AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

2–28–03 Friday
Vol. 68 No. 40 Feb. 28, 2003
Pages 9503–9850

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.archives.gov/federal_register/.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 40

Friday, February 28, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Grain Inspection, Packers and Stockyards Administration

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9632–9633
Environmental statements; availability, etc.:
Giant salvinia (aquatic weed); nonindigenous salvinia weevil release for biological control, 9633–9634

Army Department
See Engineers Corps
NOTICES
Meetings:
Army Education Advisory Committee, 9643
Senior Executive Service:
Performance Review Boards; membership, 9644

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9670–9671

Centers for Medicare & Medicaid Services
RULES
Medicare:
Physician fee schedule (2003 CY); update, 9567–9580
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9671
Committees; establishment, renewal, termination, etc.:
Ambulatory Payment Classification Groups Advisory Panel, 9671–9672
Grants and cooperative agreements; availability, etc.:
Medicaid—
Competitive employment of people with disabilities; support infrastructure development, 9672–9673
Medicare—
Capitated disease management for beneficiaries with chronic illnesses, 9673–9680
Medicaid:
New technology intraocular lenses furnished by ambulatory surgical centers; payment amounts appropriateness, 9680–9681
Medicare:
Intermediary, carrier, and durable medical equipment, prosthetics, orthotics, and supplies regional carriers; performance criteria and standards, 9681–9690

Coast Guard
RULES
Drawbridge operations:
Alabama, 9536–9537
Louisiana, 9535–9537
Massachusetts, 9536
Organization, functions, and authority delegations:
Agency transition to Homeland Security Department; technical amendments, 9533–9535
Ports and waterways safety:
Upper Mississippi River—
Cairo, IL; safety zone, 9547–9548
Vessels arriving in or departing from U.S. ports; notification requirements, 9537–9547
PROPOSED RULES
Drawbridge operations:
Florida, 9609–9611
Marine casualties and investigations:
Chemical testing following serious marine incidents, 9622–9627
Outer Continental Shelf activities:
Gulf of Mexico; safety zone, 9611–9613
NOTICES
Committees; establishment, renewal, termination, etc.:
Cook Inlet Regional Citizen's Advisory Committee, 9733–9734

Commerce Department
See Economics and Statistics Administration
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 9634

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9641–9643

Defense Department
See Army Department
See Engineers Corps
RULES
Acquisition regulations:
Technical amendments
Correction, 9580
PROPOSED RULES
Acquisition regulations:
Payment withholding, 9627–9628
NOTICES
Meetings:
Science Board task forces, 9643

Economics and Statistics Administration
NOTICES
Meetings:
Economic Analysis Bureau Advisory Committee, 9634–9635

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9644–9645
Reports and guidance documents; availability, etc.:
Constitutionally protected prayer in public elementary and secondary schools, 9645–9648

Employment and Training Administration
NOTICES
Labor surplus areas classification:
Annual list; correction, 9642–9644

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 9724–9725

Engineers Corps
PROPOSED RULES
Water pollution control:
Clean Water Act—
Waters of United States; definition, 9613–9614
NOTICES
Environmental statements; notice of intent:
Central and Southern Florida Project Comprehensive Review Integrated Water Preserve Areas Feasibility Study; cancellation, 9644

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Compression-ignition marine engines at or above 30 liters per cylinder; emission standards, 9745–9789
Air quality implementation plans; approval and promulgation; various States:
California, 9561–9565
Florida, 9553–9559
North Dakota, 9565–9567
West Virginia, 9559–9561
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Prevention of significant deterioration and nonattainment new source review; routine maintenance, repair, and replacement, 9614–9615
Air quality implementation plans; approval and promulgation; various States:
West Virginia, 9615
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 9615–9621
Water pollution control:
Clean Water Act—
Waters of United States; definition, 9613–9614
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9648–9649
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 9651–9652
Weekly receipts, 9650–9651
Grants and cooperative agreements; availability, etc.:
National Environmental Information Exchange Network Program, 9652
Pesticide, food, and feed additive petitions:
E.I. du Pont de Nemours & Co., 9660–9666
Pesticide registration, cancellation, etc.:
Atrazine, 9652–9655
EPTC, 9655–9656
Thiram, 9656–9660

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Niagara Falls, NY; special flight rules in vicinity—
Canadian flight management procedures, 9791–9795
Airworthiness directives:
Agusta S.p.A., 9504–9508
Bell, 9520–9521, 9523–9525
Bombardier, 9509–9511
Eurocopter France, 9503–9504
Fokker, 9511–9513
Hartzell Propeller, Inc., 9508–9509, 9518–9520
McDonnell Douglas, 9513–9518, 9525–9527
Raytheon, 9521–9523
Class E airspace, 9527–9528
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Reduced vertical separation minimum in domestic U.S. airspace, 9817–9822
Airworthiness directives:
Bombardier, 9602–9607
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 9607–9609
NOTICES
Passenger facility charges; applications, etc.:
Metropolitan Oakland International Airport, CA, 9734
San Diego International Airport, CA, 9734–9735

Federal Emergency Management Agency
PROPOSED RULES
Freedom of Information Act; implementation; withdrawn, 9621–9622
NOTICES
Disaster and emergency areas:
Alaska, 9666
Oklahoma, 9667
South Carolina, 9667
Space Shuttle Columbia—
Louisiana, 9668–9669
Texas, 9667–9668
Meetings:
Emergency Medical Services Federal Interagency Committee, 9669
Radiological Emergency Preparedness:
Planning guidance, 9669–9670

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance or modification:
Canadian National Railway, 9735

Federal Transit Administration
RULES
Buy America requirements:
Certification procedures; corrections to inadvertent errors in certifications after bid opening, 9797–9800
PROPOSED RULES
Buy America requirements:
Microcomputers; permanent waiver; withdrawn, 9800–9802

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Phenylbutazone; prohibition of extralabel use, 9528–9530
Medical devices:
Hematology and pathology devices—
Automated blood cell separator device operating by filtration principle; reclassification, 9530–9532
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
ZOMETA, 9690–9691

Foreign Assets Control Office
NOTICES
Victims of Trafficking and Violence Protection Act; implementation:
Payments to persons holding categories of judgments against Cuba or Iran; correction, C3–03925

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Fees:
Official inspection and weighing services, 9589–9593
Rice inspection services, 9593–9595

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Meetings:
Infant Mortality Advisory Committee, 9691

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9703–9704
Grant and cooperative agreement awards:
Public and Indian housing—
Housing Assistance Council et al., 9705
Research and technology unsolicited proposals, 9704
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 9704–9705
Mortgage and loan insurance programs:
Debenture interest rates, 9705–9706
Organization, functions, and authority delegations:
Brockton, MS; post-of-duty station closure, 9707

Immigration and Naturalization Service
NOTICES
Immigration:
Naturalization Application (Form N-400); editions issued before May 31, 2001; termination of acceptance, 9723–9724

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9707–9708
Watches and watch movements; allocation of duty-exemptions:
Virgin Islands, 9637–9638

Internal Revenue Service
RULES
Income taxes:
Loans from qualified employer plan to plan participants or beneficiaries; correction, 9532–9533
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9740
Reports and guidance documents; availability, etc.:
Art Advisory Panel; 2002 closed meetings, 9740–9741

International Trade Administration
NOTICES
Antidumping:
Creatine monohydrate from—
China, 9635–9636
Persulfates from—
China, 9636–9637
Watches and watch movements; allocation of duty-exemptions:
Virgin Islands, 9637–9638

International Trade Commission
NOTICES
Import investigations:
Ceramic station post insulators from—
Japan, 9723
Meetings; Sunshine Act, 9723

Justice Department
See Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
Immigration and Naturalization Service; transfer to Homeland Security Department; reorganization of regulations, 9823–9846

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Sierra Front-Northwestern Great Basin, 9708–9709

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9709–9712

Minority Business Development Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American Business Development Center Program—
New Mexico, 9638

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Program Advisory Committee, 9638
Information Security and Privacy Advisory Board, 9638–9639

National Institutes of Health
NOTICES
Meetings:
AIDS Research Office Advisory Council, 9691
National Cancer Institute, 9691
National Institute of Allergy and Infectious Diseases, 9696–9697
National Institute of Child Health and Human Development, 9693–9695
National Institute of Environmental Health Sciences, 9696
National Institute of General Medical Sciences, 9693, 9695
National Institute on Aging, 9692–9693
National Institute on Alcohol Abuse and Alcoholism, 9695–9696
Recombinant DNA Advisory Committee, 9697
Scientific Review Center, 9697–9703
Warren Grant Magnuson Clinical Center Board of Governors, 9703

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop, 9580–9588
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Rock sole and yellowfin sole, 9630–9631
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications, 9628–9630
NOTICES
Committees; establishment, renewal, termination, etc.:
International Whaling Commission, 9639
Meetings:
Gulf of Mexico Fishery Management Council, 9639–9640
New England Fishery Management Council, 9640
Permits:
Marine mammals, 9640–9641

National Park Service
NOTICES
Environmental statements; notice of intent:
Buck Island Reef National Monument, VI, 9713
Coral Reef National Monument, VI, 9713–9714
Virgin Islands National Park, VI, 9714–9715
Meetings:
White House Preservation Committee, 9715

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
Solid materials disposition control; environmental issues scoping process and workshop, 9595–9602
NOTICES
Environmental statements; availability, etc.:
Maine Yankee Atomic Power Co., 9727
Savannah River Site, SC—
Mixed oxide fuel fabrication facility; construction and operation, 9728–9729
Applications, hearings, determinations, etc.:
Nuclear Management Co., LLC, 9725–9727

Patent and Trademark Office
RULES
Patents:
Invention promoters; complaints, 9551–9553

Presidential Documents
ADMINISTRATIVE ORDERS
Cuba; continuation of the national emergency relating to the anchorage and movement of vessels (Notice of February 27, 2003), 9847–9849

Reclamation Bureau
NOTICES
Contract negotiations:
Tabulation of water service and repayment; quarterly status report, 9715–9722

Research and Special Programs Administration
NOTICES
Hazardous materials:
Carry-on or checked baggage; formal interpretation, 9735–9737

Saint Lawrence Seaway Development Corporation
RULES
Seaway regulations and rules:
Automatic Identification System transponder, 9549–9551

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9729
Meetings; Sunshine Act, 9729–9730
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 9730–9732

Small Business Administration
NOTICES
Disaster loan areas:
Northern Mariana Islands, 9732–9733
Meetings:
District and regional advisory councils—
Connecticut, 9733
Wisconsin, 9733

State Department
NOTICES
Foreign terrorists and terrorist organizations; designation:
Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs et al., 9733

Surface Transportation Board
NOTICES
Railroad services abandonment:
Illinois Central Railroad Co., 9737–9738
Illinois Indiana Development Co., LLC, et al., 9738

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration

See Federal Transit Administration
See Research and Special Programs Administration
See Saint Lawrence Seaway Development Corporation
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
RULES
Terrorism Risk Insurance Program, 9803–9814
PROPOSED RULES
Terrorism Risk Insurance Program, 9814–9816
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 9738–9740

Separate Parts In This Issue

Part II
Environmental Protection Agency, 9745–9789

Part III
Transportation Department, Federal Aviation Administration, 9791–9795

Part IV
Transportation Department, Federal Transit Administration, 9797–9802

Part V
Treasury Department, 9803–9816

Part VI
Transportation Department, Federal Aviation Administration, 9817–9822

Part VII
Justice Department, 9823–9846

Part VIII
Executive Office of the President, Presidential Documents, 9847–9849

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

Notices:

Notice of February 27, 2003 9849

7 CFR

Proposed Rules:

800....9589
868....9593

8 CFR

1....9824
3....9824
101....9824
103....9824
204....9824
205....9824
207....9824
208....9824
209....9824
211....9824
212....9824
214....9824
215....9824
216....9824
235....9824
236....9824
238....9824
239....9824
240....9824
241....9824
244....9824
245....9824
246....9824
249....9824
270....9824
274a....9824
280....9824
287....9824
292....9824
337....9824
507....9824
1001....9824
1003....9824
1101....9824
1103....9824
1204....9824
1205....9824
1207....9824
1208....9824
1209....9824
1211....9824
1212....9824
1214....9824
1215....9824
1216....9824
1235....9824
1236....9824
1238....9824
1239....9824
1240....9824
1241....9824
1244....9824
1245....9824
1246....9824
1249....9824
1270....9824
1274a....9824
1280....9824
1287....9824
1292....9824
1299....9824
1337....9824

10 CFR

Proposed Rules:

20....9595

14 CFR

39 (12 documents) 9503, 9504, 9508, 9509, 9511, 9513, 9516, 9518, 9520, 9521, 9523, 9525
71....9527
91....9792
93....9792

Proposed Rules:

39 (2 documents) 9602, 9607
91....9818

21 CFR

530....9528
864....9530

26 CFR

1....9532

28 CFR

200....9824

31 CFR

50....9804

Proposed Rules:

50....9815

33 CFR

1....9533
3....9533
5....9533
45....9533
51....9533
52....9533
53....9533
66....9533
109....9533
114....9533
117 (4 documents) 9535, 9536, 9537
120....9533
160....9537
165....9547
401....9549

Proposed Rules:

117....9609
147....9611
328....9613

37 CFR

4....9551

40 CFR

9....9746
52 (4 documents) 9553, 9559, 9561, 9565
94....9746

Proposed Rules:

51....9614
52 (2 documents) 9614, 9615
110....9613
112....9613
116....9613
117....9613
122....9613
230....9613
232....9613
300 (2 documents) 9613, 9615
401....9613

42 CFR

410....9567
414....9567
485....9567

44 CFR

Proposed Rules:

5....9621

46 CFR

1....9533
68....9533

Proposed Rules:

4....9622

48 CFR

214....9580

Proposed Rules:

232....9627
252....9627

49 CFR

661....9798

Proposed Rules:

661....9801

50 CFR

648....9580

Proposed Rules:

600 (2 documents) 9628, 9629
679....9630

Rules and Regulations

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–47–AD; Amendment 39–13062; AD 2003–04–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocoper) Model SA341G and SA342J helicopters. This action requires modifying an electric hoist (hoist) junction box (junction box). This amendment is prompted by the discovery of an anomaly affecting the resistor that is located in the junction box. The actions specified in this AD are intended to prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter.

DATES: Effective March 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–47–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model SA341G and SA342J helicopters with a 300 lb. hoist manufactured by Breeze. The helicopter is fitted with a hoist junction box, part number (P/N) 341A63–1103–00. The DGAC advises of the discovery of an anomaly affecting the current-limiting resistor located in the junction box, which results in insufficient current intensity and can cause failure of the emergency jettison control squib percussion to operate. The unmodified hoist electric junction box is designed to generate 2 amperes for the hoist cable cut percussion squib. The Breeze 300 lb. hoist requires a minimum of 10 amperes to activate the cable cut percussion squib. This AD will modify the limiting resistor in the hoist electric junction box and result in a percussion squib activation current of 18 amperes.

Eurocopter has issued Alert Telex No. 45.05, dated July 8, 2002, which specifies modifying the control unit of the hoist. The DGAC classified this alert telex as mandatory and issued AD 2002–370–043(A), dated July 24, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral 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 these type designs that are certificated for operation in the United States. The DGAC recommended modifying the junction box for helicopters with Breeze or TRW (or Lucas or Air Equipment) hoists installed. However, the unmodified junction box functions properly with the TRW (Lucas or Air Equipment) hoists and the FAA does not propose to modify the junction box for helicopters with TRW hoists installed. Helicopters with the Breeze hoist, P/N BL 16–600, BL 16–600–11 or BL 16–600–12, installed require this junction box modification.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter. This AD requires modifying the limiting resistor in the junction box. The actions must be accomplished in accordance with the alert telex described previously. The modification is terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the modification is required before the next hoist operation and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 2 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20 per helicopter. Based on these figures, the total cost impact of

the AD on U.S. operators is estimated to be $160.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–47–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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 a new airworthiness directive to read as follows:

2003–04–13 Eurocopter France: Amendment 39–13062. Docket No. 2002–SW–47–AD.

Applicability: Model SA341G and SA342J helicopters with electric hoist junction box (junction box), part number (P/N) 341A63–1103–00, installed with the 300 lb. Breeze hoist, P/N BL 16–600, P/N BL 16–600–11, or P/N BL 16–600–12, certificated in any category.

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

Compliance: Required before the next hoist operation, unless accomplished previously.

To prevent failure of the hoist emergency load jettison switch, resulting in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the limiting resistor in the electric hoist junction box in accordance with paragraph 2.B. of the Accomplishment Instructions in Eurocopter Alert Telex No. 45.05, dated July 8, 2002.

(b) Modifying the limiting resistor is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(d) Special flight permits to allow operation of an unmodified hoist will not be issued.

(e) The modification shall be done in accordance with paragraph 2.B. of the Accomplishment Instructions in Eurocopter Alert Telex No. 45.05, dated July 8, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on March 17, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–370–043(A), dated July 24, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4475 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–55–AD; Amendment 39–13060; AD 2002–25–51]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (EAD) 2002–25–51, sent previously to all known U.S. owners and operators of the specified Agusta S.p.A. (Agusta) helicopters by individual letters. This Airworthiness Directive (AD) requires reducing the tail rotor (T/R) blade life limit and modifying and re-identifying the T/R hub and grip assembly. It also clarifies the never-exceed speed (Vne) restrictions and modifies the T/R visual inspection intervals. The actions specified by this AD are intended to prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter.

DATES: Effective March 17, 2003, to all persons except those persons to whom it was made immediately effective by EAD 2002–25–51, issued on December 17, 2002, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–55–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On October 17, 2002, the FAA issued AD 2002–17–51 (67 FR 67510, November 6, 2002), that superseded Emergency AD 2002–14–51, issued on July 9, 2002. AD 2002–17–51 imposed a Vne of 140 KIAS. That AD also required visually checking the T/R blades on both sides for a crack before each start of the helicopter engines; visually inspecting the T/R blades with a 5x or higher magnifying glass at 25 hour time-in-service (TIS) intervals and any time an increase in vibration occurs; and conducting a dye-penetrant inspection, if necessary; and replacing any cracked T/R blade with an airworthy T/R blade. Since issuing that AD, analysis and tests have shown that the fatigue failure of the T/R blades was caused by unanticipated loads on the T/R blades. The manufacturer has redesigned the T/R grip bushings to reduce these loads; therefore, on December 17, 2002, the FAA issued EAD 2002–25–51 to required modifying the T/R hub and grip assembly with the new bushings by May 31, 2003. Until the T/R grip assembly is modified, the life limit of the T/R blades is reduced to 200 hours TIS. That action was prompted by the failure of a T/R blade that resulted in a forced autorotative landing. The failure, which occurred on June 12, 2002, was determined to be caused by fatigue. This significant reduction in the service life of the T/R blades creates an unsafe condition. This condition, if not corrected, could result in fatigue failure of the T/R blade and subsequent loss of control of the helicopter.

The FAA has reviewed Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 2002 (ABT), which maintains the visual check for cracks, the 5-hour TIS inspections with a magnifying glass, establishes a new life limit for the T/R blades, clarifies the Vne restrictions, modifies the T/R inspection intervals, and describes procedures for modifying and re-identifying the T/R hub and grip assembly by replacing T/R grip bushings (bushings), part number (P/N) 109–8131–29–101. Modifying and re-identifying the T/R hub and grip assembly restores the T/R blade life limits and cancels the Vne limitations.

Since the unsafe condition described is likely to exist or develop on other Agusta Model A109E helicopters of the same type design, the FAA issued EAD 2002–25–51 to prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter. The AD requires the following:

Applicability A: Agusta Model A109E helicopters with T/R hub and blade assembly, P/N 109–8131–02–151.

- Before further flight, placarding the helicopter and marking the airspeed indicator to reduce the helicopter Vne by 28 KIAS in addition to any reduction in Vne caused by optional equipment installation.
- Before each start of aircraft engines, visually checking each T/R blade for a crack.
- Within 5 hours TIS, and thereafter at intervals not to exceed 5 hours TIS, visually inspecting the T/R blade for a crack using a 5x or higher magnifying glass. If in doubt as to the existence of a crack, dye-penetrant inspect the T/R blades for a crack.
- Before further flight, replacing any unairworthy T/R blade with an airworthy T/R blade.
- Establishing a new life limit on the T/R blade, P/N 109–8132–01–111, of 200 hours TIS.
- Within 10 hours TIS, for helicopters having T/R blades with 190 hours TIS or more, replacing the blades.
- On or before May 31, 2003, modifying the T/R hub and grip assembly. Modifying and re-identifying the T/R hub assembly removes the Vne restrictions imposed, restores the T/R blades life limit to 1,000 hours TIS, and changes the AD requirements for the helicopter from Applicability A to Applicability B.

Applicability B: Agusta Model A109E helicopters, with T/R hub and blade assembly, P/N 109–8131–02–157.

- Before each start of the helicopter engines, visually checking the T/R blade for a crack.
- Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, visually inspecting the T/R blade for a crack using a 5x or higher magnifying glass. If in doubt as to the existence of a crack, dye-penetrant inspect the T/R blades for a crack.
- Before further flight, replace any unairworthy T/R blade with an airworthy T/R blade.
- Before accumulating 150 hours TIS on the T/R hub assembly, P/N 109–8131–02–159, and thereafter at intervals not to exceed 150 hours TIS, inspect the bushings, P/N 109–8131–30–109. Replace any unairworthy bushing with an airworthy bushing.

The actions must be accomplished in accordance with the ABT described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, the previously stated actions are required before further flight and at the specified time intervals, and this AD must be issued immediately.

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 by individual letters issued on December 17, 2002, to all known U.S. owners and operators of Agusta Model A109E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 48 helicopters of U.S. registry will be affected by this AD, that it will take approximately:

- 1 work hour to placard each helicopter;
- 0.5 work hour to visually inspect the T/R blades;
- 1.0 work hour to dye-penetrant inspect the T/R blades;
- 7 work hours to inspect the T/R grip bushing;
- 2.0 work hours to replace each set of T/R blades; and
- 16 work hours to modify the T/R grips.

The average labor rate is $60 per work hour. Required parts will cost approximately $58,690 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,005,760, assuming for each helicopter, five T/R blade visual inspections, five dye-penetrant inspections, and five bushing inspections.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–55–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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 a new airworthiness directive to read as follows:

2002–25–51 Agusta S.p.A (Agusta): Docket No. 2002–SW–55–AD. Supersedes AD 2002–17–51, Amendment 39–12936, Docket No. 2002–SW–42–AD.

Applicability A: Model A109E helicopters with tail rotor (T/R) hub and blade assembly, part number (P/N) 109–8131–02–151 (the T/R hub and blade assembly consists of two T/R blades, P/N 109–8132–01–111, and T/R hub and grip assembly, P/N 109–8131–02–127), certificated in any category.

