressure/vacuum test. The 1983 NSPS specified use of an EPA test method (Method 27) that provides a step-by-step procedure for performing the test. Like the 1983 NSPS, the 1994 NESHAP specify that you must use Method 27, but under defined conditions as discussed below. The 1994 NESHAP require you to perform Method 27 annually at vessel pressures of 18 inches of water column of positive pressure and 6 inches of negative water column pressure (40 CFR 63.425(e)). The 1994 NESHAP specify an allowable pressure drop of not more than 1 inch of water in 5 minutes for railcar size tanks after being pressurized to the test pressure. Also, the 1994 NESHAP require you to test the vapor hoses and an internal vapor valve.

Year-round testing is the second part of the 1994 NESHAP provisions for gasoline railcars. We found that significant vapor leakage may occur at various times during the year after an annual test is performed. Therefore, the CARB and local districts and EPA developed the so-called anytime or year-round test program to augment the annual test. Anyone (air pollution inspector, facility owner, etc.) who identifies through sight, sound, or smell a possible problem with vapor leaks from a railcar can require one of three alternative test procedures to allow detection and repair of the leak. The three alternative year-round test procedures are provided in 40 CFR 63.425(f) through (h) of the 1994 NESHAP. They are, respectively, a leak test using a portable instrument, an in-field pressure test using nitrogen, and a pressure test using the Method 27 test procedure coupled with a less stringent leakage rate than required in the annual test. If a railcar fails any of the year-round test procedures, the 1994 NESHAP require that it be taken out of service and not loaded again at that facility until the railcar can be fixed and pass the Method 27 test at the annual certification limits.

The third part of the railcar vapor leakage program in the 1994 NESHAP is the reporting and recordkeeping requirements (40 CFR 63.422(c)(2)). Railcars in gasoline service may not be loaded at an affected loading rack unless the railcar owner or operator has provided documentation that the railcar has passed the annual pressure and vacuum tests discussed above. Railcars that have failed any of the year-round leakage tests since the last annual test must also have documentation that they were subsequently repaired and recertified to the annual certification limits. The owner or operator of the loading rack must take steps to assure that only railcars with the documentation on file are loaded at the loading rack. Those steps include: recording the tank identification number of railcars loaded, cross-checking (within 2 weeks of loading) the identification numbers against the leak test documentation on file at the facility, notifying the owner or operator of non-documented railcars, assuring that such railcars are not loaded again until proper documentation is provided, and reporting the non-documented railcars in the semiannual compliance report to the permitting authority (40 CFR 63.428(g)). Some permitting authorities have also granted alternatives to allow electronic recordkeeping and reporting and the use of key-locks to lock out non-documented tank trucks or railcars from loading at the rack.

The last part of the 1994 NESHAP requirements concerning gasoline leakage from railcars is a design specification (40 CFR 60.502(h) and (i) as cross-referenced in (40 CFR 63.422(a)) for the liquid loading and vapor collection equipment at the terminal to prevent over-pressurizing of the railcar and vapor collection system. The requirement specifies that the vapor collection and liquid loading equipment be designed and operated to prevent the pressure in the railcar from exceeding the annual test pressure of 18 inches of water column. Also, we require that the pressure-vacuum safety vents in the facility's vapor collection system be designed to not open below the same 18 inches of water pressure limit. We have approved one gasoline loading facility's use of an alternative test procedure to load railcars at a higher pressure, provided they perform the Method 27 pressure test and the facility's vapor collection and recovery system is designed and operated to be leak-free at those higher pressures.

2. DOT Requirements

DOT, through its Research and Special Programs Administration and the Federal Railroad Administration, develops national requirements for the transportation of gasoline in railroad cargo tanks (railcars) and highway cargo tanks (tank trucks). Similar to EPA requirements discussed earlier, DOT requirements limit the degree of leakage from railroad cargo tanks, provide for test procedures, and specify the frequency of testing. DOT has codified some of those requirements in the Code of Federal Regulations, some have been developed by industry trade associations, and some are currently under development by DOT.

DOT requirements for liquid transport in railcars, including those cars used to transport gasoline, require a visual

inspection of the tank before transportation to determine if the tank is in proper condition for transport (49 CFR 173.31(d)). At that point, the inspection does not require the use of instruments to assess the fitness for service of the tank, such as tank shell thickness measurements or leak testing the mating surfaces of service equipment (valves, fittings, and pressure relief devices). DOT regulations do require, however, periodic maintenance of the tank and service equipment to ensure that such equipment conforms to the minimum Federal safety standards. Those latter standards require the use of nondestructive testing equipment and qualified personnel using qualified procedures.