Applicability B: Model A109E helicopters with T/R hub and blade assembly, P/N 109–8131–02–157 (the T/R hub and blade assembly consists of two T/R blades, P/N 109–8132–01–111, and T/R hub and grip assembly, P/N 109–8131–02–159), certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (n) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

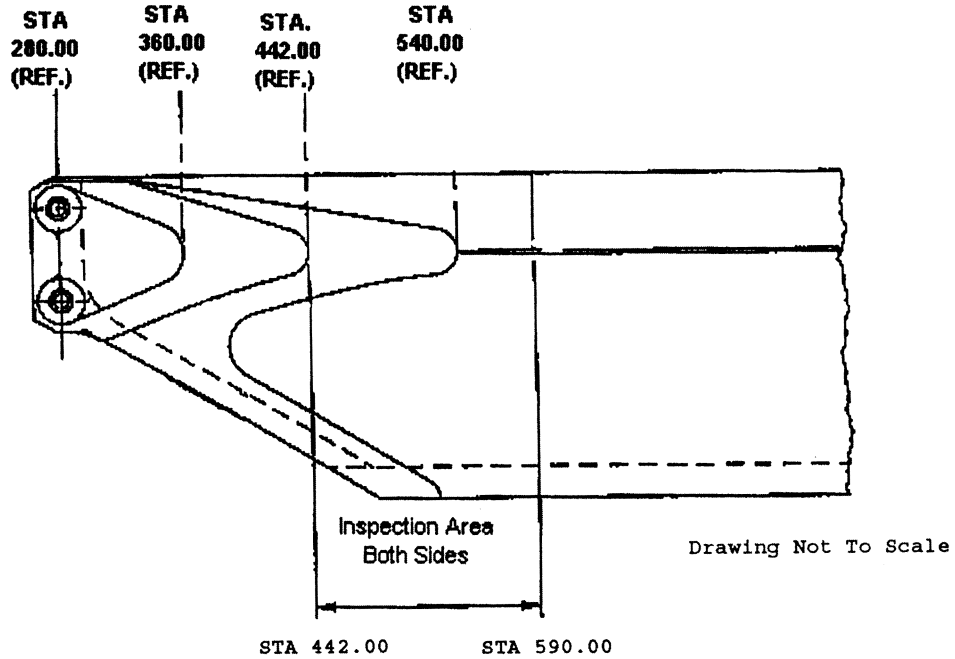
Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the T/R blade and subsequent loss of control of the helicopter, accomplish the following:

Applicability A

(a) Before further flight, placard the helicopter and mark the airspeed indicator to reduce the helicopter never-exceed speed (Vne) by 28 KIAS in addition to any reduction in Vne caused by optional equipment installation, in accordance with the Compliance Instructions, Part I, paragraph 1 of Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 2002 (ABT).

(b) Before each start of the helicopter engines, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). *See* Figure 1:



Part Number 109-8132-01-111 Tail Rotor Blade

FIGURE 1

(c) Within 5 hours time-in-service (TIS), and thereafter at intervals not to exceed 5 hours TIS, and before further flight any time there is an increase in vibration levels:

(1) Using a 5x or higher magnifying glass, visually inspect each T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5., of the ABT. Reporting to Agusta Service Engineering is not required.

(2) If you are unable to determine by the visual inspection whether there is a crack, dye-penetrant inspect the T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the ABT.

(d) Before further flight, replace any unairworthy T/R blade with an airworthy blade.

(e) This AD establishes a new life limit on the T/R blade, P/N 109–8132–01–111, of 200 hours TIS.

(f) Within 10 hours TIS, for helicopters having T/R blades with 190 hours TIS or more, replace the T/R blades with airworthy blades.

(g) On or before May 31, 2003, modify the T/R hub and grip assembly in accordance with the Compliance Instructions, Part V, of the ABT. Neither returning the removed blades nor the grips and bushings to the manufacturer is required. Modifying the T/R hub and grip assembly removes the Vne restrictions imposed, restores the T/R blades' life limit to 1,000 hours TIS, and changes the AD requirements for the helicopter from Applicability A to Applicability B.

Applicability B

(h) Before each start of the helicopter engines, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). See Figure 1.

(i) Within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, and before further flight any time there is an increase in vibration levels:

(1) Using a 5x or higher magnifying glass, visually inspect each T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5. of the ABT. Reporting to Agusta Service Engineering is not required.

(2) If you are unable to determine by the visual inspection whether there is a crack, dye-penetrant inspect the T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the ABT.

(j) Before further flight, replace any unairworthy T/R blade with an airworthy blade.

(k) On or before accumulating 150 hours TIS on the T/R hub and grip assembly, P/N 109–8131–02–159, and thereafter at intervals not to exceed 150 hours TIS, inspect the bushings', P/N 109–8131–30–109, linings for wear in accordance with Part VI of the ABT. Replace any unairworthy bushing with an airworthy bushing.

(l) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the T/R blade of 200 hours TIS and, after modifying the T/R hub and grip assembly, restores the retirement life to 1,000 hours TIS.

(m) T/R blades, P/N 109–8132–01–111, which have been operated as part of the T/R hub and blade assembly, P/N 109–8131–02–151, are considered unairworthy components of the T/R hub and blade assembly, P/N 109–8131–02–157, regardless of TIS.

(n) 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, Regulations Group, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

(o) Special flight permits will not be issued.

(p) The placarding and marking the airspeed indicator, inspecting the T/R blade and bushing, and modifying the T/R hub and grip assembly shall be done in accordance with the Compliance Instructions in Agusta Alert Bollettino Tecnico 109EP–30, Revision B, dated November 27, 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 Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(q) This amendment becomes effective on March 17, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–25–51, issued December 17, 2002, which contained the requirements of this amendment.

Note 2: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile, Italy, AD No. 2002–592, dated November 28, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4478 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–44–AD; Amendment 39–13072; AD 2003–04–23]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B3TN–5( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with blades part number (P/N) T10176H(B,K)–5 or T10178H(B)–11(R) that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes. This amendment requires replacement of those blades with blades of the latest design. This amendment is prompted by a report of in-flight propeller blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing. The actions specified by this AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

DATES: Effective April 4, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with blades P/N T10176H(B,K)–5 or T10178H(B)–11(R) that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes was published in the **Federal Register** on October 18, 2002, (67 FR 64321). That action proposed to require replacement of those blades with blades of the latest design in accordance with Hartzell Propeller Inc. SB HC–SB–61–250, Revision 1, dated April 8, 2002. The FAA has received a report of in-flight propeller blade separation that caused a severe out-of-balance condition, damage to the airplane, and resulted in engine shutdown and a safe landing, on a Mitsubishi MU–2 series airplane. Analysis revealed that the blade, made of (hard alloy) 7076 aluminum alloy, separated due to fatigue failure caused by intergranular corrosion. The service difficulty history to date indicates that this condition is limited to Hartzell propellers installed on Mitsubishi MU–2 series airplanes. This condition, if not corrected, could result in propeller blade separation, damage to the airplane, and possible loss of the airplane.

Comments

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

One commenter states that the proposed AD should be expanded to remove all Hartzell ''hard alloy'' propeller blades from service regardless of the type of aircraft they are installed on.

The FAA does not agree. As stated in the NPRM, the service history indicates that the intergranular corrosion condition found on the affected Hartzell propellers is limited to Hartzell propellers installed on Mitsubishi MU–2 series airplanes. The commenter did not provide any new service history to indicate that this condition exists on other airplanes with the affected Hartzell propellers. Therefore, the AD will not be changed. If in the future, intergranular corrosion conditions are reported to the FAA and are occurring on Hartzell propellers installed on airplanes other than the Mitsubishi MU–2 series airplanes, the FAA will review the need to expand the AD.

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

Economic Analysis

There are approximately 250 Hartzell Propeller Inc. model HC–B3TN–5( ) propellers of the affected design in the worldwide fleet. The FAA estimates that 200 propellers installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,000 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $ 2,120,000.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–23 Hartzell Propeller Inc.: Amendment 39–13072. Docket No. 2001–NE–44–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–B3TN–5( ) propellers, with part numbers (P/N's) T10176H(B)–5, T10176H(K)–5, T10176H–5, T10178H–11, T10178H–11R, T10178H(B)–11, and T10178H(B)-11R blades that are installed on Mitsubishi Heavy Industries, Ltd, MU–2 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This AD still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, unless already done.

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) Remove and replace propeller blades in accordance with paragraphs 3.A. through 3.C.(3) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 2002.

(b) After the effective date of this AD, do not install any propeller blade removed in accordance with paragraph (a) of this AD, on any airplane.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(e) The blade removal and replacement must be done in accordance with Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–250, Revision 1, dated April 8, 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 Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200, fax (937) 778–4391. 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

(f) This amendment becomes effective on April 4, 2003.

Issued in Burlington, Massachusetts, on February 19, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4484 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–100–AD; Amendment 39–13070; AD 2003–04–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 440) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes, that requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. This action is necessary to prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes was published in the **Federal Register** on August 7, 2002 (67 FR 51147). That action proposed to require replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards.

Comments

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

Requests That Credit Be Given for Previous Replacement

Two commenters request that the FAA revise the notice of proposed rulemaking (NPRM) to specify that replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) of the NPRM. One commenter states that, with the exception of the pre-modification location of placards for certain airplanes, the changes embodied in Revision ''A'' of the service bulletin are not significant for the proper execution of the bulletin and, therefore, result in the same level of safety. Another commenter states that Canadian airworthiness directive CF–2002–12, dated February 4, 2002, allows credit for airplanes modified per the original service bulletin.

We agree. We have added a new paragraph (b) in the final rule to provide operators with credit for previously accomplishing Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, and have redesignated the subsequent paragraphs.

Request To Clarify Reference to Attachments

One commenter requests clarification about the attachments specified in paragraph (a) of the NPRM. The commenter states that Bombardier Alert Service Bulletin A601R–11–077, Revision ''A,'' does not reference ''Attachments'' within its text. However, the commenter notes that, following page 46 of 46 of the service bulletin, there are two pages—a comment sheet and a compliance sheet. The commenter recommends calling those pages by their given names.

We agree and have revised the names of those sheets in the final rule accordingly. In addition, for clarification purposes, we have changed the service bulletin citation throughout this final rule to exclude those sheets. As stated in the NPRM, this AD does not require operators to complete the comment and compliance sheets.

Explanation of Change to Applicability

We have revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Cost Impact

We estimate that 284 Model CL–600–2B19 (Regional Jet Series 440) series airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 and 2 hours per airplane depending on the airplane configuration to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately between $47 and $195 per airplane depending on the configuration of the airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $30,388 and $89,460, or $107 and $315 per airplane depending on the configuration of the airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of the placard kits.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–21 Bombardier, Inc. (Formerly Canadair): Amendment 39–13070. Docket 2002–NM–100–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 440) series airplanes, certificated in any category, having the serial numbers listed in the following table:

TABLE—SERIAL NUMBERS

Serial Nos.
7003 through 7434 inclusive.
7436 through 7442 inclusive.
7444 through 7452 inclusive.
7454 through 7458 inclusive.
7460 through 7497 inclusive.
7499 through 7504 inclusive.

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

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards, accomplish the following:

Replacement of Placards

(a) Within 12 months after the effective date of this AD, replace the overwing emergency exit placards, door weight placards, and no baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision ''A,'' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(b) Replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–11–077, Revision ''A,'' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3 C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–12, dated February 4, 2002.

Effective Date

(f) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4347 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–289–AD; Amendment 39–13068; AD 2003–04–19]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary. This action is necessary to prevent excessive deformation of the floor structure in the event of rapid decompression in the lower cargo hold due to missing attachment bolts in the replaceable frame struts. Such deformation may result in the flight and engine control cables becoming jammed, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on March 28, 2002 (67 FR 14891). That action proposed to require a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts, and corrective actions, if necessary.

Comments

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

Support for the Proposed Rule

One commenter supports the proposed rule.

Request To Reference Latest Service Information

One commenter requests that Revision 1 to Fokker Service Bulletin SBF100–53–096 be cited as an acceptable source of service information for compliance with the proposed AD. That revision adds two figures to the service bulletin that are applicable to the operator's fleet.

The commenter also states that it notified the manufacturer of typographical errors in Figures 2 and 17 of the service bulletin. The manufacturer informed the commenter that a Service Bulletin Change Notification (SBCN) to correct the typographical errors would be issued. The commenter requests that a statement allowing the use of future service bulletin revisions and SBCNs be included in the proposed AD.

The FAA concurs with the commenter's request to reference Revision 1 of the service bulletin and the applicable SBCN. Since the issuance of the proposed AD, the manufacturer has issued Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001; and Fokker SBCN SBF100–53–096/02, dated January 28, 2002. The proposed rule references the original issue of the service bulletin, dated April 11, 2001, as the appropriate

source of service information for accomplishment of the proposed inspection. The actions in Revision 1 are essentially similar to those in the original issue of the service bulletin. The SBCN corrects typographical errors to part numbers in Figures 2 and 17 of the service bulletin. Part number NAS694V6 in Figure 2 has been changed to NAS674V6. Part number NAS695V10 in Figure 17 has been changed to NAS675V10. The manufacturer notified the FAA that bolts having part numbers NAS694V6 and NAS695V10 do not exist.

We have revised paragraph (a) of the final rule to reference Revision 1 of the service bulletin, including SBCN SBF100–53–096/02 as the appropriate source of service information. We have also included new paragraphs (b) and (d) in this final rule (and re-lettered other paragraphs accordingly) to give credit for inspections and corrective actions accomplished before the effective date of this AD per the original issue of the service bulletin.

Request To Include Alternative Methods of Compliance

One commenter requests that the proposed AD include a statement allowing the use of alternate and interchangeable fasteners approved by Fokker. The commenter states that Fokker Message TS01.60550, dated November 29, 2001, indicates approval from Fokker Services to use interchangeable parts. In regard to the commenter's fleet, the service bulletin lists parts that are inactive and have an interchangeable list or an alternate parts list.

The FAA does not concur with this comment. Paragraph (c)(2) of the final rule allows operators to make repairs per a method approved by either the FAA or the Civil Aviation Authority—The Netherlands (CAA-NL) (or its delegated agent). If an operator wants to make a repair using a part other than the one specified in the service bulletin, that paragraph allows the operator to contact the FAA or CAA-NL (or its delegated agent) for approval.

Request To Revise Cost Impact

One commenter states that it has begun inspections of the affected aircraft in accordance with Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001. Based on this commenter's experience, 12 work hours per airplane are required to accomplish the inspections.

From this comment the FAA infers that the commenter is requesting that the Cost Impact section of the proposed AD be revised. The FAA does not concur. The cost impact information describes only the ''direct'' costs of the general one-time visual inspection required by the proposed AD. The number of work hours necessary to accomplish the required general visual inspection, specified as 1 work hour in the cost impact information, was provided to the FAA by the manufacturer based on the best data available to date. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions required if, during the one-time general visual inspection required by the proposed AD, any attachment bolts are found missing. The ''on condition'' actions include additional general visual inspections to detect deformations or cracks in the affected floor beams and the fuselage frame C-channels at the strut attachment. Such ''on-condition'' corrective actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of the airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Conclusion

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

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,340, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–19 Fokker Services B.V.: Amendment 39–13068. Docket 2001–NM–289–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required as indicated, unless accomplished previously.

To prevent excessive deformation of the floor structure to the extent that flight and engine control cables might jam, accomplish the following:

Inspection

(a) Within 14 months after the effective date of this AD, do a one-time general visual inspection to detect any missing attachment bolts in the replaceable frame struts per Part 1, Part 2, and Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002; as applicable.

(b) Inspections accomplished prior to the effective date of this AD per Fokker Service Bulletin SBF100–53–096, original issue, dated April 11, 2001, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Corrective Actions

(c) If any attachment bolts are found missing during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Drill a new hole and install a new bolt (including nut and washer), per the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002.

(2) Do a general visual inspection to detect any deformation or crack in the affected floor beams and the fuselage frame C-channel at the strut attachment. If any deformation or crack exists, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(d) Corrective actions accomplished prior to the effective date of this AD per Fokker Service Bulletin SBF100–53–096, original issue, dated April 11, 2001, are acceptable for compliance with the requirements of paragraphs (c)(1) and (c)(2) of this AD.

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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–53–096, Revision 1, dated November 22, 2001, including Fokker Service Bulletin Change Notification SBF100–53–096/02, dated January 28, 2002. Fokker Service Bulletin SBF100–53–096, Revision 1, contains the following list of effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 2, 7, 8, 10, 27–30	1	November 22, 2001.
3–6, 9, 11–26	Original	April 11, 2001.
Fokker Service Bulletin Change Notification SBF100–53–096/02		
1, 3	Original	January 28, 2002.
2	Original	July 1, 2001.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 2001–055, dated April 27, 2001.

Effective Date

(h) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4348 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–389–AD; Amendment 39–13058; AD 2003–04–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires a one-time general visual inspection to find wire chafing damage

and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary. This action is necessary to prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on August 30, 2002 (67 FR 55735). That action proposed to require a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory; and corrective actions, if necessary.

Comments

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

Request for Withdrawal of Proposed AD

One commenter disagrees with the need for an AD to require accomplishment of Boeing Alert Service Bulletin MD90–24A074, Revision 01, dated August 8, 2001. The commenter notes that the incident that prompted the proposed AD occurred on a McDonnell Douglas Model MD–88 airplane, not an MD–90–30 airplane. The commenter notes that the affected wire bundle on the incident airplane chafed on a disconnect bracket on an extruded angle. The commenter states that, after considering the design of the disconnect panel on Model MD–90–30 airplanes, it is confident that no wire chafing will be found on Model MD–90–30 airplanes. The commenter points out that the design of the subject disconnect bracket on the Model MD–90–30 airplane is significantly different, especially in length, from that on the Model MD–88 airplane. The bracket on the Model MD–90–30 airplane does not extend to the area where the wire bundle chafing occurred on the Model MD–88 airplane. The commenter requests that the proposed AD, if issued, include information about inspection findings on Model MD–90–30 airplanes.

The FAA infers that the commenter is requesting that we withdraw the proposed AD. We do not agree. The airplane manufacturer has reviewed the installation drawings and has confirmed that the same disconnect bracket (*i.e.*, same part number) is installed in the same location on both Model MD–88 and Model MD–90–30 airplanes. Therefore, Model MD–90–30 airplanes may be subject to the same unsafe condition revealed on the Model MD–88 airplanes, even though no wire chafing damage has been found to date on Model MD–90–30 airplanes. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

The same commenter requests that, if we deem it necessary to issue an AD, we extend the compliance time from 4 months after the effective date of the AD, as proposed, to 12 months after the effective date of the AD. Aside from its comments regarding the appropriateness of the AD, discussed previously, the commenter provides no further justification for its request.

We concur that the compliance time of this AD may be extended. We have determined that a compliance time of 12 months will ensure that the identified unsafe condition is addressed in a timely manner, while allowing the majority of affected operators to complete the required actions during a scheduled maintenance visit. We have revised paragraph (a) of the final rule accordingly.

Explanation of Editorial Change

In the NPRM, we stated that the proposed actions were to be accomplished ''per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A074, Revision 01, including Appendix A, dated August 8, 2001.'' However, the service bulletin's appendix contains a form for reporting inspection findings. This AD does not include such a requirement. Therefore, we have changed the service bulletin citation throughout this final rule to exclude the appendix of the service bulletin.

Also, we have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Also, the Cost Impact section of the NPRM did not include information about warranty remedies that may be available. We have revised the Cost Impact section of this final rule to refer to warranty remedies.

Conclusion

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

Cost Impact

There are approximately 113 Model MD–90–30 airplanes of the affected design in the worldwide fleet. We estimate that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of inspection required by this AD on U.S. operators is estimated to be $1,260, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact

figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to this AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–10 McDonnell Douglas: Amendment 39–13058. Docket 2001–NM–389–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A074, Revision 01, dated August 8, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to certain wires due to contact between the wires and the adjacent structure, which could result in electrical arcing and consequent smoke and fire in the cabin, accomplish the following:

One-Time Inspection/Corrective Actions

(a) Within 12 months after the effective date of this AD: Do a one-time general visual inspection to find wire chafing damage and to determine adequate clearance between the disconnect panel structure and the wires above the aft left lavatory, per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–24A074, Revision 01, excluding Appendix and Evaluation Form, dated August 8, 2001. If no damage is found and the clearance is adequate, no further action is required by this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no damage is found, but the clearance is inadequate: Before further flight, secure the wires using tie-wraps to obtain 0.50-inch minimum clearance per the service bulletin.

(2) If damage and/or inadequate clearance is found: Before further flight, repair or replace damaged wires with new wires and/or secure the wires using tie-wraps to obtain 0.50-inch minimum clearance, as applicable, per the service bulletin.

(b) Accomplishment of the one-time inspection and corrective actions before the effective date of this AD per Boeing Alert Service Bulletin MD90–24A074, dated May 14, 2001, is considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–24A074, Revision 01, excluding Appendix and Evaluation Form, dated August 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4241 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–212–AD; Amendment 39–13067; AD 2003–04–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires measuring the length of the wear indicator on the brake stack of the main landing gear (MLG) brake assembly to determine the degree of wear, and follow-on actions. This action also requires eventual replacement of the existing MLG brake assembly with a new, improved or modified assembly, which constitutes terminating action for any repetitive actions being performed per this AD. The actions specified by this AD are intended to prevent failure of the MLG brakes and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on September 4, 2002 (67 FR 56506). That action proposed to require measuring the length of the wear indicator on the brake stack of the main landing gear (MLG) brake assembly to determine the degree of wear, and follow-on actions. That action also proposed to require eventual replacement of the existing MLG brake assembly with a new, improved or modified assembly, which would constitute terminating action for any repetitive actions being performed per the proposed AD.

Comments

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

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

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

Cost Impact

There are approximately 115 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the measurement of the brake stack wear indicator, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,260, or $60 per airplane, per measurement cycle.

It will also take approximately 1 work hour per airplane to accomplish the inspection for discrepancies of the pressure plate of the MLG brake, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,260, or $60 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the replacement of the MLG brake assembly, at an average labor rate of $60 per work hour. Required parts will cost approximately $55,000. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $1,162,560, or $55,360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–04–18 McDonnell Douglas: Amendment 39–13067. Docket 2001–NM–212–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category; equipped with a main landing gear (MLG) brake assembly having part number (P/N) 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG brake and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing, accomplish the following:

Measurement of Brake Wear

(a) Within 120 days after the effective date of this AD, measure the length of the wear indicator on the brake stack of the MLG brake assembly to determine the degree of wear, according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000.

(1) If the wear indicator measures more than 1.30 inches: Repeat the measurement of the brake stack wear indicator every 260 landings, until the wear indicator measures 1.30 inches or less. When the wear indicator measures 1.30 inches or less, do paragraph (a)(2) of this AD.

(2) If the wear indicator measures 1.30 inches or less: Before further flight, do paragraph (b) of this AD.

Repetitive Inspections for Discrepancies of Pressure Plate

(b) Perform a general visual inspection of the MLG brake assembly for discrepancies of the pressure plate (*i.e.*, the surface of the piston insulator is flush with or has pushed beyond the surface of the counterbore), according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. If no discrepancy of the pressure plate is found, repeat the inspection at intervals not to exceed 260 landings, until paragraph (c)(1), (c)(2), or (d) of this AD has been accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions

(c) If any discrepancy of the pressure plate is found during any inspection required by paragraph (b) of this AD: Before further flight, do paragraph (c)(1), (c)(2), (c)(3), or (d) of this AD.

(1) If the length of the wear indicator on the MLG brake is less than 0.40 inch: Overhaul the MLG brake assembly (including replacing the carbon stack) according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. Such overhaul terminates the repetitive inspections required by paragraph (b) of this AD.

(2) If the length of the wear indicator on the MLG brake is greater than or equal to 0.40 inch but less than or equal to 2.10 inches: Repair the MLG brake assembly according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. The repair procedures involve replacing the swage tube subassemblies of the brake with new subassemblies, replacing the pressure plate with a new, improved pressure plate, shortening the wear indicator tube, inspecting to determine the radius of the piston insulators, and replacing the piston insulators with reworked insulators if necessary. Such repair terminates the repetitive inspections required by paragraph (b) of this AD.

(3) If the length of the wear indicator on the brake is greater than 2.10 inches: No further action is required by this paragraph.

Replacement With Modified Brake Assembly

(d) Except as provided by paragraph (c) of this AD, at the next brake overhaul, or within 36 months after the effective date of this AD, whichever is first: Replace any MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P; with a new, improved or modified MLG brake assembly having P/N 5012193–4; according to Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–14, dated May 9, 2000. The modification involves replacement of certain wear indicator tubes with new tubes, installation of a new, improved pressure plate, measurement of the radius of the piston insulators, rework of the piston insulators if necessary, and reidentification of the brake assembly. Accomplishment of the replacement specified in this paragraph terminates the requirements of this AD.