Personnel performing periodic inspection and tests must be qualified for the type of nondestructive examination performed, such as ultrasonic testing, leak testing, or radiography (49 CFR 179.7(b)(9)). The tank car owner must ensure that the procedure has the sensitivity and reliability to find the flaw under observation (49 CFR 179.7(b)(10)); that is, the owner must qualify the procedure to determine that it can find a pre-defined flaw. Recent DOT regulations are not prescriptive in nature, but rather are end result driven. That means that DOT does not specify a particular nondestructive examination method or procedure for performing a test, but rather allows the tank car owner and the maintenance facility to develop site-specific procedures. End results are published by DOT as acceptance standards (49 CFR 180.511). For leakage pressure tests, the end result must show that all product piping, fittings, and closures show no indication of leakage (§ 180.511(f)).

In addition to the published DOT rules, the railroad industry has its own rules that have the effect of a national standard. The Association of American Railroads (AAR), a not-for-profit trade organization of the railroad industry, publishes the railroad industry rules. A working group under the AAR, the Tank Car Committee, develops rules and standards based on best practices. Appendix T in the AAR Tank Car Manual contains requirements and methods for performing nondestructive examinations. The AAR Appendix T parallels requirements issued by the American Society for Nondestructive Testing, an international standard writing body (ASNT SNT–TC–1A). Recently, DOT issued an exemption (DOT–E 12095) to over 70 parties that incorporates by reference the requirements of Appendix T. DOT plans to propose Federal rulemaking to include Appendix T in the next few years.

With respect to leak testing, Appendix T provides four test procedures: bubble leak test, pressure change test, halogen diode detector test, and mass spectrometer test. The tank car industry generally uses the bubble leak test to test tanks in gasoline service. That leak test procedure requires pressurizing the tank car, holding the pressure for a defined period (dwell time), and then using a bubble forming solution at the mating interface of the service equipment under observation. Leaks will cause bubbles to appear. The actual details of the procedure and the equipment under observation are defined in the Federal rule and by the tank car owner. The Federal end result (acceptance criterion) is no leakage.

The typical railcar is loaded about seven times per year. In comparison, tank trucks are loaded as many as seven times per day for high-volume commodities such as gasoline. The disparity in the loading and unloading cycles and the volumetric size of the equipment between railcars and tank trucks suggests a need to consider different leak identification strategies. The DOT leak test interval for railcars is once every 10 years, or whenever the service equipment is reassembled on the tank (49 CFR 180.509(c)(3)(i) and (j)). Beyond those Federal rules, DOT and AAR continue to work on procedures to determine the appropriate in-use frequencies for leak testing. An appropriate in-use frequency considers the material of construction of the service equipment, the service equipment mating surface, gasket specifications, the compatibility of the product with the gasket, the life-limit of the gasket, the bolting arrangement and specified torque on the joint, and the loading and unloading cycle time. In addition to those considerations, the length of the railcar lease also drives the test frequency. According to owners of railcars, leases usually run from 3 to 5 years and require leak testing at the start or renewal of the lease. The DOT and industry standard will take into consideration all aspects of fleet operations and maintenance.

DOT and the AAR are also currently working on the development of an industry standard that outlines which items to inspect, how to inspect those items, the acceptance criteria, data collection and analysis of test results, and statistical tools for predicting inspection frequencies based on a reliability-centered approach. In developing the new standard, the railroad industry surveyed maintenance practices in other industries and the industry is now working toward a document that is very similar to the Federal Aviation Administration's maintenance scheme for commercial aircraft.

B. Why Are We Making Changes to Our Railcar Leak Testing Requirements?

Over the last few years, both EPA and DOT have received requests to clarify and reduce any overlapping requirements between DOT's test procedures and those in the 1994 NESHAP. Additionally, we received and approved one loading facility's request for alternative test procedures for gasoline railcars. We met and reviewed the overlapping requirements with both DOT and industry representatives. As discussed below, we believe that DOT requirements control vapor leakage to levels equivalent to those required by the 1994 NESHAP. Therefore, we are proposing to allow certain DOT test procedures to be used as alternatives to our test procedures at gasoline distribution facilities affected under the 1994 NESHAP. Additionally, railcars have historically been loaded and tested at higher pressures than tank trucks, so we are proposing to allow them to load at those higher pressures when using vapor recovery systems.