Actions Accomplished per Previous Revisions of Service Bulletin

(e) Inspections and corrective actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin MD90–32A042, dated April 27, 2000, is acceptable for compliance with the corresponding actions required by paragraphs (a), (b), and (c) of this AD.

(f) Replacements accomplished before the effective date of this AD according to Boeing Service Bulletin MD90–32–045, dated July 21, 2000, are acceptable for compliance with paragraph (d) of this AD.

Part Installation

(g) As of the effective date of this AD, no person may install a MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–2, or 5012193–3 on any airplane, unless the MLG brake assembly is inspected and any applicable corrective action has been accomplished according to this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(j) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, excluding Evaluation Form; Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000; Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000, excluding Evaluation Form; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–14, dated May 9, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4349 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–60–AD; Amendment 39–13071; AD 2003–04–22]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HD–E6C–3B/E13890K Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 propeller control units (PCU's) installed. This amendment requires initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as a terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits. This amendment is prompted by a review by Hartzell Propeller Inc. of the model D–1199–2 PCU overhaul procedures, that revealed several dimensional checks and a nondestructive evaluation were not performed on certain serial number PCU's during a Major Periodic Inspection (overhaul). The overhaul procedures are required to comply with the Airworthiness Limitation PCU Major Periodic Inspection (overhaul) directive. The actions specified by this AD are intended to prevent below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control.

DATES: Effective April 4, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 PCU's installed was published in the **Federal Register** on October 18, 2002 (67 FR 64322). That action proposed to require initial and repetitive inspections for below-limit propeller flight idle blade angles, and, as a terminating action, removal of the affected PCU's from service and performance of a complete Major Periodic Inspection (overhaul) when the applicable time-since-new or time-since-overhaul limit is reached, or when any flight idle blade angle is below limits in accordance with Hartzell Service Bulletin No. (SB) HD–SB–61–025, dated November 7, 2002, or SB No. HD–SB–61–025, Revision 1, dated December 20, 2000.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 78 Hartzell Propeller Inc. model D–1199–2 PCU's of the affected design in the worldwide fleet. The FAA estimates that 50 PCU's installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 1.5 work hours per propeller to perform the initial inspections, 25 work hours per propeller to perform the PCU replacements, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,321 per propeller. Based on these figures, the total cost of initial inspections of this AD to U.S. operators is estimated to be $4,500, and the total cost of replacement of the affected PCU's to U.S. operators is estimated to be $441,050.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–22 Hartzell Propeller Inc.: Amendment 39–13071. Docket No. 2000–NE–60–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HD–E6C–3B/E13890K propellers with certain serial numbers of model D–1199–2 Propeller Control Units (PCU's) installed, as listed in Table 1 of this AD. These propellers are installed on, but not limited to Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 below-limit flight idle propeller blade angles that, if not corrected, could result in degraded aircraft performance and control, do the following:

Initial and Repetitive Inspection Requirements

(a) On PCU's listed by serial number in the following Table 1 of this AD, at the next ''2A'' maintenance check, but no later than 600 hours time-in-service from the effective date of this AD, perform an initial flight idle blade angle inspection, in accordance with paragraph 2A. of the Accomplishment Instructions of Hartzell Service Bulletin (SB) No. HD–SB–61–025, Revision 1, dated December 20, 2000. Table 1 follows:

TABLE 1.—AFFECTED SERIAL NUMBERS, MODEL D–1199–2 PCU'S

PCU–A–29	PCU–A–EFS140	PCU–A–EFS194	PCU–A–EFS234	PCU–A–EFS284
PCU–A–31	PCU–A–EFS141	PCU–A–EFS204	PCU–A–EFS236	PCU–A–EFS290
PCU–A–44	PCU–A–EFS144	PCU–A–EFS207	PCU–A–EFS239	PCU–A–EFS292
PCU–A–46	PCU–A–EFS152	PCU–A–EFS208	PCU–A–EFS242	PCU–A–EFS293
PCU–A–53	PCU–A–EFS155	PCU–A–EFS210	PCU–A–EFS244	PCU–A–EFS294
PCU–A–54	PCU–A–EFS158	PCU–A–EFS212	PCU–A–EFS245	PCU–A–EFS302
PCU–A–57	PCU–A–EFS160	PCU–A–EFS213	PCU–A–EFS246	PCU–A–EFS307
PCU–A–58	PCU–A–EFS162	PCU–A–EFS214	PCU–A–EFS249	PCU–A–EFS319
PCU–A–59	PCU–A–EFS165	PCU–A–EFS218	PCU–A–EFS250	PCU–A–EFS320
PCU–A–EFS101	PCU–A–EFS182	PCU–A–EFS220	PCU–A–EFS257	PCU–A–EFS326
PCU–A–EFS106	PCU–A–EFS184	PCU–A–EFS223	PCU–A–EFS261	PCU–A–EFS328
PCU–A–EFS109	PCU–A–EFS185	PCU–A–EFS224	PCU–A–EFS266	PCU–A–EFS330
PCU–A–EFS110	PCU–A–EFS187	PCU–A–EFS225	PCU–A–EFS268	PCU–A–EFS340
PCU–A–EFS111	PCU–A–EFS188	PCU–A–EFS226	PCU–A–EFS269	PCU–A–EFS347
PCU–A–EFS120	PCU–A–EFS192	PCU–A–EFS228	PCU–A–EFS271	
PCU–A–EFS122	PCU–A–EFS193	PCU–A–EFS233	PCU–A–EFS279	

(b) Remove PCU's that fail the inspection in paragraph (a) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Hartzell SB No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(c) Thereafter, at each successive ''4A'' maintenance check, but not to exceed 1,200 hours time-in-service, perform the flight idle blade angle inspection until the limiting time-since-overhaul or time-since-new is reached, as specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

(d) Remove PCU's that fail the inspection in paragraph (c) of this AD and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB No. HD–SB–61–025, Revision 1, dated December 20, 2000, or replace with a serviceable PCU.

(e) Once the limiting time-since-overhaul or time-since-new specified in Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000 is reached, remove the PCU from service and perform a Major Periodic Inspection (overhaul), in accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

Optional Terminating Action

(f) Replacement with a serviceable PCU is terminating action for the repetitive inspections specified in paragraph (c) of this AD. For the purpose of this AD, a serviceable PCU is one that is not listed in Table 1 of this AD, or is one listed in Table 1 of this AD that has undergone a Major Periodic Inspection (overhaul) after November 17, 2000, in

accordance with paragraphs 2.B. and 2.C. of Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000.

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, Chicago Aircraft Certification Office (ACO). An alternative method of compliance to Hartzell SB HD–SB–61–025, Revision 1, dated December 20, 2000, is compliance with Hartzell SB HD–SB–61–025, dated November 17, 2000. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

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

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 inspections must be done in accordance with Hartzell Propeller Inc. Service Bulletin HD–SB–61–025, Revision 1, dated December 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. 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 on April 4, 2003.

Issued in Burlington, Massachusetts, on February 19, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–4483 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–19–AD; Amendment 39–13063; AD 2003–04–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell model helicopters that requires replacing the hydraulic solenoid tee fitting (tee fitting) and tubes. This amendment is prompted by the manufacturer's discovery that tee fittings may be installed improperly and restrict hydraulic fluid flow. The actions specified by this AD are intended to prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Bell Model 427 helicopters was published in the **Federal Register** on October 18, 2002 (67 FR 64325). That action proposed to require replacing tee fittings, part number (P/N) AS1003W060404, and tubes, P/Ns 427–080–058–101 and 427–080–003–101, with union, P/N AS5230W0606, tee fitting, P/N NAS1763W060404, and tubes, P/Ns 427–080–069–101 and 427–080–068–101.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 427 helicopters. Transport Canada advises that there is a possibility of installing the existing tee fitting in such a way that the hydraulic fluid flow will be significantly restricted. To preclude this possibility, Bell has designed a new tee fitting installation.

Bell has issued Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001, which specifies replacing the tee fitting. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–11, dated January 31, 2002, to ensure the continued airworthiness of these helicopters in Canada.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with one editorial change. The manufacturer's legal name has changed since the issuance of the proposed AD, and the new name is reflected in this AD; this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to replace the tee fitting and tubes, and that the average labor rate is $60 per work hour. Required parts will cost approximately $527 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,197 to replace the tee fitting and tubes in the entire fleet.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–14 Bell Helicopter Textron Canada: Amendment 39–13063. Docket No. 2002–SW–19–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56031, with hydraulic solenoid tee fitting, part number (P/N) AS1003W060404, installed, certificated in any category.

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

Compliance: Required at the next hydraulic filter and fluid replacement or within 30 days, whichever occurs first, unless accomplished previously.

To prevent restricted flow of hydraulic fluid to the flight control hydraulic actuators resulting in loss of hydraulic control, excessive stiffness in the flight controls, and a subsequent forced landing of the helicopter, accomplish the following:

(a) Replace the hydraulic solenoid tee fitting (tee fitting), P/N AS1003W060404, and tubes, P/Ns 427–080–058–101 and 427–080–003–101, with union, P/N AS5230W0606, tee fitting, P/N NAS1763W060404, and tubes, P/Ns 427–080–069–101 and 427–080–068–101, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(d) The replacements shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–02, dated August 20, 2001. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 4, 2003.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2002–11, dated January 31, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4476 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–15–AD; Amendment 39–13069; AD 2003–04–20]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; Model BAe.125 Series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B Airplanes; and Model Hawker 800, 800 (including variant U–125A), 1000, and 800XP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (including variant U–125A), Hawker 800XP, and Hawker 1000 airplanes; that currently requires an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator and follow-on/corrective actions. This amendment expands the applicability of the existing AD to add an airplane model and further clarify the applicability and, for certain airplanes, to clarify the compliance time of the inspection requirements. This action is necessary to prevent separation of the cylinder head lugs, which could prevent the MLG from extending and result in a partial gear-up landing. This action is intended to address the identified unsafe condition.

DATES: Effective April 4, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 3, 2001 (66 FR 45575, August 29, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–17–26 R1, amendment 39–12619 (67 FR 4171, January 29, 2002), which is applicable to certain Raytheon Model DH.125, HS.125, BH.125, and BAe.125 (U–125 and C–29A) series airplanes; and Model Hawker 800, Hawker 800 (including variant U–125A), Hawker 800XP, and Hawker 1000 airplanes; was published in the **Federal Register** on August 30, 2002 (67 FR 55742). The action proposed to continue to require an inspection for cracking or corrosion of the cylinder head lugs of the main landing gear (MLG) actuator, and follow-on/corrective actions. The action also proposed to expand and clarify the applicability of the existing AD per the referenced service bulletin and type certificate data sheet, and, for certain airplanes, to clarify the compliance time for the inspection requirements in paragraph (b)(3) of this AD.

Comments

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

Explanation of Change to Applicability

For clarification purposes, we have revised the wording in the parentheses for Model Hawker 800 airplanes in the applicability throughout this AD to read ''(including variant U–125A).''

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,000 airplanes of the affected design in the worldwide fleet. We estimate that 650 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–17–26 R1, and retained in this AD, take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $780,000, or $1,200 per airplane.

This AD does not add any new actions or requirements, and only revises the applicability of the AD by adding an airplane model, clarifying the model designations, and clarifying the compliance time for the inspection requirements for certain airplanes. Therefore, the estimated cost impact for this proposed AD is unchanged from the existing AD.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We also have been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12619 (67 FR 4171, January 29, 2002), and by adding a new airworthiness directive (AD), amendment 39–13069, to read as follows:

2003–04–20 Raytheon Aircraft Company: Amendment 39–13069. Docket 2002–NM–15–AD. Supersedes AD 2001–17–26 R1, Amendment 39–12619.

Applicability: Model DH.125, HS.125, and BH.125 series airplanes; Model BAe.125 series 800A, 800A (C–29A), 800A (U–125), 800B, 1000A, and 1000B airplanes; and Model Hawker 800, 800 (including variant U–125A), 1000, and 800XP airplanes; as listed in Raytheon Service Bulletin 32–3391, dated August 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Required as indicated, unless accomplished previously.

To prevent separation of the cylinder head lugs, which could prevent the main landing gear (MLG) from extending and result in a partial gear-up landing, accomplish the following:

Restatement of Certain Requirements of AD 2001–17–26 R1:

Inspection

(a) For Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A, 800A (C–19A), 800A (U–125A), 1000A, and 1000B airplanes; and Model Hawker 800, 800 (including variant U–125A), 800XP, and 1000 airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of October 3, 2001 (the effective date of AD 2001–17–26 R1, amendment 39–12619): Perform the eddy current inspection within 24 months after October 3, 2001.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(3) For actuator cylinder heads that have been in service for more than 7 years as of October 3, 2001: Perform the eddy current inspection within 6 months after October 3, 2001.

(4) For actuator cylinder heads that have 4,001 or more total landings as of October 3, 2001: Perform the eddy current inspection within 10 landings after October 3, 2001.

New Requirements of this AD:

(b) For Model BAe.125 series 800B airplanes: Perform an eddy current inspection of the actuator cylinder head lugs for cracking or corrosion per Raytheon Service Bulletin 32–3391, dated August 2000, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For actuator cylinder heads that have 3,000 or less total landings as of the effective date of this AD: Perform the eddy current inspection within 24 months after the effective date of this AD.

(2) For actuator cylinder heads that have 3,001 to 4,000 total landings as of the effective date of this AD: Perform the eddy current inspection within 6 months after the effective date of this AD.

(3) For actuator cylinder heads that have been in service for more than 7 years or that have 4,001 or more total landings as of the effective date of this AD: Perform the eddy current inspection at the earlier of the times specified in paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Within 6 months after the effective date of this AD.

(ii) Within 10 landings after the effective date of this AD.

If No Cracking or Corrosion

(c) If no cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish follow-on actions (*e.g.*, ''vibro-etching'' the MLG actuator data plate, painting a blue stripe on the actuator cylinder head to indicate 1 1/32-inch oversize bushings, replacing bushings, and applying corrosion protection to the lug bores), per Raytheon Service Bulletin 32–3391, dated August 2000.

If Any Cracking or Corrosion

(d) If any cracking or corrosion is found during the inspection required by paragraph (a) or (b) of this AD, before further flight, accomplish either of the actions specified in paragraph (d)(1) or (d)(2) of this AD, per Raytheon Service Bulletin 32–3391, dated August 2000:

(1) Replace the actuator of the MLG with a new or serviceable actuator; or

(2) Replace the actuator cylinder head with a new cylinder head.

Note 2: Raytheon Service Bulletin 32–3391, dated August 2000, references Precision Hydraulics Component Maintenance Manual 32–30–1105 as an additional source of service information.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Raytheon Service Bulletin 32–3391, dated August 2000. This incorporation by reference of that document was approved previously by the Director of the Federal Register as of October 3, 2001 (66 FR 45575, August 29, 2001). Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 4, 2003.

Issued in Renton, Washington, on February 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4586 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–43–AD; Amendment 39–13061; AD 2003–04–12]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 427 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) model helicopters that requires modifying the auxiliary fin assemblies and revising the Limitations section of the Rotorcraft Flight Manual (RFM) to reduce the never-exceed speed (Vne) for a tail rotor pedal stop failure. This amendment is prompted by several incidents of main rotor blades contacting the top of the fin that have resulted in an upper tuning weight (weight) becoming loose. The actions specified by this AD are intended to prevent a main rotor blade from striking an auxiliary fin, loss of a tuning weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Bell Model 427 helicopters was published in the

Federal Register on November 28, 2001 (66 FR 59377). That NPRM would have required modifying the fins, part number (P/N) 427–035–836–101 and 427–035–836–102, to relocate the weights, P/N 407–023–003–145. That proposal recognized that relocating the tuning weights was an interim action and anticipated that contact between the main rotor blades and the top portion of the fins would be addressed in a separate AD. However, prior to publishing the final rule based on that NPRM, the manufacturer published service information about reducing the height of the fins. Further, Transport Canada issued a revised AD requiring the height reduction in Canada. Hence, reducing the height of the fins made the relocation of the tuning weights unnecessary, therefore a supplemental proposal was published in the **Federal Register** on October 18, 2002 (67 FR 64326). That action proposed to require modifying the auxiliary fin assemblies to reduce the height and revising the Limitations section of the RFM to reduce the Vne for a tail rotor pedal stop failure from 80 knots indicated airspeed (KIAS) to 60 KIAS.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 427 helicopters. Transport Canada advises of several ground incidents of main rotor blades contacting the top portion of a fin. Such incidents occurred on helicopters with an internal gross weight capability of 6,350 lbs. and the larger auxiliary fin assemblies.

Bell has issued Alert Service Bulletin 427–01–7, dated November 16, 2001 (ASB), which specifies reducing the height of the auxiliary fin assembly, part number (P/N) 427–035–836–101, –102, –105, and –106 within 300 hours time-in-service (TIS). Transport Canada classified this ASB as mandatory and issued AD No. CF–2001–05R1, dated February 13, 2002, to ensure the continued airworthiness of these helicopters in Canada.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the exception of minor non-substantive changes and updating the Rotorcraft Flight Manual from Revision 3 to Revision 5, which is referenced in Note 2 of the AD.

The FAA estimates that 30 helicopters of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,685 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,150 to perform the modifications and revisions for the entire fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–12 Bell Helicopter Textron Canada: Amendment 39–13061. Docket No. 2001–SW–43–AD.

Applicability: Model 427 helicopters, serial numbers 56001 through 56030 with auxiliary fin assemblies, part numbers 427–035–836–101, –102, –105, or –106, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a main rotor blade from striking an auxiliary fin, loss of an upper tuning weight, impact with a tail or main rotor blade, and subsequent loss of control of the helicopter:

(a) Within 60 days, modify auxiliary fin assemblies, part numbers (P/N) 427–035–836–101, –102, –105, or –106, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–07, dated November 16, 2001.

(b) After accomplishing paragraph (a) of this AD, reduce the never-exceed speed (Vne) limitation for a pedal stop failure from 80 knots indicated airspeed (KIAS) to 60 KIAS.

Note 2: Bell Helicopter Textron Rotorcraft Flight Manual BHT–427–FM–2, Revision 5, dated April 23, 2002, incorporates the reduced airspeed limitation for a pedal stop failure.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

(e) The modification shall be done in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 427–01–07, dated November 16, 2001. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register,

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

(f) This amendment becomes effective on April 4, 2003.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–05R1, dated February 13, 2002.

Issued in Fort Worth, Texas, on February 14, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–4477 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–353–AD; Amendment 39–13073; AD 2003–04–24]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This action requires a one-time inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators, and follow-on actions. This action is necessary to find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–353–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking has been found on a support fitting assembly for the main spoiler actuators on several McDonnell Douglas Model 717–200 airplanes. On one airplane, a crack completely separated a forward attachment lug from the support fitting. This allowed the lug to move forward and contact and damage the rear spar of the wing, which resulted in cracking of the spar and fuel seepage. On another airplane, the support fitting cracked laterally across the center of the fitting. Investigation revealed that the stop pad had been broken off at the pad's aft attachment hole, and contact occurred between the spoiler actuator and fitting. While the root-cause of these cracks is unknown, one possibility is improper rigging of the spoiler hold-down actuator, which could cause additional loading and fatigue in the support fitting. Cracking of a support fitting assembly for a main spoiler actuator, if not corrected, could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. That service bulletin describes procedures for a one-time visual inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators. For support fitting assemblies on which no cracking is found, the service bulletin describes procedures for a follow-on test of the rigging of the spoiler hold-down actuators to ensure that the actuators are rigged correctly. For cracked support fitting assemblies or stop pads, the service bulletin specifies to contact Boeing for instructions for repair and additional inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed under the heading ''Differences Between This AD and the Service Bulletin.'' This AD also requires that operators report results of inspection findings to the FAA and to Boeing.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Clarification of Inspection Type

The service bulletin identifies the inspection for cracking or other discrepancy as a ''visual'' inspection. We have determined that the inspection described in the service bulletin constitutes a ''detailed'' inspection. Note 2 of this AD defines such an inspection.

Differences Between This AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the

manufacturer may be contacted for disposition of cracking conditions, this AD would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators also should note that, if no cracking of any spoiler support fitting or stop pad is found, the service bulletin specifies to test the rigging of the spoiler hold-down actuators. However, the service bulletin does not specify any corrective action if a spoiler hold-down actuator is incorrectly rigged. If any spoiler hold-down actuator is not rigged correctly, this AD specifies to correct the rigging per McDonnell Douglas Model 717 Aircraft Maintenance Manual, Chapter 27–67–06, Revision 15, dated January 1, 2003.

Operators may note that certain portions of the service bulletin specify that, if no cracks are found, inspection findings must be submitted to Boeing. However, the Accomplishment Instructions of the service bulletin do not contain such an instruction, and this AD does not require operators to submit inspection findings if no cracking is found.

Operators also may note that note (e) in Figures 1 and 2 of the service bulletin refers to inspecting for cracking or ''evidence of riding conditions on the support fitting.'' We have confirmed with Boeing that the references to ''riding conditions'' were included inadvertently. It is only necessary to inspect the support fitting assembly and stop pads for cracks, not for evidence of riding conditions. Note 3 of this AD clarifies our intent.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 shall 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–353–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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:

2003–04–24 McDonnell Douglas: Amendment 39–13073. Docket 2002–NM–353–AD.

Applicability: Model 717–200 airplanes, fuselage numbers 5002 through 5106 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the support fitting assemblies of the main spoiler actuator, which could result in damage of adjacent structure such as the rear spar or upper skin panel, and consequent reduced structural integrity of the airplane, accomplish the following:

One-Time Inspection

(a) Within 550 flight hours after the effective date of this AD, perform a one-time detailed inspection for cracking of the support fitting assemblies and stop pads of the main spoiler actuators, per the Accomplishment Instructions of Boeing Alert

Service Bulletin 717–57A0013, dated December 20, 2002.

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

Note 3: While note (e) in Figures 1 and 2 in Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002, refers to inspecting for cracking or ''evidence of riding conditions on the support fitting,'' this AD requires inspection of the support fitting assembly and stop pads for cracking.

No Cracking Found: Follow-On Test

(b) If no cracking is found during the inspection required by paragraph (a) of this AD, before further flight, perform a test of the rigging of the spoiler hold-down actuators to ensure that the actuators are rigged correctly, per the Accomplishment Instructions of Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. If any spoiler hold-down actuator is not rigged correctly, before further flight, correct the rigging per McDonnell Douglas Model 717 Aircraft Maintenance Manual, Chapter 27–67–06, Revision 15, dated January 1, 2003.

Cracking Found: Corrective Actions and Reporting Requirement

(c) If any cracking is found during the inspection required by paragraph (a) of this AD, do paragraphs (c)(1) and (c)(2) of this AD.

(1) Before further flight, repair and perform follow-on inspections per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(2) Within 5 days after performing the inspection required by paragraph (a) of this AD, or within 5 days after the effective date of this AD, whichever is later, submit a report of inspection findings to the Manager, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137, fax (562) 627–5210; and to Boeing, at the address specified in Appendix A of Boeing Alert Service Bulletin 717–57A0013, dated December 20, 2002. The report must include the fuselage number, a description of the discrepancies found, the number of flight cycles and flight hours on the airplane, and the name and telephone number of a person to contact if the FAA or Boeing needs more information on the findings. The form in Appendix A of the service bulletin may be used for the report. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 717–57A0013, dated December 20, 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on March 17, 2003.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4487 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14462; Airspace Docket No. 03–ACE–15]

Modification of Class E Airspace; Denison, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Denison, IA revealed a discrepancy in the location of the Denison, IA nondirectional radio beacon (NDB) used in the legal description for the Denison, IA Class E airspace. This action corrects the discrepancy by modifying the Denison, IA Class E airspace and by incorporating the current location of the Denison NDB in the Class E airspace legal description.

DATES: The direct final rule is effective on 0901 UTC, July 10, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14462/ Airspace Docket No. 03–ACE–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet or more above the surface at Denison, IA. It incorporates the current location of the Denison NDB and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14462/Airspace Docket No. 03–ACE–15'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Denison, IA

Denison Municipal Airport, IA
(Lat. 41°59′11″ N., long. 95°22′51″ W.)
Denison NDB
(Lat. 41°59′02″ N., long. 95°22′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Denison Municipal Airport and within 2.6 miles each side of the 116° bearing from the Denison NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on February 14, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–4797 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 03N–0024]

New Animal Drugs; Phenylbutazone; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (we) is issuing an order prohibiting the extralabel use of phenylbutazone animal and human drugs in female dairy cattle 20 months of age or older. We are issuing this order based on evidence that extralabel use of phenylbutazone in female dairy cattle 20 months of age or older will likely cause an adverse event in humans. We find that such extralabel use presents a risk to the public health for the purposes of the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA).

DATES: This rule is effective May 29, 2003. We invite your written or electronic comments. We will consider all comments that we receive by April 29, 2003.

ADDRESSES: Submit your written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1168, e-mail: *gdunnava@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. AMDUCA

AMDUCA (Public Law 103–396) was signed into law on October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the act) to permit licensed veterinarians to prescribe extralabel uses of approved animal and human drugs in animals. However,

section 512(a)(4)(D) of the act (21 U.S.C. 360b(a)(4)(D)) gives us authority to prohibit an extralabel drug use in animals if, after affording an opportunity for public comment, we find that such use presents a risk to the public health.

In the **Federal Register** of November 7, 1996 (61 FR 57732), we published the implementing regulations (codified at part 530 (21 CFR part 530)) for AMDUCA. The sections regarding prohibition of extralabel use of drugs in food-producing animals are found at §§ 530.21 and 530.25. These sections describe the basis for issuing an order prohibiting an extralabel drug use in food-producing animals and the procedure to be followed in issuing an order of prohibition.

We may issue a prohibition order if we find that extralabel use in animals presents a risk to the public health. Under § 530.3(e), this means that we have evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless we revoke the order, modify it, or extend the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41.

II. Phenylbutazone

Phenylbutazone became available for use in humans for the treatment of rheumatoid arthritis and gout in 1949 (Ref. 1), but is no longer approved, and thus not marketed, for any human use in the United States. This is because some patients treated with phenylbutazone have experienced severe toxic reactions, and other effective, less toxic drugs are available to treat the same conditions (Refs. 1 and 2).

Phenylbutazone is known for its ulcerogenic, nephrotoxic, and hemotoxic effects in horses, dogs, rats, and humans (Refs. 2, 4, 5, 6, 7, and 8). It is known to induce blood dyscrasias, including aplastic anemia, leukopenia, agranulocytosis, thrombocytopenia, and deaths (Refs. 7 and 8). The reported adverse reactions were associated with the human clinical use of 200 to 800 milligrams phenylbutazone per day (Refs. 7 and 8). Hypersensitivity reactions of the serum-sickness type have also been reported in patients with phenylbutazone. The threshold for this effect has not been defined. Therefore, it is unclear what level of exposure would be required to trigger such reactions in sensitive people. Moreover, phenylbutazone is a carcinogen, as determined by the National Toxicology Program (NTP) based on positive results in genotoxicity tests and some evidence of carcinogenicity seen in the rat and mouse in carcinogenicity bioassays NTP conducted (Ref. 3).

For animals, phenylbutazone is currently approved only for oral and injectable use in dogs and horses. Use in horses is limited to use in horses not intended for food. There are currently no approved uses of phenylbutazone in food-producing animals.

Investigation by FDA and state regulatory counterparts has recently found phenylbutazone on farms and identified tissue residues in culled dairy cattle. In addition, the U.S. Department of Agriculture's (USDA's) Food Safety Inspection Service has reported phenylbutazone residues in culled cattle presented for slaughter for human food throughout the United States in the past 2 calendar years. This evidence indicates that the extralabel use of phenylbutazone in female dairy cattle 20 months of age or older will likely result in the presence, at slaughter, of residues that are toxic to humans, including being carcinogenic, at levels that have not been shown to be safe. Because of the likelihood of this adverse event, we are issuing an order prohibiting the extralabel use of phenylbutazone drugs in female dairy cattle 20 months of age or older.

We will continue to monitor the extralabel use of phenylbutazone and will adjust the scope of this prohibition should we find that extralabel use in other species or classes of animals presents a risk to public health.

III. Request for Comments

We are providing 60 days from the date of this publication for you to comment. The order will become effective May 29, 2003, unless we revoke or modify the order, or extend the comment period. You may send written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) by April 29, 2003. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Please identify your comments with the docket number found in brackets in the heading of this document. You may read any comments that we receive at our Dockets Management Branch reading room (see **ADDRESSES**). The reading room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

IV. Order of Prohibition

Therefore, I hereby issue the following order under section 512(a)(4)(D) of the act and 21 CFR 530.21 and 530.25. We find that extralabel use of phenylbutazone animal drugs and human drugs in female dairy cattle 20 months of age or older likely will cause an adverse event which constitutes a finding under section 512(a)(4)(D) of the act that extralabel use of this drug presents a risk to the public health. Therefore, we are prohibiting the extralabel use of this drug in female dairy cattle 20 months of age or older.

V. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**). You may view them between 9 a.m. and 4 p.m., Monday through Friday.

1. Insel, P. A., ''Analgesic-Antipyretics and Anti-inflammatory Agents, and Drugs Employed in the Treatment of Gout,'' Goodman and Gilman, *The Pharmacological Basis of Therapeutics*, 9th ed., edited by J. G. Hardman, L. E. Limbird, P. B. Molinoff, R. W. Ruddon, and A. G. Gilman, McGraw-Hill, pp. 642–643, 1996.

2. McEvoy, G. K., ''American Hospital Formulary Service B Drug Information 93,'' American Society of Hospital Pharmacists, Inc., Bethesda, MD, p. 1194, 1993.

3. National Toxicology Program, ''Toxicology and Carcinogenesis Studies of Phenylbutazone in F344/N rats and B6C3F1 Mice (gavage studies)'' National Toxicology Program Technical Report number 367, NIH publication number 90–2822, 1990.

4. Edited by R. J Anderson, J. G. Gambertoglio, and R. W. Schrier, ''Clinical Use of Drugs in Renal Failure,'' Charles C. Thomas, Springfield, IL, p. 6, 1976.

5. Carpenter, S. L., and W. M. McDonnell, ''Misuses of Veterinary Phenylbutazone,'' *Archives of Internal Medicine*, vol. 155, pp. 1229–1231, 1995.

6. Council on Drugs, ''Registry on Blood Dyscrasias,'' Report to the Council, *Journal of the American Medical Association*, vol. 179(11), pp. 888–890, 1962.

7. Hazardous Substances Data Bank, 2000. http://www.csi.micromedex.com/DATA/HS/HS3159F.htm

8. Humphreys, D. J., *Veterinary Toxicology*, Bailliére Tindall, p. 92, 1988.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs,

Labeling, Reporting and recordkeeping requirements.

Accordingly, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530--EXTRALABEL DRUG USE IN ANIMALS

1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

§ 530.41 [Amended]

2. Section 530.41 is amended by adding paragraph (a)(12) to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

(a) * * *

(12) Phenylbutazone.

* * * * *

Dated: February 13, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–4741 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 96P–0484]

Medical Devices; Hematology and Pathology Devices; Reclassification of Automated Blood Cell Separator Device Operating by Filtration Principle from Class III to Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the automated blood cell separator (ABCS) device operating by filtration principle, intended for routine collection of blood and blood components, from class III to class II (special controls). The special control requirement for this device is an annual report with emphasis on adverse reactions to be filed by the manufacturer for a minimum of 3 years. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is reclassifying the automated blood cell separator devices operating by filtration principle into class II (special controls) because special controls, in addition to general controls, are capable of providing a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(f)(1) of the act, devices that were not in commercial distribution before May 28, 1976, the date of enactment of the 1976 amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

Under section 513(f)(3) of the act, FDA may initiate the reclassification of a device classified into class III under section 513(f)(1), or the manufacturer or importer of a device may petition the Secretary of Health and Human Services for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

II. Regulatory History of the Device

The AUTOPHERESIS–C SYSTEM, an ABCS, intended for the routine collection of blood and blood components, is a postamendments device classified into class III under section 513(f)(1) of the act. Therefore, the device cannot be placed in commercial distribution for the routine collection of blood and blood components unless it is reclassified under section 513(f)(3) of the act, or subject to an approved premarket approval application (PMA) under section 515 of the act (21 USC 360e). FDA is taking this action under section 513(f)(3) of the act and § 860.134, based on information submitted in a petition by Baxter Healthcare Corp. (Baxter) on June 17, 1996, requesting reclassification of the AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, from class III to class II (Ref. 1). Although Baxter submitted its petition for reclassification under section 513(e) of the act, the request should have been submitted under section 513(f)(3), and therefore FDA has considered the petition filed under section 513(f)(3). Consistent with section 513(f)(3) of the act and § 860.134, FDA referred the petition to the Blood Products Advisory Committee, Medical Devices Panel (the Panel) for its recommendation on the requested change in classification. The Panel met on September 26, 1996, at a public meeting (Ref. 2).

III. Device Description

The AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, is an automated plasmapheresis system. It utilizes a spinning membrane separation device to achieve rapid and gentle separation by filtration of whole blood into concentrated cellular components for reinfusion and into plasma for collection.

The instrument uses a system of pumps and sensors controlled by a microprocessor and it incorporates a variety of safety and alarm system

functions. It uses a fully automated processing program to collect a preset volume of plasma from a donor. Plasma collection in the AUTOPHERESIS–C SYSTEM involves sequential phases of collection of plasma from the donor and reinfusion of the residual red blood cell concentrate back to the donor.

The AUTOPHERESIS–C SYSTEM is currently employed in plasma centers where it is used to collect Source Plasma, and it is also found in blood centers and hospital blood banks where it is used for the collection of plasma for preparation of fresh frozen plasma.

Any change in the indication for use, i.e., for therapeutic use, would require a PMA because devices for therapeutic use are not included in this reclassification action.

IV. Risks to Health

FDA has identified the following risks associated with apheresis blood donation and processing: (1) The potential loss of blood due to leaks; (2) thrombosis due to activation of factors by foreign surfaces; (3) toxic reaction to citrate or heparin anticoagulant; (4) damage to red cells, activation of complement, and denaturation of proteins; (5) potential for sepsis and fever due to bacterial contamination of the donor's blood returned to the donor; (6) infectious disease risk to the donor or to the operator due to leaks; (7) electrical shock hazard; (8) donor stress reaction due to removal or loss of blood; and (9) reservoir rupture.

Some of the reported adverse donor reactions are: (1) Allergic reaction; (2) vasovagal or synocopal reaction; (3) citrate toxicity; (4) hematoma; (5) hematuria or hemoglobinuria; (6) hypovolemic reaction; (6) myocardial infarct in three cases unrelated to the donation procedure; (7) mesenteric thrombosis unrelated to the donation procedure; (8) chest pains; (9) high blood pressure; (10) blood clotting; (11) nonresponsive donor during or after the donation procedure; (12) death of a donor several days following an apheresis unrelated to the procedure; (13) blood spray; and (14) tubing separation.

In addition to the potential risks of the AUTOPHERESIS–C SYSTEM and subsequent generic types of filtration-based blood cell separators, there is sufficient information about the benefits of the device. Specifically, the AUTOPHERESIS–C SYSTEM has been used since 1986, and the data presented by Baxter show no evidence of cellular or protein damage to the donor blood; the procedure is well tolerated by the donor; and the instrument is safe and effective for plasma collection. The period from 1986 to 1996 showed that a 0.03 percent of donations were associated with some type of potential adverse event that were reported to Baxter.

V. Panel Recommendation

The Panel reviewed the data and information contained in the petition and provided by FDA, and considered the open discussions during the Panel meeting. The Panel consisted of members with personal knowledge of and clinical experience with the device. At a public meeting on September 27, 1996, the Panel unanimously recommended that the AUTOPHERESIS–C SYSTEM and subsequent membrane-based blood cell separators substantially equivalent to this device, intended for routine collection of blood and blood components, be reclassified from class III to class II. The Panel believed that class II with the special controls of a periodic report filed annually for a minimum of 3 years with emphasis on adverse reactions would provide reasonable assurance of the safety and effectiveness of the device.

VI. Special Controls

FDA believes that, in addition to general controls, the special controls described below address these risks and provide reasonable assurance of the safety and effectiveness of the device. FDA described the special controls in the **Federal Register** of May 29, 2001 (66 FR 29149 at 29151), and provided an opportunity for public comment. FDA did not receive any comments on the special controls. Therefore, on September 5, 2001, FDA issued an order to the petitioner reclassifying the AUTOPHERESIS–C SYSTEM, and substantially equivalent devices of this generic type, from class III to class II subject to the special controls described below (Ref. 3). Through this final rule, FDA is codifying the reclassification of this device by revising 21 CFR 864.9245. By listing the contents of the special controls, new manufacturers of substantially equivalent devices can comply with the same special controls.

In addition to general controls of the act, automated blood cell separator devices operating by filtration principle are subject to the following special controls in order to provide reasonable assurance of the safety and effectiveness of the device. The manufacturer must file an annual report with FDA on the anniversary date of reclassification for 3 consecutive years. A manufacturer of a device determined to be substantially equivalent to the AUTOPHERESIS–C SYSTEM, intended for routine collection of blood and blood components, also is required to comply with the same general and special controls. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report.

Each annual report (special control) must include:

1. A summary of adverse donor reactions reported by the users to the manufacturer that do not meet the threshold for medical device reporting under 21 CFR part 803;

2. Any change to the device, including but not limited to:

- new indications for use of the device;
- labeling changes, including operation manual changes;
- computer software changes, hardware changes, and disposable item changes, e.g., collection bags, tubing, filters;

3. Equipment failures, including software, hardware, and disposable item failures, e.g., collection bags, tubing, filters.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small

entities. Reclassification of the affected devices from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act, and may permit small potential competitors to enter the marketplace by lowering their costs. Although the final rule requires manufacturers of these devices to file an annual report with FDA for 3 consecutive years, this is less burdensome than the current premarket approval requirement that annual reports be submitted to FDA on an ongoing basis. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. In addition, the Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule because the rule will not impose costs of $100 million or more on State, local, and tribal governments in the aggregate, or the private sector, in any one year (adjusted annually for inflation).

IX. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilites among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order, and, consequently, a federalism summary impact statement is not required.

XI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition for reclassification of the Autopheresis-C System from class III to class II by Baxter Healthcare Corp., June 17, 1996.

2. Transcript of the Blood Products Advisory Committee, 52d Meeting, September 27, 1996.

3. Order to the petitioner, September 5, 2001.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.9245 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, by adding new paragraph (b), and by revising newly redesignated paragraphs (c) and (d) to read as follows:

§ 864.9245 Automated blood cell separator.

* * * * *

(b) *Classification of device operating by filtration separation principle*. Class II (special controls). The special controls for the device are that the manufacturer must file an annual report with FDA for 3 consecutive years. Each annual report must include the following:

(1) A summary of adverse donor reactions reported by the users to the manufacturer that do not meet the threshold for medical device reporting under part 803 of this chapter;

(2) Any change to the device, including but not limited to:

(i) New indications for use of the device;

(ii) Labeling changes, including operation manual changes;

(iii) Computer software changes, hardware changes, and disposable item changes, e.g., collection bags, tubing, filters;

(3) Equipment failures, including software, hardware, and disposable item failures, e.g., collection bags, tubing, filters.

(c) *Classification of device operating by centrifugal separation principle*. Class III (premarket approval).

(d) *Date PMA or notice of completion of a PDP is required*. No effective date has been established of the requirement for premarket approval for the device described in paragraph (c) of this section. See § 864.3.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–4690 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9021]

RIN 1545–AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, December 3, 2002 (67 FR 71821). This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries.

DATES: This correction is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this corrections are under section 72 of Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9021) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9021), which is the subject of FR. Doc. 02–29204, is corrected as follows:

§ 1.72(p)–1 [Corrected]

1. On page 71825, column 1, § 1.72(p)–1, A–19, paragraph (a), last 2 lines in the paragraph, the language ''of the Internal Revenue Code. See Q&A 16 of this section'', is corrected to read ''of the Internal Revenue Code. See Q&A–11 through Q&A–16 of this section''.

2. On page 71825, column 3, § 1.72(p)–1, A–20, paragraph (a)(2), lines 4 and 5, the language ''section (including paragraph (a)(3) of this Q&A 20 and the amount limitations'', is

corrected to read ''section (including the amount limitations''.

3. On page 71825, column 3, § 1.72(p)–1, A–20, paragraph (a)(2), the last line of the paragraph, the language ''replaced loan.'', is corrected to read ''replacement loan.''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–4546 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 3, 5, 45, 51, 52, 53, 66, 109, 114 and 120

46 CFR Parts 1 and 68

[USCG–2003–14505]

Coast Guard Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes technical changes to various parts of titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations. These revisions coincide with the scheduled March 1, 2003, transfer of the Coast Guard from the Department of Transportation to the newly created Department of Homeland Security. This rule, which revises existing regulations to reflect organizational changes, has no substantive effect on the regulated public.

DATES: This rule is effective March 1, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–2003–14505), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call James McLeod, Project Manager, Office of Regulations and Administrative Law (G–LRA), Coast Guard, at 202–267–6233. If you have questions on viewing, or submitting material to, the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this rule. The rule consists entirely of agency organization, procedure and practice revisions to various regulations in titles 33 (Navigation and Navigable Waters) and 46 (Shipping) of the Code of Federal Regulations (CFR) in response to enactment of the Homeland Security Act of 2002 (HLSA), Public Law 107–296, 116 Stat. 2135 (2002). Congress has established the Department of Homeland Security (DHS) (section 101 of HLSA) and directed the transfer of the Coast Guard (sections 888 and 1512 of HLSA) from the Department of Transportation to DHS. As indicated in the Department of Homeland Security Reorganization Plan submitted on November 25, 2002, by the President to Congress (under section 1502 of the HLSA), the Coast Guard is scheduled to move to DHS on March 1, 2003.

Because it is technical in nature and relates only to agency organization, procedure and practice, under 5 U.S.C. 553(b)(A), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements. These changes will have no substantive effect on the public; therefore, it is not necessary for us to publish an NPRM and provide an opportunity for public comment. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

In this rule, we are changing ''Department of Transportation'' to the ''Department of Homeland Security'' in specified sections in 33 CFR Chapter I and 46 CFR Chapter I. We have also eliminated references to Department of Transportation delegation regulations (*i.e.*, 49 CFR 1.45 and 1.46) in the text of Coast Guard regulations. And we have updated our rulemaking regulations (33 CFR part 1, subpart 1.05) not only to reflect our transition to DHS but to reflect current agency practice and procedure.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(a) and (b) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. These regulations are editorial or procedural and concern internal agency functions and organization. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 5

Volunteers.

33 CFR Part 45

Military personnel, Reporting and recordkeeping requirements.

33 CFR Part 51

Administrative practice and procedure, Military personnel.

33 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel.

33 CFR Part 53

Administrative practice and procedure, Investigations, Military personnel, Whistleblowing.

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 109

Anchorage grounds.

33 CFR Part 114

Bridges.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures, Terrorism.

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 68

Oil pollution, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 3, 5, 45, 51, 52, 53, 66, 109, 114 and 120, and 46 CFR parts 1 and 68, as follows:

33 CFR Chapter I

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1, subpart 1.05, is revised to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; and 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.4(b), 1.45(b), and 1.46.

§ 1.01–70 [Amended]

2. In § 1.01–70(e), remove ''49 CFR 1.46 (ff) and (gg),''.

§ 1.05–1 [Amended]

3. In § 1.05–1—

a. In paragraph (a), remove the word ''Transportation'' and add, in its place, the words ''Homeland Security'';

b. In paragraph (b), remove the word ''Transportation'' and add, in its place, the words ''Homeland Security''; and remove the last sentence.

§ 1.05–10 [Amended]

4. In § 1.05–10—

a. In paragraph (a), remove the words ''and Department of Transportation Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations''.

b. In paragraph (b), add the word ''significant'' immediately before the word ''regulatory'' wherever ''regulatory'' appears in the paragraph.

§ 1.05–25 [Amended]

5. In § 1.05–25(a), add the following sentences at the end of the paragraph: ''Public dockets for rulemakings originating at Coast Guard Headquarters are kept at a Docket Management Facility (DMS) maintained by the Department of Transportation, at the Nassif Building, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. These dockets are available electronically through the DMS Web site at *http://dms.dot.gov.*''

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

6. The authority citation for part 3 is revised to read as follows:

Authority: 14 U.S.C. 633, Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.45, 1.46.

§ 3.01–1 [Amended]

7. In § 3.01–1(a), remove the words ''under the authority delegated by 1.45 and 1.46''.

§ 3.01–5 [Amended]

8. In § 3.01–5, remove the words ''Sections 1.45 and 1.46 of Title 49, Code of Federal Regulations, authorize'' and ''Transportation'', and add, in their places, respectively, the words ''Section 888 of Pub. L. 107–296, 116 Stat. 2135, authorizes'' and ''Homeland Security''.

PART 5—COAST GUARD AUXILIARY

9. The authority citation for part 5 is revised to read as follows:

Authority: 14 U.S.C. 633, 892; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 5.01 [Amended]

10. In § 5.01(j), remove the word ''Transportation'' wherever it appears in the paragraph, and add, in its place, the words ''Homeland Security''.

PART 45—ENLISTMENT OF PERSONNEL

11. The authority citation for part 45 is revised to read as follows:

Authority: 14 U.S.C. 351, 371; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46(b).

§ 45.1 [Amended]

12. In § 45.1(a), remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

13. The authority citation for part 51 is revised to read as follows:

Authority: 10 U.S.C. 1553; Pub. L. 107–296, 116 Stat. 2135.

§ 51.2 [Amended]

14. In § 51.2(a), remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

15. The authority citation for part 52 is revised to read as follows:

Authority: 10 U.S.C. 1552; 49 U.S.C. 108; Pub. L. 101–225, 103 Stat. 1908, 1914; Pub. L. 107–296, 116 Stat. 2135.

§§ 52.1, 52.2, 52.11, and 52.81 [Amended]

16. In part 52, remove the word ''Transportation'', and add, in its place, the words ''Homeland Security'' in the following places:

a. Section 52.1;

b. Section 52.2(a);

c. Section 52.11(a) and (b);

d. Section 52.81.

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

17. The authority citation for part 53 is revised to read as follows:

Authority: 10 U.S.C. 1034; Pub. L. 100–456, 102 Stat. 1918; Pub. L. 101–225, 103 Stat. 1908; Pub. L. 107–296, 116 Stat. 2135.

§ 53.3, 53.5, 53.7, and 53.9 [Amended]

18. In part 53, remove the word ''Transportation'', and add, in its place, the words ''Homeland Security'' in the following places:

a. Section 53.3;

b. Section 53.5 (Board for Correction of Military Records of the Coast Guard), (Inspector General) and (Secretary).

c. Section 53.7(a); and

d. Section 53.9(a) introductory text, and (a)(4).

PART 66—PRIVATE AIDS TO NAVIGATION

19. The authority citation for part 66 is revised to read as follows:

Authority: 14 U.S.C. 83, 85, 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 66.01–3 [Amended]

20. In § 66.01–3(a), remove the words ''Pursuant to the authority in 49 CFR 1.45(b)'' and add, in their place, the words ''Under Section 888 of Pub. L. 107–296, 116 Stat. 2135''.

PART 109—GENERAL

21. The authority citation for part 109 is revised to read as follows:

Authority: R.S. 4233, as amended, 28 Stat. 647 as amended, 30 Stat. 98, as amended, sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1), 80 Stat. 940; 33 U.S.C. 180, 258, 322, 471; 49 U.S.C. 1655(g)(1); Pub. L. 107–296, 116 Stat. 2135; Department of Transportation Order 11001, March 31, 1967, 49 CFR 1.4(a)(3).