As discussed earlier, there are many differences between our rules and DOT's rule for leak testing of gasoline railcars. Our test procedures allow for some leakage during the test, are performed annually and affect additional vapor-handling equipment, are for both pressure and vacuum, and include checks for excessive leakage between the annual tests. DOT requirements allow for no leaks during the test when using the most common test procedure, provide for less frequent testing than ours, test only under positive pressure, and include both pre-test and post-test inspections of the railcar tank.

We believe the difference in test frequency is not a significant issue because other factors balance the difference. As discussed above, under DOT procedures and industry practices railcars are commonly pressure tested every 3 to 5 years and, in the worst case, as long as 10 years. We require an annual test, but our test allows for some leakage, we do not require pre- and post-test inspections of the cargo tank, and we do not have a program for qualifying the personnel performing the test. Additionally, we will still have the safety net of our year-round field tests and the ongoing studies by DOT and shippers to determine the appropriate test frequency for railcars. Considering all of those factors, we are proposing

today to allow DOT frequency requirements and the no-leakage test procedure (bubble test) to be used as an alternative to our test method and procedures. In using that alternative, railcar operators must still meet all of the recordkeeping, reporting, and monitoring requirements as mentioned earlier for the 1994 NESHAP.

The remaining difference is that DOT bubble pressure test only identifies positive pressure leakage and we require the tanks to be tested for negative pressure (vacuum) leakage. Today's proposed amendments would limit the use of DOT bubble test to those railcars that do not vapor balance with the customer tanks. We are not aware of any vapor balancing of gasoline railcars, and industry representatives have reported that there are very few, if any, railcars that are being vapor balanced. However, since maintaining vacuum is critical to the capture and control of cargo tank unloading emissions, we are proposing to limit DOT alternative procedures to railcars that do not vapor balance.

Lastly, industry representatives have reported that gasoline railcars load at higher pressures than the design and test pressure in the 1994 NESHAP. As discussed earlier, the 1994 NESHAP require the total system (railcar and vapor collection and loading equipment) to be designed, tested, and operated below the same specified pressure (18 inches of water column). We have allowed one gasoline railcar loading facility to operate under higher pressures [1] which may be set by the facility, provided they have designed and tested the complete loading and vapor collection system for the specified higher pressures. Today, we are proposing to provide a similar higher pressure allowance for all affected facilities loading gasoline into railcars.

III. Which Specific Leak Test Methods Can be Used for Railcars?

As we describe in section VII.I of this preamble, we conducted a search to identify railroad tank car test procedures that could serve as alternatives to DOT's referenced bubble leak test procedure in the AAR Tank Car Manual. Our search located two additional test methods that we and DOT believe are equivalent to DOT's approach. Those test procedures are: ASTM E 515–95 (Reapproved 2000), ''Standard Test Method for Leaks Using Bubble Emission Techniques,'' and British Standard (BS) EN 1593:1999, ''Non-destructive Testing: Leak Testing-Bubble Emission Techniques.'' The procedure ASTM E 515–95 and BS EN 1593:1999 are procedures for the detection and location of leaks in vessels by bubble emission techniques and are similar to DOT's current procedure. The procedure BS EN 1593 covers certification of personnel, creation of a pressure differential across the vessel, the type of bubble forming solution to be used, preparation of the vessel surface, dwell time for establishment of bubble emissions, surface temperature, and direct and indirect visual examination procedures. The procedure ASTM E 515–95 includes specifications for personnel performing the leak testing, creation of a pressure differential across the vessel, and the type of bubble forming solution to be used, and also addresses the application of the solution to the test surface and provides estimates of precision and bias for the procedure.

We are proposing to allow those two test procedures, as well as the current DOT bubble leak test procedure, as acceptable alternatives through addition of a new paragraph to the 1994 NESHAP (40 CFR 63.425(i)).