§ 109.07 [Amended]

22. In § 109.07, remove the citation ''49 CFR 1.46(n)(4)'', and add, in its place, the citation ''Pub. L. 107–296, 116 Stat. 2135,''.

PART 114—GENERAL

23. The authority citation for part 114 is revised to read as follows:

Authority: 33 U.S.C. 401, 491, 499, 521, 525, and 535; 14 U.S.C. 633; 49 U.S.C. 1655(g); Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46(c).

§ 114.05 [Amended]

24. In § 114.05(e), (g), and (i), remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

PART 120—SECURITY OF PASSENGER VESSELS

25. The authority citation for part 120 is revised to read as follows:

Authority: 33 U.S.C. 1231; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46.

§ 120.220 [Amended]

26. In § 120.220(a), remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

46 CFR Chapter I

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.01–10 [Amended]

28. In § 1.01–10, —

a. In paragraph(b)(1), remove the words ''Marine Safety and Environmental'' wherever they appear, and add, in their place, the words ''Marine Safety, Security, and Environmental'', and

b. In paragraph (b)(2), remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

29. The authority citation for part 68 is revised to read as follows:

Authority: 46 U.S.C. 2103; Pub. L. 107–296, 116 Stat. 2135; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. App. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

Subparts 68.01 and 68.05—[Amended]

30. In part 68, remove the word ''Transportation'', and add, in its place, the words ''Homeland Security'' in the following places:

a. Subpart 68.01 in Appendix A and Appendix B; and

b. Subpart 68.05 in Appendix A and Appendix B.

Dated: February 25, 2003.

Robert F. Duncan,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 03–4763 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–004]

RIN 2115–AE47

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern Railroad bascule bridge across the Inner Harbor Navigation Canal, mile 4.5, in New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for twenty-four hours from March 19 through March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 7 a.m. on Wednesday, March 19, 2003

until 7 a.m. on Thursday, March 20, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 504–589–2965. The Bridge Administration Branch, Eighth District, maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to replace the bronze babbitt bearing on the riverside main motor gear drive of the bridge. This repair is necessary for the continued operation of the bridge. This deviation allows the draw of the Norfolk Southern Railroad bascule bridge to remain closed to navigation from 7 a.m. on Wednesday, March 19 through 7 a.m. on Thursday, March 20, 2003.

The bascule bridge has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. The bridge is maintained in the open-to-navigation position and is closed to allow for trains to cross the bridge. In accordance with 33 CFR 117.5, the draw is required to open on signal for the passage of vessels. The bridge will not be able to open for emergencies during the closure period. Navigation on the waterway consists mainly of recreational and fishing vessels and some tugs with tows. Alternate routes are available to any vessel by transiting through the Chef Menteur Pass or the Rigolets Pass.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4758 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–03–006]

Drawbridge Operation Regulations: Annisquam River and Blynman Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR 127 Bridge, mile 0.0, across the Annisquam River, Blynman Canal, in Gloucester, Massachusetts. This deviation allows the bridge to remain in the closed position from 6 a.m. on March 9, 2003 through 11:59 p.m. on March 15, 2003. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from March 9, 2003 through March 15, 2003.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The SR 127 Bridge, at mile 0.0, across the Annisquam River, Blynman Canal, has a vertical clearance of 7 feet at mean high water, and 16 feet at mean low water in the closed position. The existing regulations are listed at 33 CFR 117.586.

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs, the replacement of the tread plates and segmental castings, at the bridge.

This deviation to the operating regulations allows the SR 127 Bridge to remain in the closed position from 6 a.m. on March 9, 2003 through 11:59 p.m. on March 15, 2003.

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

Dated: February 10, 2003.

J.L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–4759 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–006]

Drawbridge Operation Regulations; Three Mile Creek, Mobile, Baldwin County, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Transportation Railroad Swing Span Bridge across Three Mile Creek, mile 0.3, at Mobile, Baldwin County, AL. This deviation allows the bridge to remain closed to navigation on March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 7 a.m. through 3 p.m. on March 20, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: CSX Transportation has requested a temporary deviation in order to lift the girder off the pivot pedestal in order to replace a worn disc that affects the opening and closing of the swing span bridge across Three Mile Creek at mile 0.3 at Mobile, Baldwin County, Alabama. This maintenance is essential for the continued operation of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 3 p.m. on Thursday, March 20, 2003.

The swing span bridge has a vertical clearance of 10 feet above mean high water and 12 feet above mean low water in the closed-to-navigation position. Navigation on the waterway is primarily commercial, consisting of tugs with

tows and fishing vessels. There is no recreational boat traffic at the bridge site. The only known commercial users of the waterway, D. R. Jordan Pile Driving, Inc. and Mobile Ship Yard, were both contacted and have no objection to the closure. The bridge normally opens to pass navigation on an average of 3 times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4756 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–005]

RIN 2115–AE47

Drawbridge Operating Regulations; Falgout Canal, Terrebonne Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 315 drawbridge across the Falgout Canal, mile 3.1, in Terrebonne Parish, Louisiana. This deviation allows the bridge to remain in the closed-to-navigation position for fifty-six hours from March 18 to March 20, 2003. The deviation is necessary to conduct maintenance to the drawbridge.

DATES: This deviation is effective from 8 a.m. on Wednesday, March 18, 2003, until 4 p.m. on Thursday, March 20, 2003.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from 33 CFR 117.444 in order to replace a defective main pivot pier bearing housing. This deviation allows the draw of the SR 315 drawbridge to remain closed to navigation from 8 a.m. on Tuesday, March 18, 2003 until 4 p.m. on Thursday, March 20, 2003.

The bridge has a vertical clearance of 3.5 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. In accordance with 33 CFR 117.444, the draw is required to open on signal; except that, from 15 August to 5 June, the draw need not be opened from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

During the closure period, the bridge will not be able to open for the passage of vessels. No alternate routes are available; however, the bridge owner will attempt to contact all waterway users to keep them abreast of the repair work. Navigation on the waterway consists of small tugs with tows, fishing vessels, and other recreational craft. The bridge opens an average of 426 times per month for the passage of vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 19, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–4757 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2002–11865]

RIN 2115–AG35

Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing its notification of arrival and departure requirements for vessels bound for or departing from ports or places in the United States. This rule permanently changes the notice of arrival requirements in 33 CFR part 160. It replaces the temporary rule that has been in place since October 4, 2001. This rule consolidates the Notice of Departure into the Notice of Arrival; requires electronic submission of cargo manifest information to the United States Customs Service; and requires additional crew and passenger information. These permanent changes will help to ensure public safety, security, and the uninterrupted flow of commerce.

DATES: This final rule is effective April 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–11865 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Kimberly Andersen, U.S. Coast Guard (G–MP), at 202–267–2562. If you have questions concerning U.S. Customs Service procedures, call Kimberly Nott at 202–927–0042. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 4, 2001, we published a temporary final rule entitled ''Temporary Requirements for Notification of Arrival in U.S. Ports'' in the **Federal Register** (66 FR 50565). Subsequently, we published two corrections in the **Federal Register** (November 19, 2001 (66 FR 57877) and January 18, 2002 (67 FR 2571)). The temporary rule increased the submission time for a Notice of Arrival (NOA) from 24 to 96 hours prior to arriving at a U.S. port; required centralized submissions; temporarily suspended exemptions from reporting requirements for some groups of vessels; and required submission of passenger, crew, and cargo information. The

effective period of the temporary rule was extended twice, first until September 30, 2002 (May 30, 2002 (67 FR 37682)), and then again through March 31, 2003 (August 28, 2002 (67 FR 55115)). The second extension allowed us to complete the rulemaking for permanent changes.

On June 19, 2002, we published a notice of proposed rulemaking in the **Federal Register** entitled ''Notification of Arrival in U.S. Ports'' (67 FR 41659). We received 21 comments addressing our proposal to permanently change the NOA requirements. No public hearing was requested and none was held.

Background and Purpose

This rule permanently changes the NOA requirements in 33 CFR part 160. It replaces the temporary rule issued in response to the attacks on September 11, 2001, and contains most of the same NOA requirements that have been in place since October 4, 2001.

Currently, owners, agents, masters, operators, or persons in charge of vessels bound for U.S. ports must file an NOA before they enter port. (Persons required to submit reports will hereafter in this preamble be called ''submitters.'') In our notice of proposed rulemaking (NPRM) we proposed the following:

- Requiring additional information items in NOA reports;
- Requiring electronic submissions of cargo manifest information to the United States Customs Service (USCS);
- Requiring earlier submission times for NOAs;
- Revising requirements for reporting changes to submitted information;
- Merging the Notice of Departure (NOD) requirements with the NOA requirements;
- Allowing consolidated NOA reports for multiple port arrivals;
- Requiring centralized NOA submissions;
- Revising exemptions from NOA requirements; and
- Updating definitions.

Each of these issues is discussed in more detail in the remainder of the preamble.

Discussion of Comments and Changes

We received 21 comments on the proposed rule. Generally, the comments recognized our need to increase the amount and type of information required in an NOA and the need for earlier submission of that information. Comments focused generally on:

- Format and readability of the regulation;
- Specific exemptions from NOA requirements;
- Suggestions for reporting requirements for ''certain dangerous cargo;''
- Recommendations for a single submission of information to meet the needs of multiple agencies;
- Electronic submissions;
- Questions about the proposed requirement for submission of the cargo manifest to USCS;
- Requests for additional definitions in part 160; and
- Suggestions for changes to information required in an NOA.

Each of these groups of comments is discussed in more detail in the following paragraphs.

Format of regulation. A number of comments said the NPRM was difficult to read and understand. We agree. For ease of understanding, we have reformatted the requirements and renumbered the sections for this final rule. Many of the information requirements are also now provided in table format.

The current codification of part 160 contains both permanent and temporary sections, which are being changed by this rule. We are, therefore, republishing subpart C in its entirety for the public's convenience until the next CFR recodification.

Exemptions. We received nine comments related to exemption from NOA reporting. Six comments recommended exempting towing vessels that are in domestic service and not carrying CDC. We agree. This rule exempts towing vessels and barges not carrying CDC or controlling another vessel carrying CDC that are operating solely between ports or places in the continental U.S. from NOA reporting requirements.

One comment requested that Mobile Offshore Drilling Units (MODUs) moving between operating locations under U.S. jurisdiction be exempt from the NOA requirements. The comment suggested that the report required by 33 CFR 146.202, which notifies the Captain of the Port (COTP) 14 days before a MODU arrives or changes its location on the Outer Continental Shelf (OCS), should be used to meet the NOA requirements. The Coast Guard disagrees and has not exempted MODUs from the NOA requirements in this rule. The NOA information is different from that required by § 146.202. The MODU's arrival or change of location on the OCS does not require submission of an NOA, only the notification to the District Commander required by § 146.202. If a MODU is leaving the OCS to arrive at a U.S. port the MODU must comply with the NOA submission requirement in this rule.

One comment recommended exempting Aleutian Trade Act fish tenders. The comment explained that these fish tenders operate in the remote reaches of Alaska and their movements are unpredictable; it also explained that these fish tenders sail only between U.S. Ports, are U.S. owned, and that 98% of the crew are American citizens. The comment also stated that they do not carry bulk hazardous cargo. Because this issue is specific to Alaska, it can appropriately be addressed by the local COTP who, under § 160.214, may waive provisions of this subpart.

One comment recommended eliminating the exemption for passenger and supply vessels when they are employed in continental shelf resource exploration or extraction. The comment stated, ''Logic would dictate that the offshore rigs could be used as a vehicle to aid in terrorism. Passenger and supply vessels often carry a myriad of hazardous materials including explosives.'' Two comments responded, disagreeing and urging Coast Guard to keep the exemption. The Coast Guard is not changing the exemption for these vessels.

One comment asked us to clarify who is required to report above or below mile 235 on the Mississippi River. Specifically, the comment asked if domestic barges not carrying CDC were required to report on this body of water.

We have revised the proposed regulatory text to more clearly state that all vessels are exempt when operating on the Mississippi River above mile 235, Above Head of Passes, including the tributaries and the Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River, the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two. NOA requirements for vessels operating below mile 235 on the Mississippi River are the same as any other location in the U.S. covered by this rule.

Certain Dangerous Cargo. We received three (3) comments regarding the definition of Certain Dangerous Cargo (CDC). The comments state that the list of CDCs included in the requirement for NOA submission is too broad and that it impedes the collection of information on cargoes that pose the greatest risk to maritime safety and security. The comments suggest the Coast Guard limit the CDC definition to include only those cargoes that pose the greatest risk to maritime safety and security. They also recommend the Coast Guard use the list of high consequence cargoes in the AWO Security Plan (a list developed with

input from the towing industry and Coast Guard representatives) to define CDC for this rule.

The Coast Guard agrees that the definition of CDC should be limited to those cargoes that pose the greatest risk to maritime safety and security. The Coast Guard conducted a comprehensive review of cargoes, which included a review of the CDC list in the NPRM and the high consequence cargo list in the AWO Security Plan. As a result of the review we revised the list of CDCs described in the NPRM to include only those cargoes that currently pose the greatest risk to maritime safety and security.

Duplicate Reporting. Several comments said they were submitting the same information to different federal agencies and recommended a single submission of information. Many remarked that they would welcome the submission of an electronic data file to a central depository, where submissions could then be accessed by or forwarded to each agency needing the information.

We agree and we are currently working to integrate information and data requirements with other government agencies. Once we have this capability, we will revise our reporting requirements.

We also received a comment that COTPs were still asking companies to send their NOA to the COTP, even though it had already been submitted to the National Vessel Movement Center (NVMC). This final rule requires the submission of an NOA to the COTP only for vessels 300 gross tons or less entering a port or place in the Seventh Coast Guard District. Questions about requests from COTPs for duplicate submissions should be referred to LTJG Kimberly Andersen at the phone number in **FOR FURTHER INFORMATION CONTACT.**

National Vessel Movement Center. Four comments asked about the methods for submitting information to the NVMC. The NPRM proposed three methods for submitting NOAs to the NVMC: telephone (1–800–708–9823), fax (1–800–547–8724), and e-mail. Two comments stated that vessels calling or faxing through INMARSAT are unable to use 1–800 numbers. An alternate phone number (304) 264–2502 and fax number (304) 264–2684 have been added for vessels using INMARSAT.

Another comment requested that e-mail be a submission method. E-mail has always been an option for submitting NOAs and remains an option in this final rule. General information about the NVMC and methods for submission are available on the NVMC Web site at *http://www.nvmc.uscg.gov/.*

Electronic Submissions. This rule will not mandate electronic submissions of NOA reports. You may, however, continue to choose to use the voluntary electronic format available on the NVMC website. As mentioned under duplicate reporting, we will continue to work with other government agencies on a common format for electronic data submissions.

In our NPRM, we asked six questions related to electronic submission and we received four comments answering some, or all of, these questions. The six questions and corresponding answers are as follows:

1. *''What are your information security concerns regarding electronic submissions of NOA?''* Of the two comments that responded to this question, both stated there were no security concerns. One of the comments stated that their ships already have known, published schedules. The other comment stated that their member lines already submit NOAs electronically and they assumed the electronic transmissions were being sent to and via a secure website.

2. *''Would you allow the Coast Guard to forward all or parts of your NOA information to entities such as marine exchanges or port authorities as a value added service to facilitate information sharing at the port level?''* Of the three comments that responded to this question, one encouraged the forwarding of NOA information to other entities and one objected. The comment objecting to sharing information stated that it was not apparent what added security benefits it would provide and that it might lead to greater security risks. The comment also stated that they would want to know ''exactly what kind of information would lend itself to such information sharing.'' The third comment stated that they would not object to forwarding this information if the Coast Guard determined sharing this information was absolutely necessary and under the condition that ''all such information would *not* be shared with the general public.''

3. *''If the Coast Guard produced a desktop application that allowed you to create, manage, and automatically submit NOA via email, would you use it?''* Of the three comments that responded to this question, one said they already submit their NOA via email and that the current formats should continue to be allowed alongside future desktop applications. The second said they ''would most likely utilize a CG desktop application.'' They also said it would have to be deployable on board ship and be compatible with INMARSAT, along with a capability to be transmitted in a compressed format to reduce transmission costs. The third comment stated that the ''cost passed on to those purchasing the program would outweigh any benefit derived by industry.''

4. *''Which electronic means for submitting NOAs would you prefer? (e.g.: HTML, SMTP, FTP)''* Each of the four comments responded to this question with different answers. One gave no preference. The second also gave no preference but acknowledged that some are more secure than others. This same comment recommended we ensure ''one set of standards for all government agencies or the government agencies should have the capability to receive all protocols and programs.'' A third comment stated they ''do not regard these means to be mutually exclusive, and would encourage that as many options be made available to submitters as technically feasible.'' The final comment rank ordered their preferences beginning with SMTP, then FTP, and finally HTTP. This comment also recommended that vessels without these capabilities be allowed to continue to use fax and e-mail.

5. *''What are your information security concerns if the Coast Guard allowed you to send your NOA to an FTP (File Transfer Protocol) server or web server in the public domain?''* None of the questions listed any security concerns related to FTP servers or web servers, but one suggested ''Encryption: PKI scheme based encryption (PGP).''

6. *''If the Coast Guard provided an XML (Extensible markup language) data specification for NOA, would you be able to generate XML documents and submit them via email or other means?''* Of the three comments responding to this question, one stated that they believe they could install an XML plug-in; the second said the format method should be XML; and the third stated, ''* * * relatively few shipping companies today have the capability of generating XML documents for NOA submissions.'' The third comment also reemphasized that no single electronic means should become the exclusive method for submission.

Several comments also requested that in the future we continue to maintain the phone and fax options for NOA submission. Although we are not requiring electronic submission of NOA information to the NVMC in this rule, we are working on electronic submission issues and considering the responses to these questions.

Who May Submit. In the NPRM, we asked whether we should accept NOA submissions from only the vessel owner and operator, or from only the owner,

operator and authorized agent (including shipping agents and marine exchanges) of the vessel. We specifically requested comments on how either of these changes would affect the method of NOA submission used by the submitter.

Five comments responded to this issue. All of them recommended that no change be made and that we continue to accept NOA submissions from ''...the owner, agent, master, operator, or person in charge of a vessel...''. The Coast Guard agrees and this provision remains unchanged in this final rule.

Cargo Manifest (Cargo Declaration—Customs Form 1302). We received several comments stating that the Coast Guard should not require electronic submission of the cargo manifest to USCS. The comments stated that the cargo manifest submission is already required by USCS and the Coast Guard requirements were different.

We disagree. This requirement is not redundant—a single submission of the Cargo Manifest meets the requirements of both Coast Guard and USCS. The Coast Guard and USCS are working together to obtain vessel arrival information in an automated format that will meet the requirements of both agencies. Including this requirement in the Coast Guard's final rule is one step toward this end.

Definitions. Several comments requested additional definitions for ''domestic voyage,'' and ''barge.'' This final rule adds definitions for ''barge,'' ''crewmember,'' ''nationality,'' and ''persons in addition to crewmembers.'' We are also revising the definition for ''certain dangerous cargo,'' as discussed previously in this preamble. The term domestic voyage is no longer used in this subpart, and therefore, no definition is required.

Another comment asked for a clarification of the definition of crewmember because it was unclear as to what category company personnel, contractors, or other supernumerary persons belonged. The comment stated these persons would be included on the list of ''persons in addition to the crew''. The Coast Guard agrees that these persons are considered ''persons in addition to the crew''. The comment requested a clarification because it would be important for purposes of mandatory training required by STCW for crewmembers; requirements of Passenger Services Act; and legal benefits tendered to crewmembers under maritime law. However, the definition of ''crewmember'' in this rule applies only to 33 CFR part 160, subpart C. It does not affect regulations concerning these other issues. Therefore, the Coast Guard is not changing the definition of ''crewmember'' in this final rule.

Information Required in an NOA. Six comments discussed specific information items in the NOA. These items included ''crewmember information,'' ''operational condition,'' ''any other name by which each individual has been known,'' ''last five ports or places visited,'' and ''24-hour Point of Contact (POC).''

One comment stated that the reporting requirements for crewmembers were excessive and unjustified. This information is necessary for safety and security purposes and we will continue to require it. However, the Coast Guard recognizes the fact that crewmembers may change positions frequently. For this reason, we have added a provision to § 160.208 that states that a notice of change need not be submitted when a change occurs to a crewmember's position or duty on the vessel.

One comment questioned the need for a barge to report the operational condition of the equipment under 33 CFR 164.35. This operational condition report applies to self-propelled vessels of 1600 or more gross tons and would not, therefore, be applicable to a barge. Further, barges operating solely between ports and places in the continental U.S. are exempt from the NOA requirements, unless they are carrying CDC. If they are carrying CDC, we require a consolidated NOA from the towing vessel on both the towing vessel and the barge(s) it is controlling.

Five comments questioned the necessity for reporting any other name including alias, nickname, maiden name, professional or stage name by which an individual has been known. Comments stated that this information is not required on INS Form I–418; it is difficult to produce and/or verify; and the Coast Guard should not require it. We agree, and we have removed it from this final rule.

Several comments questioned the need for requiring the last five ports of call from all vessels. Comments stated that cruise ships and domestic inland barge traffic should be exempt from providing the last five ports of call. We agree that vessels operating solely between ports or places in the continental U.S. should only be required to provide the destination(s) and last port of call. Vessels that have arrived from or have stopped in foreign ports, however, are required to provide their last five ports of call.

We received one comment asking for clarification on the meaning of ''Name and telephone number of a 24-hour point of contact (POC) for each port included in the notice of arrival.'' A new POC need not be provided for each port, nor must the POC be located at that port. We have changed the regulatory text to read as follows: ''name and telephone number of a 24-hour point of contact.''

Submission Timeframe. One comment asked the Coast Guard to reconsider requiring estimated departure date and time, as well as updates to these times, if the change was more than six hours for vessels not carrying CDC. The comment stated it places undue burden on the industry and results in an unmanageable amount of update filings to the NVMC. Coast Guard COTPs need this information for safety and security reasons. We will continue to require NOA information on estimated departure date and time, as well as updates to those times, when the arrival or departure time has changed by six hours or more.

Discussion of Rule

Required elements in NOA reports. This rule requires the following information be submitted in an NOA: vessel, cargo, and persons on board. Submitters are to identify each of their destinations by listing the names of the receiving facility, the port or place in the U.S., the city, and the state, as well as indicate the location or position of the vessel at the time of reporting. Submitters also must provide a general description of cargo aboard the vessel. The description will inform the Coast Guard if the vessel is carrying items such as grain, oil, containers, etc. Submitters will also identify where each crewmember and each person in addition to crewmembers embarked.

Based on experience with the temporary rule, we have removed the reporting information on the stowage location. We feel this information is adequately covered by the cargo manifest requirements in entry 8 of Table 160.206.

Cargo Manifest Information. The Coast Guard is requiring the vessel's cargo manifest information as described in 19 CFR 4.7(a). This requirement is in addition to entry (3)(i) in table 160.206, ''general description of the cargo'', and will consist of the information contained in the cargo declaration (Customs Form 1302). Cargo manifest information is necessary to assess vessels entering U.S. ports for potential threats to the national security and to appropriately respond to those threats.

The Coast Guard does not have the capability at NVMC to receive and process the cargo manifest information. The USCS, however, does have an

existing capability to receive, process, and share the information with the Coast Guard. The cargo manifest information is to be submitted electronically to USCS through the Sea Automated Manifest System (AMS) at least 96 hours before the vessel arrives at a U.S. port, while all other required NOA information is to be submitted to the NVMC. A single electronic submission of the cargo manifest information (Customs Form 1302) to USCS will satisfy the requirements of both agencies for submission of that data.

To transmit information electronically to USCS, a submitter must be able to use Sea AMS. To enroll in Sea AMS, a submitter must first call the USCS at 703–921–7500 or send a letter to the following address requesting participation in the Sea AMS program: U.S. Customs Service, Client Representative Branch, 7501 Boston Blvd. Rm. 211, Springfield, VA 22153. Upon receiving an inquiry, a USCS client representative will be assigned to work with the submitter. This representative will serve as a technical advisor establishing a Sea AMS interface. Establishing an interface for participation can require as little as two weeks or up to several months, depending on the particular method chosen. This rule, therefore, provides a 90-day delay in implementation of the requirement to submit the cargo information to USCS. This 90-day period should provide sufficient time for submitters to either enroll in Sea AMS or find a submission agent who is already able to use Sea AMS.

AMS will allow participants to transmit manifest information electronically 96 hours prior to vessel arrival. There are four methods of transmitting data to AMS: (1) Establish a direct connection with USCS; (2) use a service provider; (3) use a port authority; and (4) purchase software from a vendor. For general information related to AMS, visit the USCS Automated Commercial System Web site at *http://www.customs.gov/xp/cgov/import/operations_support/automated_systems/ams/sea_features.xml.*

Of vessels already required to submit a ''cargo manifest'' to USCS, approximately 95 percent submit the manifest information electronically. The new Coast Guard requirement only affects vessels not currently submitting electronically to Customs. The requirement to submit the cargo manifest information electronically will not apply to vessels on a domestic voyage in the United States.

Submission times for NOA. In the temporary rule, we increased the times for submitting an NOA. This rule requires most vessels to submit NOAs at least 96 hours before arrival in the United States. Towing vessels, when in control of a barge or barges carrying CDC and operating solely between ports or places in the continental United States, must submit an NOA before departure but at least 12 hours before entering the port or place of destination. Except for these vessels, this rule contains the same submission times established in our temporary rule.

Submission times for Cargo Declaration (Customs Form 1302). To align USCS and Coast Guard cargo declaration requirements, we have created two new exceptions to the submission times for Cargo Declaration. Except for vessels carrying containerized cargo or break bulk cargo, vessels carrying bulk cargo may submit the Cargo Declaration before departure but at least 24 hours before entering the U.S. port or place of destination. Vessels carrying break bulk cargo operating under a USCS exemption granted under 19 CFR 4.7(b)(4)(ii) may, during the effective period of the USCS exemption, submit the Cargo Declaration before departure but at least 24 hours before entering the U.S. port or place of destination.

Exemptions in this rule from submitting NOAs or particular items in an NOA apply only to the provisions of this subpart. No exemption in this subpart affects USCS or other agency requirements to submit arrival information, particularly the USCS requirement to submit the Cargo Declaration 24 hours prior to lading in a foreign port. In these instances, however, the Coast Guard expects that if a vessel complies with the USCS requirements for submitting 24 hours before lading, that it will also meet the times for submission of that information under this subpart. Thus, one submission will meet the separate requirements of two agencies for the same information.

Reporting changes to submitted NOA information. Changes to NOAs must be reported as soon as practical but not less than 6, 12, or 24 hours prior to entering port depending on vessel and voyage characteristics. When reporting changes, a complete resubmission of an entire report is not necessary.

Notice of Departure. The Coast Guard has combined all of the information elements of a NOD and an NOA into a single NOA report. Both notices contained duplicate reporting elements, although the NOD required the submission of one additional element. The additional element (the estimated date and time of departure) is now included in the NOA, thereby eliminating reporting the same information twice and reducing the reporting burden.

Consolidated NOA Submission. Submitters are allowed to file a single NOA listing all consecutive U.S. destinations during the voyage, along with estimated arrival and departure dates and times for each port.

Towing vessels controlling a barge that is required to submit an NOA under this subpart must submit only one NOA containing the information required for the towing vessel and each barge under its control.

Require centralized submissions. All NOA reports will continue to go to the NVMC instead of to individual COTPs. Vessels of 300 gross tons or less operating in the Seventh Coast Guard District will continue to submit NOA reports to cognizant COTPs.

Vessels transiting inbound on the Saint Lawrence Seaway are able to meet the NOA reporting requirements by continuing to fax their NOA submissions to the Saint Lawrence Seaway Development Corporation (SLSDC) and the Saint Lawrence Seaway Management Corporation of Canada. The SLSDC will forward each vessel's NOA report to the Coast Guard. The cargo manifest must be submitted electronically to USCS.

Exemptions from NOA reporting. The temporary final rule suspended reporting exemptions for vessels complying with Automated Mutual Assistance Vessel Rescue System (AMVER), certain vessels operating solely on the Great Lakes, and vessels operating on a regularly scheduled route. As proposed in our NPRM, these exemptions have been permanently removed.

Under this rule, U.S. vessels, except tank vessels, operating solely between U.S. ports on the Great Lakes are exempt from reporting. Canadian vessels, U.S. tank vessels coming from a foreign port, and vessels complying with AMVER are required to submit an NOA report. Vessels operating on a regularly scheduled route are required to submit an NOA report.

Charterers. We have added a NOA requirement to submit the name of the vessel charterer. This change will continue the requirement (August 19, 2002 (67 FR 53735)) contained in the temporary rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We present this Regulatory Evaluation for the purposes of information. A more detailed analysis can be found in the public docket under **ADDRESSES**.

Evaluation. The regulatory baseline for this rule is the NOA and NOD reporting requirements in 33 CFR part 160 that are to be amended by this rulemaking. At the present, the requirements of part 160 that we are amending are temporarily suspended. During the suspension period of these requirements there has been a temporary final rule in place since October 4, 2001. The temporary reporting requirements are not addressed in this analysis. This means that the cost of the rule is estimated as the incremental expenditure required to meet the provisions of the rule in absence of the temporary rule published October 4, 2001.

The cost for complying with the rule will differ depending on the type of vessel submitting the report. Owners and operators of non-AMVER/non-Great Lakes vessels will have to submit lists of the crew and persons in addition to the crew (information they already have to submit to INS). Additionally, these vessels must provide detail on the persons aboard the vessel (*e.g.*, port where embarked). Owners and operators of AMVER and Great Lakes vessels may complete the INS forms (which they did not have to provide previously), the crew lists, and the crew detail.

The cost of the rule to industry is presented below based on the average number of annual arrivals for 1998 and 1999.

ANNUAL COST AND BENEFIT OF THE RULE (2003 DOLLARS)

NOA report	Arrivals	Cost per arrival	Annual cost
Non-AMVER/Non-Great Lakes	63,286	$95.17	$6,022,715
AMVER	4,040	141.75	572,603
Great Lakes	813	141.75	115,243
Totals			$6,710,561

As shown, the rule is estimated to cost $6.7 million annually. Over the next 10 years, the Present Value (PV) cost of the rule is $50.4 million (2003–2012, 7 percent discount rate, 2003 dollars).

The non-quantifiable benefit of the rule is—

- Providing relevant information about an applicable vessel's cargo, crewmembers, and passengers as well as a threat it may pose; and
- Providing more time to evaluate, analyze, and respond to the information collected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 fewer 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.

Assistance for Small Entities

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

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It modifies an existing OMB-approved collection—2115–0557. A summary of the revised collection follows.

Title: Advance Notice of Vessel Arrival and Departure.

OMB Control Number: 2115–0557.

Summary of the Collection of Information: The Coast Guard requires pre-arrival messages from any vessel entering a port or place in the United States. This rule will amend 33 CFR part 160 to permanently require:

- Earlier receipt of the notice of arrival—96 hours instead of 24 hours—from vessels currently required to provide advance notification of arrival;
- Submission of NOA reports to a central clearinghouse, the National Vessel Movement Center;
- Removal of the current exemption from notice of arrival reporting requirements for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, some vessels operating on the Great Lakes, and vessels on scheduled routes; and
- Additional information about crewmembers, passengers, cargoes on board the vessel to be provided as items in the notice of arrival report.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard must permanently change regulations relating to the notifications of arrival requirements.

Proposed Use of Information: This information is required to control vessel traffic, develop contingency plans, enforce regulations, and enhance maritime security.

Description of the Respondents: Respondents are owners and operators of vessels that arrive at or depart from a port or place in the United States after departing from foreign ports.

Number of Respondents: The existing OMB-approved collection number of respondents is 10,367 (respondents are owners/operators of the vessels calling on U.S. ports annually). This rule will not increase the number of respondents.

Frequency of Response: Owners/operators of vessels making calls in U.S. ports will submit NOA reports as necessary. The existing OMB-approved collection number of responses is 68,139 (responses are arrivals at and departures from U.S. ports). This rule

will not increase the number of responses.

Burden of Response: The existing OMB-approved collection burden of response is approximately 15 minutes (0.250 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This rule will increase the burden of response by an average of 60 minutes (1.000 hour) and decrease the burden of response by 1 minute (0.017 hours) for a net total of 74 minutes (1.233 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 39,037 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This rule will increase the total annual burden by 136,278 hours and decrease total annual burden by 1,136 hours for a net total of 174,179 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to OMB for its review and approval of the revised collection of information. The existing OMB-approved collection (2115–0557) expires on March 31, 2003.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If OMB does not approve this revised collection of information, we will publish a notice in the **Federal Register** of OMB's decision.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and will either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined, that to the extent states have a current requirement in effect for notices of vessel arrivals to a state agency, *e.g.*, notices to pilot authorities for pilot services, we do not intend to preempt those requirements with this rule.

However, we reserve our position with respect to preemption of any prospective new state rule or legal requirement for an advance notice of arrival or submission of information requirements that are similar to those set forth in this rule. The U.S. Supreme Court in *United States* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000), held that pursuant to title I of the Ports and Waterways Safety Act (the authority for this rule), the Coast Guard can preempt conflicting or similar State requirements on vessel operation. The Court held also that Congress had preempted the field of marine casualty reporting. Accordingly, based on the Supreme Court's holding in the Locke case, we believe that any prospective state requirement for a notice of arrival or information gathering requirement directed at vessel owners, or operators, that is similar to that contained in this rule is inconsistent with the federalism principles enunciated in that case, and is preempted.''

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule changes the requirements in the notification of arrival regulations. They are procedural in nature and therefore are categorically excluded. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The authority citation for part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; 49 CFR 1.46.

Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. Revise Subpart C to read as follows:

Subpart C—Notifications of Arrival, Hazardous Conditions, and Certain Dangerous Cargoes

160.201 General.
160.202 Applicability.
160.203 Exemptions.
160.204 Definitions.
160.206 Information required in an NOA.
160.208 Changes to a submitted NOA.
160.210 Methods for submitting an NOA.
160.212 When to submit an NOA.
160.214 Waivers.
160.215 Notice of hazardous conditions.

Subpart C—Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargos

§ 160.201 General.

This subpart contains requirements and procedures for submitting Notices of Arrival (NOA) and Notice of Hazardous Condition. The sections in this subpart describe:

(a) Applicability and exemptions from requirements in this subpart;

(b) Required information in an NOA;

(c) Required changes to an NOA;

(d) Methods and times for submission of an NOA and changes to an NOA;

(e) How to obtain a waiver; and

(f) Requirements for submission of the Notice of Hazardous Conditions.

§ 160.202 Applicability.

(a) This subpart applies to U.S. and foreign vessels bound for or departing from ports or places in the United States.

(b) This subpart does not apply to recreational vessels under 46 U.S.C. 4301 *et seq.*

(c) Unless otherwise specified in this subpart, the owner, agent, master, operator, or person in charge of a vessel regulated by this subpart is responsible for compliance with the requirements in this subpart.

(d) Towing vessels controlling a barge or barges required to submit an NOA under this subpart must submit only one NOA containing the information required for the towing vessel and each barge under its control.

§ 160.203 Exemptions.

(a) Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:

(1) Passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.

(2) Oil Spill Recovery Vessels (OSRVs) when engaged in actual spill response operations or during spill response exercises.

(3) Vessels operating upon the following waters:

(i) Mississippi River between its sources and mile 235, Above Head of Passes;

(ii) Tributaries emptying into the Mississippi River above mile 235;

(iii) Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River; and

(iv) The Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two points.

(b) If not carrying certain dangerous cargo or controlling another vessel carrying certain dangerous cargo, the following vessels are exempt from NOA requirements in this subpart:

(1) Vessels 300 gross tons or less, except for vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35–1(b).

(2) Vessels operating exclusively within a Captain of the Port Zone.

(3) Vessels arriving at a port or place under force majeure.

(4) Towing vessels and barges operating solely between ports or places in the continental United States.

(5) Public vessels.

(6) Except for tank vessels, U.S. vessels operating solely between ports or places in the United States on the Great Lakes.

(c) Vessels less than 500 gross tons need not submit the International Safety Management (ISM) Code Notice (Entry (7) to Table 160.206).

(d) Vessels operating solely between ports or places in the continental United States need not submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206).

(e) This section does not exempt any vessel from compliance with the U.S. Customs Service (USCS) reporting or submission requirements.

§ 160.204 Definitions.

As used in this subpart:

Agent means any person, partnership, firm, company or corporation engaged by the owner or charterer of a vessel to act in their behalf in matters concerning the vessel.

Barge means a non-self propelled vessel engaged in commerce.

Carried in bulk means a commodity that is loaded or carried on board a vessel without containers or labels and received and handled without mark or count.

Certain dangerous cargo (CDC) includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 ''poisonous gas'', as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation'' as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per vessel.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 ''poisonous material'' as listed in 49 CFR 172.101 that is also a ''material poisonous by inhalation,'' as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per vessel when not in a bulk packaging.

(6) Class 7, ''highway route controlled quantity'' radioactive material or ''fissile material, controlled shipment,'' as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids:

(i) Acetone cyanohydrin,

(ii) Allyl alcohol,

(iii) Chlorosulfonic acid,

(iv) Crotonaldehyde,

(v) Ethylene chlorohydrin,

(vi) Ethylene dibromide,

(vii) Methacrylonitrile, and

(viii) Oleum (fuming sulfuric acid).

Charterer means the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period. This includes ''time charterers'' and ''voyage charterers.''

Crewmember means all persons carried on board the vessel to provide navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Gross tons means the tonnage determined by the tonnage authorities of a vessel's flag state in accordance with the national tonnage rules in force before the entry into force of the International Convention on Tonnage Measurement of Ships, 1969 (''Convention''). For a vessel measured only under Annex I of the Convention, gross tons means that tonnage. For a vessel measured under both systems, the higher gross tonnage is the tonnage used for the purposes of the 300-gross-ton threshold.

Hazardous condition means any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision,

fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.

Nationality means the state (nation) in which a person is a citizen or to which a person owes permanent allegiance.

Operator means any person including, but not limited to, an owner, a charterer, or another contractor who conducts, or is responsible for, the operation of a vessel.

Persons in addition to crewmembers mean any person onboard the vessel, including passengers, who are not included on the list of crewmembers.

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place in which a vessel is bound to anchor or moor.

Public vessel means a vessel that is owned or demise-(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.

Time charterer means the party who hires a vessel for a specific amount of time. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

Voyage charterer means the party who hires a vessel for a single voyage. The owner and his crew manage the vessel, but the charterer selects the ports of destination.

§ 160.206 Information required in an NOA.

(a) Each NOA must contain all of the information items specified in Table 160.206.

TABLE 160.206.—NOA INFORMATION ITEMS

Required information	Vessels not carrying CDC	Vessels carrying CDC	
		Vessels	Towing vessels controlling vessels carrying CDC
(1) Vessel Information:			
(i) Name;	X	X	X
(ii) Name of the registered owner;	X	X	X
(iii) Country of registry;	X	X	X
(iv) Call sign;	X	X	X
(v) International Maritime Organization (IMO) international number or, if vessel does not have an assigned IMO international number, substitute with official number;	X	X	X
(vi) Name of the operator;	X	X	X
(vii) Name of the charterer; and	X	X	X
(viii) Name of classification society	X	X	X
(2) Voyage Information:			
(i) Names of last five ports or places visited;	X	X	X
(ii) Dates of arrival and departure for last five ports or places visited;	X	X	X
(iii) For each port or place in the United States to be visited list the names of the receiving facility, the port or place, the city, and the state;	X	X	X
(iv) For each port or place in the United States to be visited, the estimated date and time of arrival;	X	X	X
(v) For each port or place in the United States to be visited, the estimated date and time of departure;	X	X	X
(vi) The location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting; and	X	X	X
(vii) The name and telephone number of a 24-hour point of contact	X	X	X
(3) Cargo Information:			
(i) A general description of cargo, other than CDC, onboard the vessel (*e.g.:* grain, container, oil, etc.);	X	X	X
(ii) Name of each certain dangerous cargo carried, including cargo UN number, if applicable; and		X	X
(iii) Amount of each certain dangerous cargo carried		X	X
(4) Information for each Crewmember Onboard:			
(i) Full name;	X	X	X
(ii) Date of birth;	X	X	X
(iii) Nationality;	X	X	X
(iv) Passport or mariners document number (type of identification and number);	X	X	X
(v) Position or duties on the vessel; and	X	X	X
(vi) Where the crewmember embarked (list port or place and country)	X	X	X
(5) Information for each Person Onboard in Addition to Crew:			
(i) Full name;	X	X	X
(ii) Date of birth;	X	X	X
(iii) Nationality;	X	X	X
(iv) Passport number; and	X	X	X
(v) Where the person embarked (list port or place and country)	X	X	X
(6) Operational condition of equipment required by § 164.35 of this chapter	X	X	X
(7) International Safety Management (ISM) Code Notice:			
(i) The date of issuance for the company's Document of Compliance certificate that covers the vessel;	X	X	X
(ii) The date of issuance for the vessel's Safety Management Certificate; and	X	X	X
(iii) The name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates	X	X	X
(8) Cargo Declaration (Customs Form 1302) as described in 19 CFR 4.7	X	X	X

(b) Vessels operating solely between ports or places in the continental United States need submit only the name of and date of arrival and departure for the last port or places visited to meet the requirements in entries (2)(i) and (ii) to Table 160.206 of this section.

(c) You may submit a copy of INS Form I–418 to meet the requirements of entries (4) and (5) in Table 160.206.

(d) Any vessel planning to enter two or more consecutive ports or places in the United States during a single voyage may submit one consolidated Notification of Arrival at least 96 hours before entering the first port or place of destination. The consolidated notice must include the name of the port or place and estimated arrival date for each destination of the voyage. Any vessel submitting a consolidated notice under this section must still meet the requirements of § 160.208 of this part concerning requirements for changes to an NOA.

§ 160.208 Changes to a submitted NOA.

(a) Unless otherwise specified in this section, when submitted NOA information changes, vessels must submit a notice of change within the times required in § 160.212.

(b) Changes in the following information need not be reported:

(1) Changes in arrival or departure times that are less than six (6) hours;

(2) Changes in vessel location or position of the vessel at the time of reporting (entry (2)(vi) to Table 160.206); and

(3) Changes to crewmembers' position or duties on the vessel (entry (5)(v) to Table 160.206).

(c) When reporting changes, submit only the name of the vessel, original NOA submission date, the port of arrival, the specific items to be corrected, and the new location or position of the vessel at the time of reporting. Only changes to NOA information need to be submitted.

§ 160.210 Methods for submitting an NOA.

(a) *Submission to the National Vessel Movement Center (NVMC).* Except as provided in paragraphs (b) and (c) of this section, all vessels required to submit NOA information in § 160.206 (entries 1–7 to Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV, 25430, shall do so by:

(1) Telephone at 1–800–708–9823 or 304–264–2502;

(2) Fax at 1–800–547–8724 or 304–264–2684; or

(3) E-mail at *SANS@NVMC.USCG.gov*.

Note to paragraph (a): Information about the National Vessel Movement Center is available on its Web site at *http://www.nvmc.uscg.gov/*. You may submit the notice using any electronic format available on the NVMC website.

(b) *Saint Lawrence Seaway transits.* Those vessels transiting the Saint Lawrence Seaway inbound, bound for a port or place in the United States, may meet the submission requirements of paragraph (a) of this section by submitting the required information to the Saint Lawrence Seaway Development Corporation and the Saint Lawrence Seaway Management Corporation of Canada by fax at 315–764–3235 or at 315–764–3200. The Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS, as required by paragraph (d) of this section.

(c) *Seventh Coast Guard District.* Those vessels 300 or less gross tons operating in the Seventh Coast Guard District must submit an NOA to the cognizant Captain of the Port (COTP). The Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS, as required by paragraph (d) of this section.

(d) *Submission to the United States Customs Service's Sea Automated Manifest System (AMS).*

(1) Beginning July 1, 2003, the Cargo Declaration (Customs Form 1302) in entry (8) in Table 160.206 must be submitted electronically to the USCS Sea AMS by one of the following methods:

(i) By direct connection with USCS or by purchasing the proper software; or

(ii) Using a service provider or a Port Authority.

(2) To become a participant in Sea AMS, submitters must provide a letter of intent to USCS prior to first submission.

§ 160.212 When to submit an NOA.

(a) *Submission of NOA.* (1) Except as set out in paragraph (a)(2) of this section, all vessels must submit NOAs within the times required in paragraph (a)(3) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the continental United States, must submit an NOA before departure but at least 12 hours before entering the port or place of destination.

(3) Times for submitting NOAs areas follows:

If your voyage time is—	You must submit an NOA—
(i) 96 hours or more; or	Before departure but at least 96 hours before entering the port or place of destination; or
(ii) Less than 96 hours	Before departure but at least 24 hours before entering the port or place of destination.

(b) *Submission of changes to NOA.* (1) Except as set out in paragraph (b)(2) of this section, vessels must submit changes in NOA information within the times required in paragraph (b)(3) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the continental United States, must submit changes to an NOA as soon as practicable but at least 6 hours before entering the port or place of destination.

(3) Times for submitting changes to NOAs are as follows:

If your remaining voyage time is—	Then you must submit changes to an NOA—
(i) 96 hours or more;	As soon as practicable but at least 24 hours before entering the port or place of destination;
(ii) Less than 96 hours but not less than 24 hours; or	As soon as practicable but at least 24 hours before entering the port or place of destination; or
(iii) Less than 24 hours	As soon as practicable but at least 12 hours before entering the port or place of destination.

(c) *Submission of the Cargo Declaration (Customs Form 1302).* (1) Except as set out in paragraph (c)(2) of this section, all vessels must submit to USCS the Cargo Declaration (Customs Form 1302) in entry (8) to Table

160.206, within the times required in paragraph (a)(3) of this section.

(2)(i) Except for vessels carrying containerized cargo or break bulk cargo, vessels carrying bulk cargo may submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206) before departure but at least 24 hours before entering the U.S. port or place of destination.

(ii) Vessels carrying break bulk cargo operating under a USCS exemption granted under 19 CFR 4.7(b)(4)(ii) may, during the effective period of the USCS exemption, submit the Cargo Declaration (Customs Form 1302), (Entry (8) to Table 160.206) before departure but at least 24 hours before entering the U.S. port or place of destination.

§ 160.214 Waivers.

The Captain of the Port may waive, within that Captain of the Port's designated zone, any of the requirements of this subpart for any vessel or class of vessels upon finding that the vessel, route, area of operations, conditions of the voyage, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of safety, environmental protection, or national security.

§ 160.215 Notice of hazardous conditions.

Whenever there is a hazardous condition either aboard a vessel or caused by a vessel or its operation, the owner, agent, master, operator, or person in charge shall immediately notify the nearest Coast Guard Marine Safety Office or Group Office. (Compliance with this section does not relieve responsibility for the written report required by 46 CFR 4.05–10.)

Dated: February 19, 2003.

Paul J. Pluta,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–4408 Filed 2–24–03; 4:36 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Paducah, KY 03–003]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, Mile Marker 14.5 to 16.0, Cairo, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River from mile marker 14.5 to 16.0, near Cairo, IL. Significant reductions in river levels have caused extreme low water conditions on the Upper Mississippi River. This safety zone is needed to protect vessels transiting the area from the safety hazards associated with the unprecedented low water conditions. Entry into or operation in this zone is prohibited to all vessels unless authorized by the Coast Guard Captain of the Port Paducah or his on-scene representative.