IV. How Is a Flare Defined for Purposes of Monitoring the Presence of a Flame Instead of Flame Temperature?

We found that the 1994 NESHAP were not clear on the difference between a flare system and a thermal oxidation system. The distinction is important because of the different monitoring requirements for those two types of control systems. The 1994 NESHAP require flares to be continuously monitored for the presence of a pilot flame, and thermal oxidation systems to be continuously monitored for firebox temperature. The 1994 NESHAP did not contain a definition for either type of unit. Today's proposed amendments would clarify the intent of the 1994 NESHAP by adding definitions for both units. The proposed amendments would also clarify the text of the monitoring requirements. Additionally, we are clarifying the use of the term flare in the test methods and procedures section of the 1994 NESHAP.

The continuous monitoring section of the 1994 NESHAP require thermal oxidation systems to include a monitor to measure the temperature in the firebox or in the ductwork immediately downstream from the firebox (40 CFR 63.427(a)(3)). Flare systems, on the other hand, must use a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity to the pilot light, to indicate the presence of a flame (40 CFR 63.427(a)(4)). Flares are one type of thermal oxidation system that thermally oxidizes pollutants in an open flame without an enclosure. Other types of thermal oxidizers also thermally oxidize pollutants, but the combustion flame is enclosed in a box or cylinder. We intended that only non-enclosed flare systems meeting the design specifications in the General Provisions to this part (40 CFR 63.11(b)) be allowed to monitor for the presence of a flame. We found, through testing many types of flares, that flares meeting those design specifications have a high combustion efficiency. Therefore, due to the complexity of testing systems with an open flame and no enclosure, we do not require each flare to be performance tested if it meets the required design specifications. Also, due to their design, the flares need only monitor for the presence of a flame to show long-term or continuous compliance. For other enclosed thermal oxidation systems or recovery systems, a performance test measuring pollutant flow rate and concentration is feasible. The enclosed thermal oxidation system's oxidation temperature can vary and is easily measured, so temperature monitoring is important and required to demonstrate long-term compliance. For flares not meeting the 40 CFR 63.11(b) design specifications, you must develop your own test methods and procedures and monitoring techniques to determine short- and long-term compliance with the emissions standards specified in the 1994 NESHAP. Outlet emissions shall not exceed 10 milligrams of total organic compounds per liter of gasoline loaded.

Based on those considerations and how other standards have defined the control systems, we have developed definitions for flares and thermal oxidation systems to clarify the requirements for each type of system. We are also proposing to clarify the rule text to say that flares meeting the design specifications are the only flare systems allowed to use a flame monitor rather than a temperature monitor. For flares not meeting the design specifications, the owner or operator must determine and obtain approval for alternative

[1] Instead of limiting the positive pressure for the test to 18 inches of water as required under the 1994 NESHAP, the testing pressure must be at or above the maximum operating pressure expected when loading multiple railcars. The testing pressure is the maximum operating pressure plus 20 percent, but will in no case be greater than 25 pounds per square inch. Instead of the 25 mm (1 inch) of water pressure change allowed in 40 CFR 63.425(e), the allowable pressure change shall be no greater than 5.0 percent of the maximum pressure. In complying with the test run repetition requirements as specified in section 5.2.5 of Method 27, the tester must repeat positive pressure test runs until two consecutive runs agree within 2.5 percent of the maximum pressure. Maintain records of the railcar pressure limits as required in § 63.428(b).

monitoring and test procedures as discussed below.

The test methods and procedures section of the 1994 NESHAP (40 CFR 63.425(a)) specifies that a performance test is required for all control systems. That provision also says that if you cannot measure emissions from a flare using the specified test methods, then the general design specifications for flares apply. The 1994 NESHAP neither defined a flare nor specified what happens if a flare does not meet the design specifications. The intent of the 1994 NESHAP and other rules using that approach is that if a flare meets the 40 CFR 63.11(b) design specifications, you must only demonstrate that those specifications are met without the need to conduct the performance test required for enclosed systems, where gas flow rate and pollutant concentration can be easily measured. Today, we are clarifying the intent of the 1994 NESHAP by amending the rule text language of 40 CFR 63.425(a). We are also clarifying that if a flare does not meet the flare design specifications and cannot be tested using the specified test procedures, then you must determine and demonstrate appropriate test methods and procedures and monitoring parameters as currently specified in 40 CFR 63.7(f) and 40 CFR 63.427(a)(5), respectively.