DATES: This rule is effective 4 p.m., January 30, 2003, until 8 a.m., March 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Paducah 03–003] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Paducah, 225 Tully St., Paducah, KY 42003 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Patrick Mounsey, Marine Safety Office Paducah, Port Operations, at (270) 442–1621 ext. 350.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the safety hazards associated with unprecedented low water levels on the Upper Mississippi River.

Background and Purpose

The hazardous condition requiring this regulation is significant reductions in river levels on the Upper Mississippi River. A safety zone is needed to protect vessels transiting the area from the safety hazards associated with the unprecedented low water. Entry into or operation in this zone is prohibited to all vessels unless authorized by the Coast Guard Captain of the Port Paducah or his on-scene representative.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Inland River Contingency Action Plan provides guidance for marine operations and transportation emergencies on the Upper Mississippi River. The goal of the plan is to serve as a guide for officials of the USCG, U.S. Army Corps of Engineers, and the marine industry to facilitate the safe and orderly movement of barge traffic during a navigational crisis. In accordance with the Mississippi River Contingency Action Plan, members of the USCG, U.S. Army Corps of Engineers, and the marine industry met. Representatives of towing companies that operate in this affected area agreed that in order to protect the vessel traffic transiting the area they will halt all operations until river levels have improved and safe vessel navigation can resume.

Small Entities

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

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 the Upper Mississippi River, from Mile Marker 14.5 to 16.0 from 4 p.m., January 30, 2003, until 8 a.m., March 1, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. This rule will be in effect on a temporary basis until conditions improve.

2. This particular area of the Upper Mississippi River does have a significant number of small entity operations.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG Patrick Mounsey, Marine Safety Office Paducah representative, at (270) 442–1621 ext. 350.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new § 165.T08–013 is added to read as follows:

§ 165.T08–013 Safety Zone; Upper Mississippi River, Mile Marker 14.5 to 16.0, Cairo, IL.

(a) *Location.* The waters of the Upper Mississippi River from mile marker 14.5 to 16.0, extending the entire width of the river.

(b) *Effective period.* This section is effective from 4 p.m. January 30, 2003, until 8 a.m. March 1, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by any vessel is prohibited unless authorized by the Captain of the Port Paducah or his on-scene representative.

(2) All vessels requiring entry into the zone must request permission from Captain of the Port Paducah or his designated representative. They may be contacted via VHF channel 16 or by telephone at (270) 442–1621 ext. 350 or (270) 994–7385.

(3) The Captain of the Port Paducah will notify the public of changes in the status of this zone by Marine Radio Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and through press releases in local newspapers.

Dated: January 30, 2003.

Patrick T. Keane,

Commander, U.S. Coast Guard, Captain of the Port, Paducah.

[FR Doc. 03–4762 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002–13698]

RIN 2135–AA15

Seaway Regulations and Rules: Automatic Identification System

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

The 2003 Seaway navigation season is scheduled to open on March 25. These amendments will be in effect in Canada on that date. For consistency, because these are joint regulations under international agreement and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective on that date, March 25, 2003.

DATES: This rule is effective on March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

Background and Purpose

Since the opening of the Saint Lawrence Seaway in 1959, the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Management Corporation Vessel Traffic Services (VTS) system has been responsible for monitoring the progress of commercial traffic to ensure the safe and expeditious passage of vessels operating in Seaway sectors under their control. Procedures in use today include limits on vessel speed and requirements for all commercial traffic to report by voice on marine VHF radio to the Vessel Control (VTC) centers. These reports are made at designated ''call-in-points'' along the river. Traffic managers at VTC centers use the vessel reports to monitor traffic patterns, including one-way vessel traffic restricted areas and project the estimated times of arrival (ETA) of vessels at locks in the Seaway.

SLSDC and SLSMC sponsored successful prototype demonstrations and evaluations of a Global Positioning System based VTS system in the fall of 1994 and during the 1995 shipping season. The demonstrations established that a VTS using AIS technology was both feasible and cost effective and can improve the efficiency and safety of operations. In the 1999 shipping season, SLSDC and SLSMC deployed a modernized vessel Traffic Management System (TMS). Now, for the first time, all vessel control centers in the Saint Lawrence Seaway share a common vessel information database. Presently, vessel positions, derived from simulations based on transit histories of vessels, are entered manually into the TMS system by traffic controllers and then updated by voice reports from the vessels during actual transits.

AIS is a broadcast system, operating in the VHF maritime mobile band. It is capable of sending and receiving ship information such as identification, position, course, speed and more, to and from other ships and to and from shore. The Seaway TMS will send pertinent navigation information such as local wind speed and direction, water levels, ice conditions, availability of next lockage, and safety-related messages to vessels.

With the capabilities of ship-to-ship, ship-to-shore and shore-to-ship communications, AIS will greatly enhance the safety, improve the efficiency of the traffic management and increase the vessel security and emergency response capabilities. Specifically, the potential benefits of AIS for the Seaway entities include providing a more efficient vessel traffic management as a result of knowing accurate location and speed of the vessels, monitoring vessel speeds especially for hazardous cargo and deeper draft vessels and faster response time to vessels in case of security concerns and vessel accidents or incidents. The potential benefits to the carrier users include the reduction of overall transit time as a result of better scheduling of lockages and other services timely dispatching of pilots. It also provides real-time position, speed, heading and other pertinent information of the vessel, which will allow master or pilot to better coordinate on the meeting or overtaking in critical reaches of the Seaway.

Comments and Modifications

On November 27, 2002, the SLSDC published a Notice of Proposed Rulemaking asking for public comment. The SLSDC received three comments. All three noted that the joint SLSDC–SLSMC rule would require use of AIS in the Seaway System in advance of the dates set by the International Maritime Organization (IMO) for certain commercial vessels to be permanently equipped with AIS units. One commenter also noted that the joint SLSDC–SLSMC requirement would also be in advance of the same requirement for the navigable waters of the United States under the ''Maritime Transportation Security Act of 2002'' (Pub. L. 107–295) (U.S. Act). The same commenter voiced concern that production of integrated AIS equipment would not be sufficient to ensure installation within the rule's timeframe. Another commenter also recommended that, since the SLSDC–SLSMC requirement would precede the IMO and the Act's effective dates, portable equipment be made available and its use allowed. The St. Lawrence Seaway is jointly operated under an International Agreement between the United States and Canada. It is an inland waterway to which the IMO requirements do not apply. Furthermore, the U.S. Act's does not apply in the navigable waters of Canada, transit through which is inextricably necessary for passage through the Seaway System. Thus, even if the requirement were not to apply in the navigable waters of the United States, ships would still be required to use it in Canadian waters. Entry into the Seaway System in either direction is only through Canada. Thus, making the rule applicable only in Canadian waters would be impractical. Moreover, the Shipping Federation of Canada, representing approximately 95% of the commercial oceangoing vessels using

the Seaway, has actively supported the Seaway AIS initiative. In addition, according to the SLSMC, the Canadian Shipowners Association, representing the commercial non-oceangoing vessels (lakers) using the Seaway, expects 100% AIS equipage among its members. Notwithstanding, the SLSDC–SLSMC rule does not require permanent installation of integrated AIS equipment as required by the IMO and the U.S. Act before the effective dates of those two requirements. The rule will allow the use of temporary or, in some cases, portable equipment, for those vessels not permanently equipped at considerably less cost. The SLSDC and SLSMC have been working with private navigation equipment and service vendors in Montreal to ensure that rental, temporary AIS units will be available for vessels that do not have permanent shipboard AIS installation. Thus, even if permanent, integrated units were not available as alleged, these temporary units would be. Temporary AIS installation will meet all carriage requirements as specified for vessels required to be fitted with a gyro compass under the Seaway Regulations and Rules. In this regard, subparagraph (b)(6) of the rule has been changed to require ''temporary'' units meeting the requirements of subparagraphs (b)(1) through (5) for these vessels, as opposed to ''portable units,'' since portable units do not have the gyro compass connection. For vessels that do not have to meet the gyro compass requirement, use of portable units compatible to the requirements of subparagraphs (b)(1) though (3) and (b)(5) still will be allowed under a new subparagraph (b)(7). In addition, to be consistent with the IMO and U.S. Act requirements, subparagraph (a)(1) has been changed to apply only to ''commercial'' vessels that require pre-clearance and have a 300 gross tonnage or greater, have a Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire. Another comment was concerned about a possible lack of type approved AIS equipment. There are at least six major AIS transponder manufacturers in the world that have already obtained type approved certificates for AIS equipment from the IMO recognized testing houses such as BSH of Germany and Qinetiq of the United Kingdom. Finally, the reference in paragraph (b)(4) to the ''International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended'' has been changed to reflect the final version of ''6 January 2003.''

Final Rule

The SLSDC and the SLSMC are promulgating a new § 401.20 that requires mandatory use of AIS in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003. All commercial vessels that require pre-clearance and have a 300 gross tonnage or greater, have Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire, will have to use an AIS transponder to transit the Saint Lawrence Seaway. Dredges and floating plants and towing vessels over 8 meters in length will also be required to use AIS, except only each lead unit of combined and multiple units (tugs and tows) will have to use it. Each vessel will have to meet the following international recommendations, standards, and guidelines:

1. International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

2. International Telecommunication Union, ITU-R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

3. International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

4. International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 6 January 2003, as amended, and for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

5. Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services.

6. The use of a temporary AIS unit in compliance with Class A AIS transponder specifications and standards, as specified in 1 through 5 above, is permissible.

7. For each vessel less with LOA than 30 meters, the use of portable AIS unit compatible with AIS transponder specifications and standards, as specified in 1, 2, 3 and 5 above, is permissible.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of human environment. All nine AIS shore base stations (three in U.S. and six in Canada) are co-located with the existing Seaway VHF radio or private telephone towers.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or

modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Part 401 is amended by adding a new § 401.20 to read as follows:

§ 401.20 Automated Identification System.

(a) Each of the following vessels must use an Automatic Identification System (AIS) transponder to transit the Seaway:

(1) each commercial vessel that requires pre-clearance in accordance with § 401.22 and has a 300 gross tonnage or greater, has a Length Over All (LOA) over 20 meters, or carries more than 50 passengers for hire; and

(2) each dredge, floating plant or towing vessel over 8 meters in length, except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU–R Recommendation M.1371–1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993–2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 6 January 2003, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of a temporary unit meeting the requirements of paragraphs (b)(1) through (5) of this section is permissible; or

(7) For each vessel less with LOA less than 30 meters, the use of portable AIS compatible with the requirements of paragraphs (b)(1) through (3) and paragraph (5) of this section is permissible.

Issued at Washington, DC on February 25, 2003.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 03–4740 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 4

RIN 0651–AB12

Complaints Regarding Invention Promoters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) has added rules of practice to implement the USPTO's procedures for acceptance of complaints under the Inventors' Rights Act of 1999 (the ''Act''). The Act requires the USPTO to provide a forum for the publication of complaints concerning invention promoters. The USPTO provided the public with an opportunity to comment on the new rules, received comments, and considered comments in drafting this final rule.

DATES: Effective Date: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Commissioner for Patents, Ms. Cathie Kirik, (703) 305–8800 or *cathie.kirik@uspto.gov.*

SUPPLEMENTARY INFORMATION: An interim final rule and request for comments was published in the **Federal Register** (65 FR 3127) on January 20, 2000. That interim rule implemented regulations 37 CFR part 4, concerning complaints regarding invention promoters.

Three (3) individuals, three (3) law firms, and two (2) organizations submitted written comments regarding the proposal to implement Part 4.

Section 4.2: Definitions Section

With regard to the definition of ''invention promoter'' in § 4.2(a), Commentator wants to know whether the Act is being interpreted to end protection once a regular application is filed under the exclusion in § 4.2(a)(3). Commentator believes any business that collects compensation for doing ''an evaluation to determine commercial potential of * * * patent application'' should be included within the scope of the Act.

Response: The rule and the Act contain an identical definition of ''invention promoter.''

With regard to § 4.2(d), Commentator believes the use of the term ''procurement'' could be confusing because it is often used as a synonym for ''acquire'' and suggests replacing the term with ''locate or identify'' or ''procurement of an arrangement or contract.''

Response: This definition of ''invention promotion services'' is identical to that contained in the Act. The definition is unambiguous.

Section 4.3: Submitting Complaints Section

Since § 4.3(b)(5) [1] requires that the complaint identify the name of the mass media in which the invention promoter advertises, Commentators believe that the address of the mass media entity should also be included in the complaint so that complainant or USPTO could send a copy of the complaint and reply to the media entity.

Response: This is an additional requirement beyond the requirements of the Act. See additional comment below under section 4.5.

Commentator suggests a ''Sunset provision'' which provides that complaints will not be ''made public after three years from the date first received.'' Commentator believes this is necessary in order to preclude stale complaints and complaints that do not

[1] It appears that Commentators mistakenly refer to § 4.3(a)(5). The correct citation is § 4.3(b)(5).

take into account a company's modified and improved current practices.

Response: It is the USPTO's intent that complaints will be removed from its Internet home page three (3) years from the date of their publication. However, to the extent that the USPTO is required to make such documents publicly available under other statutory authority, the documents shall be retained.

Section 4.4: Invention Promotion Reply Section

Commentator suggests extending the proposed thirty (30) day response time to sixty (60) days to allow invention promoters sufficient time to investigate and respond to a complaint.

Response: Presently invention promoters respond to letters of complaint within the thirty (30) day time frame and additional time does not appear to be necessary. A response can include a statement that further investigation into the complaint is being done by the invention promoter. A second response will be accepted and published upon receipt as is provided in this section of the proposed rule. Furthermore, the USPTO will publish an invention promoter's response, even if it is received after the 30-day response period.

Section 4.5: Notice of Publication Section

Commentator feels that the word ''complaint'' at the end of the sentence, ''The invention promoter will be given 30 days from such notice to submit a reply to the complaint'' should read ''notice which reply includes name and address information where the complaint can be served by mail.''

Response: The final rule is modified because only a ''Notice of Complaint'' will have been reviewed by the invention promoter.

Commentators believe the Office's Internet home page should be the primary source of publication of the Notice of Complaint because inventors and the public at large do not have access to the Official Gazette or **Federal Register.**

Response: Change will be made in the final rule to specify that Notice of Complaints will be posted on the USPTO Internet home page only: *http://www.uspto.gov.*

In Commentator's experience only a small percentage of inventors use the Internet and, thus, publication of complaint and reply should be by paper publication, *i.e.,* the Official Gazette or **Federal Register**.

Response: With today's knowledge-based economy and the move toward e-business it would be ineffective to use the print media to publish the complaints. By using USPTO's Internet web page, no further change to the rules would be needed in the future.

Commentators believe that the Office should forward a copy of a Notice of Complaint to the Federal Communications Commission (''FCC'') since the complaint discloses the name of the mass media entity that ran the advertisement for the invention promoter.

Response: Name of mass media may not reflect actual vendor or station where advertisements were placed. The FCC may access the Notice of Complaints through publicly available means.

With regard to the language: ''If the Office does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available.'' Commentators believe that publicly available should include (1) publication on the Office's Internet home page, (2) sending a copy of the complaint and reply to the mass media entity, and (3) sending a copy of the complaint to the FCC. Commentators assert that mass media entities cannot do anything unless complaints are brought to their attention, and if so, these entities will take steps to check the credibility of the invention promoters.

Response: For reasons discussed above, complaints will be published on the USPTO Internet home page.

Commentator believes that to require invention promoters to monitor the Official Gazette, **Federal Register,** or Office's Internet home page for notice of complaints places an unfair burden on invention promoters in situations where a complaint has been returned undeliverable. Commentator does not, however, offer an alternative notice scheme.

Response: The source of publication will be the USPTO's Internet home page, thereby making the Notices of Complaint searchable and available at the earliest possible date.

Section 4.6: Attorneys and Agents Section

Commentator believes that § 4.6 (in conjunction with § 4.3(c)) should be modified so that complaints are not required or permitted to include information about patent attorneys, unless the attorneys are engaged in invention promotion services, and these services are the basis for the complaint. Without this modification, commentator believes the Office is soliciting complaints concerning attorneys, regardless of whether the attorney's work is the basis for complaint. Commentator asserts that it is not improper or unethical for attorneys to accept referrals from invention promoters and that attorney complaints should be handled by the Office of Enrollment and Discipline (OED).

Response: The Act provides which attorneys or agents may be identified in a complaint. Any other complaint specifically addressing an attorney or agent is forwarded to OED or returned to complainant. A preliminary review of the complaint is conducted to determine the proper place for the complaint prior to any complaints being forwarded to an invention promoter, OED or returned to the complainant.

Paperwork Reduction Act

Commentators state that if their suggestions were adopted, they would ''enhance the quality, utility, and clarity of information to be collected.''

Response: See above comments.

Rulemaking Requirements

As prior notice and opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(3)(A), or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which OMB has approved under control number 0651–0044. Public reporting burden for this collection is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering information, and completing and reviewing the collection of information.

Notwithstanding any other provision of the 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 requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 37 CFR Part 4

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

Accordingly, the USPTO adopts the interim rule promulgating 37 CFR part 4 that was published in the **Federal**

Register at 65 FR 3127, January 20, 2000, as a final rule with the following change:

1. The authority citation for 37 CFR part 4 continues to read as follows:

PART 4—[AMENDED]

Authority: 35 U.S.C. 6 and 297.

2. Section 4.5 is revised to read as follows:

§ 4.5 Notice by publication.

If the copy of the complaint that is mailed to the invention promoter is returned undelivered, then the USPTO will primarily publish a Notice of Complaint Received on the USPTO's Internet home page at *http://www.uspto.gov.* Only where the USPTO's Web site is unavailable for publication will the USPTO publish the Notice of Complaint in the *Official Gazette* and/or the **Federal Register**. The invention promoter will be given 30 days from such notice to submit a reply to the Notice of Complaint. If the USPTO does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available.

* * * * *

Dated: February 14, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–4428 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–200313; FRL–7453–7]

Approval and Promulgation of Air Quality Implementation Plans; Florida Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Florida that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective February 28, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Heidi LeSane at the above Region 4 address or at (404) 562–9035.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On June 16, 1999, EPA published a document in the **Federal Register** (64 FR 32348) beginning the new IBR procedure for Florida. In this document EPA is doing the update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 10, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart K—Florida

2. Section 52.520 paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.520 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to January 1, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c) and (d) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of January 1, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T), NW., Washington, DC 20460.