V. Can the Flare Design Specifications Be Used for Compliance With the 1983 NSPS?

When the 1983 NSPS were under development, flares were not being used at bulk gasoline terminals and the flare design specifications in 40 CFR 60.18(b) through (f) had not been promulgated. If a flare is designed and operated in accordance with these specifications, no efficiency or outlet performance testing is necessary to demonstrate performance. Since then, flares have been put into use at bulk terminals and we have been allowing the flare design specifications to be used for compliance demonstrations for flares with an open (without enclosure) flame.[2] Therefore, we are proposing to add a reference to the flare design specifications in the rule text.

The test methods and procedures section of the 1983 NSPS (40 CFR 60.503) provides detailed procedures for carrying out the required performance testing of vapor processing systems. One of those procedures includes measurement of volume and concentration of total organic compounds exhausted from the control device (40 CFR 60.503(c)). Open flame flares, due to their design, do not allow the easy measurement of volume and concentration of total organic compounds exhausted. For that reason, in 1986 we promulgated open flame flare design specifications in the General Provisions of 40 CFR part 60. However, we stipulated that those design specifications do not apply unless a particular subpart of part 60 refers to them (40 CFR 60.18(a). We found if a flare is designed and operated in accordance with those specifications, no efficiency or outlet emissions testing is necessary to show that the flare achieves a control efficiency of at least 98 percent. However, we require some testing to demonstrate that the flare meets the design specifications. We have determined that those specifications are applicable under the 1983 NSPS, so we are proposing to add a reference to them in the rule text.

Under today's proposed amendments affecting 40 CFR 60.503, we are allowing owners and operators under the 1983 NSPS to demonstrate that their flare meets the 40 CFR 60.18(b)–(f) design specifications rather than conducting an outlet volume and concentration performance test (40 CFR 60.503(c)). If you have an open flame flare that does not meet the flare design specifications and cannot be tested using the specified outlet volume and concentration test procedures, then you must determine and demonstrate appropriate methods and procedures that will demonstrate the control performance of the flare. Those methods must be capable of demonstrating that the flare provides a level of emissions control that is at least equivalent to the applicable emission limit in the 1983 NSPS. We still require all vapor processing systems, including flares meeting the above open flame flare design specifications, to meet the additional leak and pressure test methods and procedures in 40 CFR 60.503 for vapor collection and vapor processing systems (40 CFR 60.503(a), (b), and (d)). Also, we are adding the flare definition to 40 CFR 60.501 to clarify that the flare design provisions only apply in the 1983 NSPS to flares with an open (without enclosure) flame.

VI. Can Cargo Tank Vapor Tightness Records Be Kept Off-Site?

Recently, a company requested and we approved the off-site storage of cargo tank vapor tightness records, instead of on-site record retention as specified in 40 CFR 63.428(b) of the 1994 NESHAP. That company and others operating multiple terminals need and have a centralized recordkeeping system. The company is now allowed to keep the records off-site if the records are instantly accessible at the affected facility in a centralized computer system that will produce an exact duplicate image of the original paper record with certifying signatures. Also, they must notify the permitting authority in writing when they have completed the scanning of all required records and have the system of instant access to all terminals fully functional.

The 1994 NESHAP and the 1983 NSPS require (in 40 CFR 63.428(b) and 40 CFR 60.505(a), (b), and (d), respectively) terminal owners and operators to maintain an on-site record of vapor tightness test results for each gasoline cargo tank loaded at a 1994 NESHAP or 1983 NSPS affected terminal. Those records are used by terminal owners and operators and compliance inspectors to determine if the cargo tanks loading at the terminal have passed the required vapor tightness test. If an exact duplicate electronic copy of those records is instantly available at the terminal, we believe that that is an equivalent alternative to the original requirement. Today, we are proposing an alternative for both the 1994 NESHAP and the 1983 NSPS that allows a terminal owner or operator to keep paper copies of those records off-site, provided that the same records are instantly available (in electronic form) on-site.

VII. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulation is ''significant'' and, therefore, subject to Office of Management and Budget (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 government 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

[2] The industry also uses enclosed flares. You can test the performance of enclosed flares with test procedures currently in the 1983 NSPS; therefore, the discussion and the proposed amendments do not apply to enclosed flares.

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

The promulgation of the 1994 NESHAP was treated as a ''significant regulatory action'' within the meaning of the Executive Order. An estimate of the cost and benefits of the 1994 NESHAP was prepared at proposal as part of the draft background information document (BID) and was updated in the final BID at promulgation to reflect public comments and changes made in finalizing the rule. The 1983 NSPS were promulgated when an earlier form (Executive Order 12291) of the Executive Order was administered. We concluded that it was not a major rule under Executive Order 12291. Today's proposed amendments to the 1983 NSPS and 1994 NESHAP would reduce the recordkeeping and testing burden for some terminals, but we do not have an estimate of the number of terminals affected by the proposed amendments. Therefore, the cost impacts of the subject standards are less than previously estimated but our estimates have not been revised. The OMB evaluated the action and determined it to be nonsignificant; therefore, the action did not require OMB review.

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.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments would 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 proposed amendments would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs. Moreover, States are not required under the CAA to take delegation of Federal NESHAP or NSPS and bear their implementation costs, although States are encouraged and often choose to do so. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments. Although section 6 of Executive Order 13132 does not apply to the proposed amendments, EPA is providing State and local officials an opportunity to comment on the proposed amendments. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking action.

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.''

The proposed amendments do not have tribal implications. They 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. No affected plant sites are known to be owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the proposed amendments. The proposed amendments add two alternatives to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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, EPA 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 EPA.

As discussed earlier, OMB evaluated the action and determined it to be nonsignificant. 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 Executive Order has the potential to influence the regulation. The proposed amendments provide for equivalent alternative recordkeeping and testing and the promulgated 1994 NESHAP fall into that category only in part: the minimum rule stringency is set according to a congressionally-mandated, technology-based lower limit called the ''floor,'' while a decision to increase the stringency beyond the floor can be partly based on risk-type considerations, although EPA does not conduct true risk assessments when deciding to regulate beyond the MACT floor under section 112(d). The 1983 NSPS are not based on health or safety risks, but are based on the best demonstrated technological systems of continuous emissions reduction, considering costs, nonair quality health, and environmental and energy impacts. No children's risk analysis was performed for the 1983 NSPS, 1994 NESHAP, or the proposed amendments because no alternative technologies exist that would provide greater stringency at a reasonable cost; therefore, the results of any such analysis would have no impact on the stringency decision.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

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 aggregate, or by the private sector, of $100 million or more in any 1 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 of 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.

EPA has determined that today's proposed amendments do not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the UMRA do not apply to this action.

G. 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.

When EPA promulgated the 1994 NESHAP, it analyzed the potential impacts on small businesses, discussed the results of the analysis in the **Federal Register**, and concluded that the promulgated regulation would not result in financial impacts that significantly or differentially stress affected small companies. The 1983 NSPS were analyzed for potential impacts on small businesses under the RFA of 1980, and it was determined that the RFA did not apply. We analyzed and considered the impacts, and no significant impacts were expected.

After considering the economic impact of today's proposed amendments on small entities, we certify that this action will not have a significant impact on a substantial number of small entities. The proposed amendments would minimize the impact on small entities and, therefore, would not have a significant economic impact on a substantial number of small entities. The proposed amendments add two alternatives to provide facilities with the flexibility to comply in the least costly manner while maintaining a workable and enforceable rule. Both alternatives were requested by impacted bulk terminal and railcar owners and operators, and we worked with them to develop the alternatives.

H. Paperwork Reduction Act

The information collection requirements in this rule have been previously submitted to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and were approved by OMB under the previously promulgated 1983 NSPS (OMB control number 2060–0006–ICR 0665.06) and 1994 NESHAP (OMB control number 2060–0325–ICR 1659.04). A copy of the Information Collection Request (ICR) documents may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov,* or by calling (202) 566–1672.

Today's proposed amendments would reduce the recordkeeping and testing burden for some terminals. We do not have an estimate of the number of terminals affected by the proposed amendments. Therefore, the ICR burden is less than previously estimated but the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

The proposed amendments involve technical standards. EPA cites DOT railcar procedures that reference the AAR Tank Car Manual bubble test. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to that method. The search and review results have been documented and are placed in the docket for the proposed amendments, Docket No. A–92–38.

Two VCS are cited in the proposed amendments as alternatives to DOT's bubble test. The two standards are British Standard (BS) EN–1593:1999, ''Non-destructive Testing: Leak Testing-Bubble Emission Techniques,'' and ASTM E515–95 (Reapproved 2000), ''Standard Test Method for Leaks Using Bubble Emission Techniques.'' Those two standards are discussed below.

The VCS BS EN–1593 cited in the proposed amendments is a detailed method that contains procedures that are either equivalent to those of DOT bubble test specifications or that provide additional quality control, including: certification of personnel, creating a pressure differential, type of liquids to be used, preparation of the surface, dwell time appropriate for the establishment of bubble emissions, required surface temperature range, and

specifications for direct and indirect visual examination procedures.

The VCS ASTM E515 cited in the proposed amendments is also an acceptable method that contains procedures that are either equivalent to those of DOT bubble test specifications or provide additional quality control, including: the type of liquids to be used; application of fluid; creating a pressure differential; applying pressure before liquid is applied; and accuracy, repeatability, and reproducibility of locating leaks of 0.0001 Std cm^3/sec or greater.

The methods that are included in the proposed amendments are listed in 40 CFR 63.425(i)(2). Under 40 CFR 63.7(f) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods in place of any of EPA testing methods.

J. Regulatory Review

In accordance with sections 112(d)(6) and (f)(2) of the CAA, the 1994 NESHAP will be reviewed 8 years from the date of promulgation. That review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emissions control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects for 40 CFR Parts 60 and 63

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

Dated: September 12, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 60 and 63 of the Code of Federal Regulations are proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart XX—[Amended]

2. Section 60.501 is amended by adding the following definitions in alphabetical order to read as follows:

§ 60.501 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

3. Section 60.503 is amended by adding paragraphs (e) and (f) to read as follows:

§ 60.503 Test methods and procedures.

* * * * *

(e) The performance test requirements of paragraph (c) of this section do not apply to flares defined in § 60.501 and meeting the requirements in § 60.18(b) through (f). The owner or operator of the flare and associated vapor collection system shall demonstrate compliance with the requirements in §§ 60.18(b) through (f) and 60.503(a), (b), and (d), respectively.

(f) The owner or operator shall use alternative test methods and procedures in accordance with the alternative test method provisions in § 60.8(b) for flares that do not meet the requirements in § 60.18(b).

4. Section 60.505 is amended by adding paragraph (e) to read as follows:

§ 60.505 Reporting and recordkeeping.

* * * * *

(e) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraphs (a), (c), and (d) of this section, an owner or operator may comply with the requirements in paragraphs (e)(1) through (3) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(2) The copy of each record in paragraph (e)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(3) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraphs (e) (1) and (2) of this section.

* * * * *

PART 63—[AMENDED]

5. The authority citation for part 63 continues to read as follows:

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

Subpart R—[Amended]

6. Section 63.421 is amended by adding the following definitions in alphabetical order to read as follows:

§ 63.421 Definitions.

* * * * *

Flare means a thermal oxidation system using an open (without enclosure) flame.

* * * * *

Thermal oxidation system means a combustion device used to mix and ignite fuel, air pollutants, and air to provide a flame to heat and oxidize hazardous air pollutants. Auxiliary fuel may be used to heat air pollutants to combustion temperatures.

* * * * *

7. Section 63.422 is amended by revising paragraph (c)(2)(i) and adding paragraph (e) to read as follows:

§ 63.422 Standards: Loading racks.

* * * * *

(c) * * *

(2) * * *

(i) The tank truck or railcar gasoline cargo tank meets the test requirements in § 63.425(e), or the railcar gasoline cargo tank meets applicable test requirements in § 63.425(i);

* * * * *

(e) As an alternative to § 60.502(h) and (i) of this chapter as specified in paragraph (a) of this section, the owner or operator may comply with paragraphs (e)(1) and (2) of this section:

(1) The owner or operator shall design and operate the vapor processing system, vapor collection system, and liquid loading equipment to prevent gauge pressure in the railcar gasoline cargo tank from exceeding the applicable test limits in § 63.425(e) and (i) during product loading. This level is not to be exceeded when measured by the procedures specified in § 60.503(d) of this chapter.

(2) No pressure-vacuum vent in the bulk gasoline terminal's vapor processing system or vapor collection system shall begin to open at a system pressure less than the applicable test limits in § 63.425(e) or (i).

* * * * *

8. Section 63.425 is amended by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 63.425 Test methods and procedures.

(a) Each owner or operator subject to the emission standard in § 63.422(b) or § 60.112b(a)(3)(ii) of this chapter shall comply with the requirements in paragraphs (a)(1) and (2) of this section.

(1) Conduct a performance test on the vapor processing and collection systems

according to either paragraph (a)(1)(i) or (ii) of this section.

(i) Use the test methods and procedures in § 60.503 of this chapter, except a reading of 500 ppm shall be used to determine the level of leaks to be repaired under § 60.503(b) of this chapter, or

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) The performance test requirements of § 60.503(c) of this chapter do not apply to flares defined in § 63.421 and meeting the flare requirements in § 63.11(b). The owner or operator of the flare and associated vapor collection system shall demonstrate compliance with the requirements in §§ 63.11(b) and 60.503(a), (b), and (d) of this chapter, respectively.

* * * * *

(i) *Railcar bubble leak test procedures.* As an alternative to paragraph (e) of this section for annual certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (i)(1) and (2) of this section for railcar gasoline cargo tanks, provided the railcar tank meets the requirement in paragraph (i)(3) of this section:

(1) Comply with the requirements of 49 CFR 173.31(d), 179.7, 180.509, and 180.511 for the testing of railcar gasoline cargo tanks.

(2) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515–95, BS EN 1593:1999, or another bubble leak test procedure meeting the requirements in 49 CFR 179.7, 180.505, and 180.509.

(3) The alternative requirements in this paragraph (i) shall not be used for any railcar gasoline cargo tank that collects gasoline vapors from a vapor balance system permitted under or required by a Federal, State, local, or tribal agency. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar gasoline cargo tank from which liquid gasoline is being unloaded.

9. Section 63.427 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 63.427 Continuous monitoring.

* * * * *

(a) * * *

(3) Where a thermal oxidation system other than a flare is used, a CPMS capable of measuring temperature shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(4) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, shall be installed in proximity to the pilot light to indicate the presence of a flame.

* * * * *

10. Section 63.428 is amended by revising paragraphs (b)(1), (b)(3)(i), and (b)(3)(viii), and by adding paragraph (k) to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) Annual certification testing performed under § 63.425(e) and railcar bubble leak testing performed under § 63.425(k).

* * * * *

(3) * * *

(i) Name of test: Annual Certification Test—Method 27 (§ 63.425(e)(1)); Annual Certification Test—Internal Vapor Valve (§ 63.425(e)(2)); Leak Detection Test (§ 63.425(f)); Nitrogen Pressure Decay Field Test (§ 63.425(g)); Continuous Performance Pressure Decay Test (§ 63.425(h)); or Railcar Bubble Leak Test Procedure (§ 63.425(i)).

* * * * *

(viii) Test results: test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

* * * * *

(k) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in paragraphs (k)(1) through (3) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(2) The copy of each record in paragraph (k)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(3) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraphs (k)(1) and (2) of this section.

[FR Doc. 02–23740 Filed 9–19–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
September 20, 2002

Part IX

The President

Notice of September 19, 2002—Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism

Federal Register
Vol. 67, No. 183
Friday, September 20, 2002

Presidential Documents

Title 3—

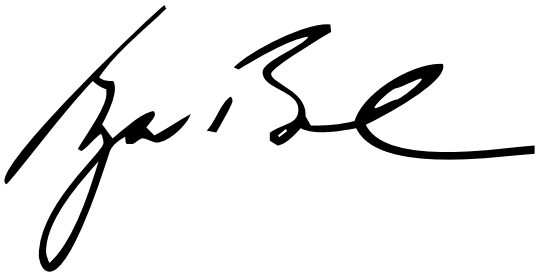
The President

Notice of September 19, 2002

Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism

On September 23, 2001, by Executive Order 13224, I declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and on the Pentagon committed on September 11, 2001, and the continuing and immediate threat of further attacks on United States nationals or the United States. Because the actions of these persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 19, 2002.

[FR Doc. 02–24235
Filed 9–19–02; 1:39 pm]
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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.R. 223/P.L. 107–211

To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

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H.R. 601/P.L. 107–213

To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

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H.R. 1576/P.L. 107–216

James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107–217

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, ''Public Buildings, Property, and Works''. (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107–218

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H.R. 2440/P.L. 107–219

To rename Wolf Trap Farm Park as ''Wolf Trap National Park for the Performing Arts'', and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107–220

To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

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To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107–223

23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

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