(c) *EPA-approved regulations.*

EPA-APPROVED FLORIDA REGULATIONS

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–204 Air Pollution Control—General Provisions				
62–204.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–204.200	Definitions	3/13/96	6/16/99 64 FR 32346	
62–204.220	Ambient Air Protection	3/13/96	6/16/99 64 FR 32346	
62–204.240	Ambient Air Quality Standards	3/13/96	6/16/99 64 FR 32346	
62–204.260	Prevention of Significant Deterioration Increments	3/13/96	6/16/99 64 FR 32346	
62–204.320	Procedures for Designation and Redesignation of Areas	3/13/96	6/16/99 64 FR 32346	
62–204.340	Designation of Attainment, Nonattainment, and Maintenance Areas	3/13/96	6/16/99 64 FR 32346	
62–204.360	Designation of Prevention of Significant Deterioration Areas	3/13/96	6/16/99 64 FR 32346	
62–204.400	Public Notice and Hearing Requirements for State Implementation Plan Revisions.	11/30/94	6/16/99 64 FR 32346	
Chapter 62–210 Stationary Sources—General Requirements				
62–210.100	Purpose and Scope	11/23/94	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–210.200	Definitions	10/15/96	5/27/98 63 FR 28905	
62–210.220	Small Business Assistance Program	10/15/96	5/27/98 63 FR 28905	
62–210.300	Permits Required	8/15/96	1/17/97 62 FR 2587	
62–210.350	Public Notice and Comment	11/23/94	6/16/99 64 FR 32346	
62–210.360	Administrative Permit Corrections	11/23/94	6/16/99 64 FR 32346	
62–210.370	Reports	11/23/94	6/16/99 64 FR 32346	
62–210.550	Stack Height Policy	11/23/94	6/16/99 64 FR 32346	
62–210.650	Circumvention	10/15/92	10/20/94 59 FR 52916	
62–210.700	Excess Emissions	11/23/94	6/16/99 64 FR 32346	
62–210.900	Forms and Instructions	2/9/93	11/7/94 59 FR 46157	
Chapter 62–212 Stationary Souces—Preconstruction Review				
62–212.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–212.300	General Preconstruction Review Requirements	11/23/94	6/16/99 64 FR 32346	
62–212.400	Prevention of Significant Deterioration (PSD)	3/13/96	6/16/99 64 FR 32346	
62–212.500	Preconstruction Review for Nonattainment Areas	3/13/96	6/16/99 64 FR 32346	
62–212.600	Sulfur Storage and Handling Facilities	3/13/96	6/16/99 64 FR 32346	
Chapter 62–242 Motor Vehicle Emissions Standards and Test Procedures				
62–242.100	Purpose and Scope	3/21/91	3/22/93 58 FR 15277	
62–242.200	Definitions	3/13/96	6/16/99 64 FR 32346	
62–242.400	Standards and Procedures for Inspection of Gasoline Fueled Vehicles; Pass/Fail Criteria.	2/2/93	10/11/94	
62–242.500	Standards and Procedures for Inspection of Diesel Fueled Vehicles; Pass/Fail Criteria.	2/2/93	10/11/94 59 FR 51382	
62–242.600	Equipment Performance Specifications	2/2/93	10/11/94 59 FR 51382	
62–242.700	Tampering Inspection	2/2/93	10/11/94 59 FR 51382	
62–242.800	Low Emissions Adjustment	2/2/93	10/11/94 59 FR 51382	
62–242.900	Training Criteria For Motor Vehicle Emissions Inspection Personnel	2/2/93	10/11/94 59 FR 51382	
Chapter 62–243 Tampering With Motor Vehicle Air Pollution Control Equipment				
62–243.100	Purpose and Scope	5/29/90	6/9/92 57 FR 24370	
62–243.200	Definitions	1/2/91	6/9/92 57 FR 24378	
62–243.300	Exemptions	1/2/91	6/9/92 57 FR 24378	
62–243.400	Prohibitions	1/2/91	6/9/92 57 FR 24378	
62–243.500	Certification	1/2/91	6/9/92 57 FR 24378	
62–243.600	Enforcement	1/2/91	6/9/92 57 FR 24378	
62–243.700	Penalties	5/29/90	6/9/92 57 FR 24370	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–244 Visible Emissions From Motor Vehicles				
62–244.100	Purpose and Scope	5/29/90	6/9/92 57 FR 24370	
62–244.200	Definitions	1/2/91	6/9/92 57 FR 24378	
62–244.300	Exemptions	1/2/91	6/9/92 57 FR 24378	
62–244.400	Prohibitions	1/2/91	6/9/92 57 FR 24378	
62–244.500	Enforcement	1/2/91	6/9/92 57 FR 24378	
62–244.600	Penalties	5/29/90	6/9/92 57 FR 24370	
Chapter 62–252 Gasoline Vapor Control				
62–252.100	Purpose and Scope	2/2/93	3/24/94 59 FR 13883	
62–252.200	Definitions	2/2/93	3/24/94 59 FR 13883	
62–252.300	Gasoline Dispensing Facilities-Stage I Vapor Recovery	2/2/93	3/21/94 59 FR 13883	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery	11/23/94	6/16/99 64 FR 32346	
62–252.500	Gasoline Tanker Trucks	9/10/96	7/21/97 62 FR 38918	
62–252.800	Penalties	2/2/93	3/24/94 59 FR 13883	
62–252.900	Form	2/2/93	7/21/97 62 FR 38918	
Chapter 62–256 Open Burning and Frost Protection Fires				
62–256.100	Declaration and Intent	12/09/75	11/1/77 42 FR 57124	
62–256.200	Definitions	11/30/94	6/16/99 64 FR 32346	
62–256.300	Prohibitions	11/30/94	6/16/99 64 FR 32346	
62–256.400	Agricultural and Silvicultural Fires	7/1/71	5/31/72 37 FR 10842	
62–256.450	Burning for Cold or Frost Protection	6/27/91	9/9/94 59 FR 46552	
62–256.500	Land Clearing	11/30/94	6/16/99 64 FR 32346	
62–256.600	Industrial, Commercial, Municipal, and Research Open Burning	7/1/71	5/31/72 37 FR 10842	
62–256.700	Open Burning Allowed	11/30/94	6/16/99 64 FR 32346	
62–256.800	Effective Date	7/1/71	5/31/72 37 FR 10842	
Chapter 62–296 Stationary Sources—Emission Standards				
62–296.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–296.320	General Pollutant Emission Limiting Standards	3/13/96	6/16/99 64 FR 32346	
62–296.401	Incinerators	3/13/96	6/16/99 64 FR 32346	
62–296.402	Sulfuric Acid Plants	3/13/96	6/16/99 64 FR 32346	
62–296.403	Phosphate Processing	3/13/96	6/16/99 64 FR 32346	
62–296.404	Kraft (Sulfate) Pulp Mills and Tall Oil Plants	3/13/96	6/16/99 64 FR 32346	
62–296.405	Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input.	3/13/96	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.406	Fossil Fuel Steam Generator with less than 250 million Btu per Hour Heat Input, New and Existing Emissions Units.	3/13/96	6/16/99 64 FR 32346	
62–296.407	Portland Cement Plants	11/23/94	6/16/99 64 FR 32346	
62–296.408	Nitric Acid Plants	11/23/94	6/16/99 64 FR 32346	
62–296.409	Sulfur Recovery Plants	11/23/94	6/16/99 64 FR 32346	
62–296.410	Carbonaceous Fuel Burning Equipment	11/23/94	6/16/99 64 FR 32346	
62–296.411	Sulfur Storage and Handling Facilities	11/23/94	6/16/99 64 FR 32346	
62–296.412	Dry Cleaning Facilities	3/13/96	6/16/99 64 FR 32346	
62–296.413	Synthetic Organic Fiber Production	3/13/96	6/16/99 64 FR 32346	
62–296.414	Concrete Batching Plants	3/13/96	6/16/99 64 FR 32346	
62–296.415	Soil Thermal Treatment Facilities	3/13/96	6/16/99 64 FR 32346	
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities.	11/23/94	6/16/99 64 FR 32346	
62–296.501	Can Coating	11/23/94	6/16/99 64 FR 32346	
62–296.502	Coil Coating	11/23/94	6/16/99 64 FR 32346	
62–296.503	Paper Coating	11/23/94	6/16/99 64 FR 32346	
62–296.504	Fabric and Vinyl Coating	11/23/94	6/16/99 64 FR 32346	
62–296.505	Metal Furniture Coating	11/23/94	6/16/99 64 FR 32346	
62–296.506	Surface Coating of Large Appliances	11/23/94	6/16/99 64 FR 32346	
62–296.507	Magnet Wire Coating	11/23/94	6/16/99 64 FR 32346	
62–296.508	Petroleum Liquid Storage	11/23/94	6/16/99 64 FR 32346	
62–296.509	Bulk Gasoline Plants	10/15/92	10/20/94 59 FR 52916	
62–296.510	Bulk Gasoline Terminals	11/23/94	6/16/99 64 FR 32346	
62–296.511	Solvent Metal Cleaning	11/23/94	6/16/99 64 FR 32346	
62–296.512	Cutback Asphalt	11/23/94	6/16/99 64 FR 32346	
62–296.513	Surface Coating of Miscellaneous Metal Parts and Products	11/23/94	6/16/99 64 FR 32346	
62–296.514	Surface Coating of Flat Wood Paneling	11/23/94	6/16/99 64 FR 32346	
62–296.515	Graphic Arts Systems	11/23/94	6/16/99 64 FR 32346	
62–296.516	Petroleum Liquid Storage Tanks with External Floating Roofs	11/23/94	6/16/99 64 FR 32346	
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_X—Emitting Facilities.	11/23/94	6/16/99 64 FR 32346	
62–296.600	Reasonably Available Control Technology (RACT)—Lead	3/13/96	6/16/99 64 FR 32346	
62–296.601	Lead Processing Operations in General	8/8/94	9/18/96 61 FR 49064	
62–296.602	Primary Lead Acid Battery Manufacturing Operations	3/13/96	9/18/96 61 FR 49064	
62–296.603	Secondary Lead Smelting Operations	8/8/94	9/18/96 61 FR 49064	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	8/8/94	9/18/96 61 FR 49064	
62–296.605	Lead Oxide Handling Operations	8/8/94	9/18/96 61 FR 49064	
62–296.700	Reasonably Available Control Technology (RACT)—Particulate Matter	11/23/94	6/16/99 64 FR 32346	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.701	Portland Cement Plants	11/23/94	6/16/99 64 FR 32346	
62–296.702	Fossil Fuel Steam Generators	11/23/94	6/16/99 64 FR 32346	
62–296.703	Carbonaceous Fuel Burners	11/23/94	6/16/99 64 FR 32346	
62–296.704	Asphalt Concrete Plants	11/23/94	6/16/99 64 FR 32346	
62–296.705	Phosphate Processing operations	11/23/94	6/16/99 64 FR 32346	
62–296.706	Glass Manufacturing Process	11/23/94	6/16/99 64 FR 32346	
62–296.707	Electric Arc Furnaces	11/23/94	6/16/99 64 FR 32346	
62–296.708	Sweat of Pot Furnaces	11/23/94	6/16/99 64 FR 32346	
62–296.709	Lime Kilns	11/23/94	6/16/99 64 FR 32346	
62–296.710	Smelt Dissolving Tanks	11/23/94	6/16/99 64 FR 32346	
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding operations.	11/23/94	6/16/99 64 FR 32346	
62–296.712	Miscellaneous Manufacturing Process Operations	11/23/94	6/16/99 64 FR 32346	
Chapter 62–297 Stationary Sources—Emissions Monitoring				
62–297.100	Purpose and Scope	3/13/96	6/16/99 64 FR 32346	
62–297.310	General Test Requirements	3/13/96	6/16/99 64 FR 32346	
62–297.400	EPA Methods Adopted by Reference	11/23/94	6/16/99 64 FR 32346	
62–297.401	Compliance Test Methods	3/13/96	6/16/99 64 FR 32346	
62–297.411	DEP Method 1	11/23/94	6/16/99 64 FR 32346	
62–297.412	DEP Method 2	10/15/92	10/20/94 59 FR 52916	
62–297.413	DEP Method 3	10/15/92	10/20/94 59 FR 52916	
62–297.415	DEP Method 5	11/23/94	6/16/99 64 FR 32346	
62–297.416	DEP Method 5A	10/15/92	10/20/94 59 FR 52916	
62–297.417	DEP Method 6	11/23/94	6/16/99 64 FR 32346	
62–297.423	EPA Method 12—Determination of Inorganic Lead Emissions from Stationary Emissions Units.	11/23/94	6/16/99 64 FR 32346	
62–297.440	Supplementary Test Procedures	11/23/94	6/16/99 64 FR 32346	
62–297.450	EPA VOC Capture Efficiency Test Procedures	11/23/94	6/16/99 64 FR 32346	
62–297.620	Exceptions and Approval of Alternate Procedures and Requirements	11/23/94	6/16/99 64 FR 32346	

(d) *EPA-approved State Source-specific requirements.*

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Harry S Truman, animal import center	NA	11/26/1996	1/19/2000 65 FR 2882	

(e) *EPA-approved Florida non-regulatory provisions.*

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plans for Jacksonville and Southeast Florida Areas	12/10/1999	8/2/2001	66 FR 40137	
Revision to Maintenance Plan for the Tampa, Florida Area	7/9/2000	8/15/2002	67 FR 53314	

[FR Doc. 03–4631 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV055–6025a; FRL–7449–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). The revisions change portions of West Virginia's minor new source review and existing stationary source operating permit program. Specifically, today's action converts the partial approval and partial disapproval of West Virginia's minor new source review permit program, published on January 13, 2000 to a full approval. EPA's full approval of the revision to the West Virginia SIP is based on the findings that the deficiencies that formed the basis for the partial approval/disapproval of West Virginia's minor new source review permit program have been corrected in this SIP revision. The rule, as submitted, is in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 29, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. If EPA receives such comments, it 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 should be mailed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2000 (65 FR 2042), EPA published a final rule notice (FRN) regarding West Virginia's minor new source review and existing stationary source operating permit program. The FRN approved in part, and disapproved in part, changes to West Virginia's minor new source review permit program as a revision to the West Virginia SIP. With the exception of the two separate provisions included in West Virginia's submission, the FRN approved West Virginia's minor new source review and existing stationary source operating permit program under section 110 of the Act as meeting the criteria set forth in a June 28, 1989 **Federal Register** document (54 FR 27274) for state permit programs that can limit a source's potential to emit criteria pollutants. The FRN also approved West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Act as meeting the statutory criteria for state permit programs that can limit a source's potential to emit hazardous air pollutants (HAPs).

Concurrently, the FRN disapproved two separate provisions included in West Virginia's minor new source review and existing stationary source operating permit program. Specifically, the FRN disapproved an exemption from minor new source review for sources that have been issued permits under the State's Federally approved major source operating permit program (developed pursuant to Title V of the Clean Air Act) as such exemption did not comport with the federal requirements of 40 CFR 51.160 regarding the scope of the program. In addition, the FRN disapproved provisions governing the issuance of temporary construction or modification permits with only a 15-day public comment period as such provisions did not satisfy the Federal requirements for a 30-day comment period required by 40 CFR 51.161(b).

Summary of SIP Revision

To address the deficiencies of West Virginia Regulation CSR13 described in the January 13, 2000 rulemaking action, the State of West Virginia submitted on September 21, 2000, a formal revision to its SIP. The submitted SIP, which consists of changes to West Virginia Regulation CSR13, applies statewide and corrects the deficiencies that formed the basis for the partial disapproval of West Virginia's minor new source review and existing stationary source operating permit program. In order to correct the deficiencies, the exemption from minor new source review for sources that have been issued permits under the State's Federally-approved major source operating permit program was removed. In addition, the provision governing the issuance of temporary construction or modification permits with a 15-day public comment period was revised to provide for a 30-day public comment period in order to be consistent with the federal requirements for public participation found at 40 CFR 51.161(b).

As part of its September 21, 2000 SIP revision, West Virginia also submitted a number of additional revisions intended to, among other things, streamline the permitting process. Those revisions include changes to the construction and modification thresholds; creation of a ''de-minimis'' source list; changes in the definitions of volatile organic compounds (VOCs) and HAPs; and, clarification of the definition of when ''construction'' commences. Also, West Virginia Regulation CSR13 was revised to incorporate an administrative process

for making relatively minor permit revisions. The revised Regulation CSR13 contains modified public notice procedures, such as: eliminating the two-step notice from the previous regulation; establishing a 30-day notice for certain actions and a 45-day notice for the remainder; and, additional notice methods which may be required by the State. The revised regulation also provides further clarification regarding HAPs and toxic air pollutants and revised procedures for temporary permits. EPA has reviewed these revisions to West Virginia Regulation CSR13 and find that they are at least as stringent as the corresponding requirements of the Clean Air Act.

II. Final Action

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment from either the public or the regulated community. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 29, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, to approve the West Virginia minor new source review and existing stationary source operating permit program, must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(52) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(52) Revisions to the West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, submitted on September 21, 2000 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Department of Environmental Protection transmitting revision to West Virginia Regulation 45CSR13.

(B) West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation, effective June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(52)(i) of this section.

[FR Doc. 03–4629 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 266–0383; FRL–7454–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Ventura Air Pollution Control District (''District'') portion of the California State Implementation Plan (''SIP''). These revisions were proposed in the **Federal Register** on June 24, 2002, and concern the District's new source review (''NSR'') rules. We are now approving these revisions under the Clean Air Act as amended in 1990 (''CAA'' or ''the Act'').

EFFECTIVE DATE: This rule is effective on March 31, 2003.

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

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

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

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

A copy of the rules is also available via the Internet at *http://arbis.arb.ca.gov/drdb/ven/cur.htm*.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, EPA Region IX, (415) 972–3978. E-mail address: *zoueshtiagh.nahid@epa.gov*.

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

List of Contents:

I. Proposed Action
A. How the Deficiencies Were Corrected
B. Creation of an Annual Equivalency Program
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 24, 2002, we proposed to approve certain District rules into the California SIP. 67 FR 42516. We are finalizing that action today by approving the following District rules into the SIP:

Rule No.	Rule title
10	Permits Required.
26.1	New Source Review—Definitions.
26.2	New Source Review—Requirements.
26.3	New Source Review—Exemptions.
26.4	New Source Review—Emission Banking.
26.6	New Source Review—Calculations.
26.11	New Source Review—ERC Evaluation At Time of Use.

A. How the Deficiencies Were Corrected

We proposed to approve the District rules because we determined that they complied with the relevant CAA requirements, namely part D of title I and section 110(k) of the CAA. In the proposed action, we found that the District had corrected all of the deficiencies initially identified in our limited approval and limited disapproval published in the **Federal Register** on December 7, 2000. 65 FR 76567. The California Air Resources Board (''CARB'') submitted the District's revised rules addressing our identified deficiencies on May 20, 2002. In our proposed approval, we found that the District had corrected the following deficiencies: (1) Lack of a requirement for relocating sources to obtain an authority to construct (''ATC'') permit, (2) failure to require that emission reduction credits (''ERCs'') used as NSR emission offsets be surplus at the time of use, (3) failure to provide for denial of permits for sources in violation of Prevention of Significant Deterioration (''PSD'') increments, and (4) improper reliance on the California Environmental Quality Act (''CEQA'') analysis for the alternatives analysis required by section 173(a)(5) of the CAA. We received no comments on deficiency numbers 1, 3 and 4 or how the District corrected them. As such, for the complete discussion on these deficiencies and the corrections, please review our proposed approval and the TSD for that proposed action. We discuss the correction for deficiency number 2 in greater detail in this notice.

B. Creation of an Annual Equivalency Demonstration Program

As part of the its revised NSR rules, the District created an annual equivalency demonstration program to correct the deficiency that ERCs used for NSR offset purposes are not required by the District to be surplus at the time of use.[1] The basis for the approval of the

[1] Actually, all emission reductions used for NSR purposes must be surplus at the time of use in order to be creditable, not just ERCs, which are credits for emission reductions that have been banked. We are focusing on ERCs, however, because these are the only emission reductions used for NSR offset purposes with a risk of being non-surplus because the credits were generated and banked at an earlier time. Moreover, since the District's rules primarily rely upon ERCs generated and banked within the District for compliance with offset requirements, it

Continued

annual equivalency demonstration program is contained in CAA section 173(a)(1)(A)'s mandate that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions (''offsets'') such that ''the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *.'' This statutory focus on total regional emissions supports the approval of a District offset program that ensures equivalency with the federal NSR offset requirements on an annual aggregate basis. EPA is also working with other California Districts to help them craft approvable annual equivalency demonstration programs.[2]

The goal of the District's offset equivalency tracking system and annual reports, therefore, is to show that the District's rules are requiring appropriately discounted[3] ERCs that are, in the aggregate, equivalent to the credits that would be required under the federal major source NSR offset requirements. To show equivalency, pursuant to District Rule 26.11, the District intends to rely upon ERCs used in minor source permitting actions[4] to make up for any loss in the creditable amount of ERCs provided by a permit applicant for major source NSR permits due to surplus adjustment.

To ensure appropriate District implementation and EPA oversight of the annual equivalency program, the District and EPA entered into a memorandum of understanding (''MOU'') on February 18, 2003 describing in detail how the District will implement the annual equivalency program. Generally, the MOU sets forth the records to be maintained by the District, the information the District must include in each annual report submitted to EPA, and the necessary surplus analysis to be performed by the District at the time of permitting. The MOU also describes the proper use of the hammer provision, District Rule 26.11.C.6., which requires that the District discontinue the use of the equivalency program once an annual report demonstrates a deficit of creditable ERCs compared to the amount of reductions necessary to offset emissions for new or modified major NSR sources. As of the time the report demonstrates a deficit, the District rules require that sources provide enough surplus-adjusted ERCs to cover any required NSR offsets at the time of permitting. A copy of the MOU is in the Docket and is available to the public from the Region IX contact listed in this notice.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

- CARB;[5]
- California Council for Environment and Economic Benefit (''CCEEB'');
- The District; and
- Pillsbury Winthrop on behalf of Western States Petroleum Association (''WSPA'').

The commentors generally supported our action to approve the District rules into the SIP and the creation of the annual equivalency demonstration program. The majority of substantive comments focused on our interpretation of what emission reductions are considered non-surplus under Section 173(c)(2). This interpretation is important since the NSR District rules being approved closely track the language of section 173(c)(2), which explicitly excludes emission reductions that are ''otherwise required by'' the CAA from use as an NSR offset. As section 173(c)(2) does not specifically delineate the type of requirements included within its scope, EPA's interpretation of the application of the provision is very important for proper implementation of the NSR program.

In our proposed approval, we described six categories of emission reductions that we consider non-surplus for NSR offset purposes. Emission reductions falling under any of these categories are therefore not available for use as NSR offsets, whether directly in a permitting action or through their use in an annual equivalency demonstration. In response to comments received on the proposed approval and after further consideration, we are slightly revising item numbers 2 and 5 to be more consistent with the CAA.[6] Since this list of non-surplus reductions is only EPA's interpretation of section 173(c)(2) and District Rule 26.1.28.b. and does not require any change to the District's rules being approved today, the revision of the list does not affect the approvability of the District's rules. Moreover, the finalized list has been incorporated into the MOU between the District and EPA, which further ensures that the annual equivalency demonstration program, including surplus adjustment of ERCs, will be properly implemented.

The following is the revised and final list of what we consider to be non-surplus emission reduction categories:

(1) Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standard, Reasonably Available Control Technology, and Maximum Achievable Control Technology, whether or not the requirements are part of the State Implementation Plan (''SIP'') or a local attainment plan.

(2) Any emission reduction relied upon by a permitting authority for attainment purposes, or contained in an approved attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations. Reference 51.165(a)(3)(ii)(G).

(3) Any emission reduction whose original emission is not included in the District's emission inventory. Reference 51.165(a)(3)(ii)(C)(1).

(4) Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

is appropriate to focus the surplus discussion on ERCs.

[2] For example, on February 13, 2003, EPA proposed to approve San Joaquin Valley Air Pollution Control District's NSR program, which includes an annual equivalency demonstration. 68 FR 7330. On September 18, 2000, EPA also published a proposed limited approval and limited disapproval for a NSR program that would allow an annual equivalency demonstration program for the Bay Area Air Quality Management District. 65 FR 56284. On December 4, 1996, EPA approved South Coast Air Quality Management District NSR rule revisions based in part on the District's commitment to implement a tracking system to show that in the aggregate it will provide for the offsets required by the CAA. 61 FR 64291.

[3] The words ''discount'' and ''adjust'' are used synonymously in this action, and generally refer to a reduction of an ERC by the portion of the original emission reduction that is no longer surplus.

[4] Though the CAA requires that permitting authorities, including local air districts, have minor source permitting programs, it does not require that minor sources obtain offsets. As such, ERCs used to offset new emissions from minor sources may be available for use in the annual equivalency demonstration if the District can demonstrate that the emission reductions underlying the ERCs are surplus to all other requirements of the Act, and are otherwise creditable for federal purposes.

[5] Since CARB only stated its general opinion regarding annual equivalency programs and did not provide any specific comments for this action that required a response, none of CARB's comments have been addressed in this Public Comments and EPA Responses section.

[6] The changes to item number 5 is discussed in the response to comment number 4. The change in item number 2 was the addition of the language ''or contained in an approved attainment plan.'' Though EPA received no comments on this item, we included this language to ensure that *any* and *all* reductions relied upon or required for attainment purposes be considered non-surplus, whether or not the reduction is explicitly set forth in an attainment plan.

(5) Any emission reduction required by a condition of a permit issued to comply with CAA new source review requirements. Any emission reduction required by a permit condition placed on a permit solely: 1) to make the reduction federally enforceable to meet federal creditability criteria for use of the reduction as an offset for new source review purposes, or 2) to assure compliance with a state or local requirement that is not federally enforceable shall not be included in this class. Reference 51.165(a)(3)(ii)(G).

(6) Any emission reduction based on a source-specific emission limitation resulting from an Environmental Protection Agency enforcement case.

The specific comments and EPA responses are summarized below:

Comment 1: CCEEB commented that ''Section 173(c)(2) * * * does not provide that banked emission reductions, which were not required when banked, must be adjusted again to reflect later-adopted emission reduction requirements. Further, EPA has not promulgated any regulation to require such discounting.'' WSPA provided an almost identical comment.

Response 1: We disagree with CCEEB's and WSPA's comments. The requirement for discounting at the time of use derives from the statutory requirement that emission reductions be surplus of CAA requirements. CAA section 173(c)(2). In a 1994 memorandum, EPA set forth its policy that banked ERCs used as NSR offsets must be adjusted at the time of permit issuance to ensure that they are surplus as required by section 173(c)(2). Memo from John S. Seitz, Dir., OAQPS to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) (''1994 Seitz Memo''). This is important to ensure that emission reductions are not ''double-counted'' for CAA purposes, something prohibited by the CAA. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. For example, a source may voluntarily reduce its emission of hazardous air pollutants (''HAPs'') and bank those credits at the time of reduction. Some time after these reductions are achieved, EPA promulgates a Maximum Achievable Control Technology (''MACT'') standard that applies to the source. Though these credits may be permanent, real, quantifiable, and enforceable, the promulgation of the new MACT standard would render the portion of the banked ERC that would have been required by the new MACT standard unavailable for NSR offset purposes because it is no longer in excess of requirements under the Act. This is important since many HAPs are also considered volatile organic compounds (''VOCs''). Without a requirement to discount ERCs at the time of use, sources could be relying upon emission reductions that were otherwise required by the CAA. Moreover, the SIP may take credit for the reductions achieved by this MACT rule, raising the further possibility that the reductions would be double-counted for attainment purposes if not surplus adjusted at the time of use.

More than just preventing possible double counting, however, adjusting at the time of use is important to generally ensure proper implementation of the NSR program. The CAA does not require or provide for ERC banking programs, which means that there are no federal requirements ensuring the quality of banks or banked credits for federal offset purposes. Because of this, a surplus at the time of use analysis and appropriate adjustment provides an important first and only review of the proposed ERC's consistency with NSR CAA offset requirements. Without such a review, EPA could not assure that sources were complying with NSR offset requirements of the CAA since most ERCs were banked without EPA review and many without supporting documentation or information.

Despite the necessity for surplus adjustment at the time of use, EPA has worked with the District to create a system where sources may be able to rely on banked ERCs while at the same time maintaining the integrity and legality of the District's NSR program. Through the use of the annual equivalency demonstration program, EPA is allowing the District to give full credit to ERCs provided by major sources for NSR permitting activities as long as the District can identify other retired or used creditable emission reductions that make up for the difference within the year accounting period.

Comment 2: Item number 3 in the list of categories of non-surplus emission reductions in the proposed approval reads ''any emission reduction whose original emission reduction is not included in the District's emission inventory. See 40 CFR 51.165(a)(3)(ii)(C)(1).'' The District commented that ''[t]he citation [40 CFR § 51.165(a)(3)(ii)(C)(1)] refers * * * only to '(e)missions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels'. There is not a requirement in the Code of Federal Regulations to include an emission reduction resulting from a source employing emission reduction techniques, not otherwise required by the federal CAA, in the District's emission inventory.''

Response 2: 40 CFR 51.165 describes the minimum regulatory requirements for an approvable state NSR permitting program. 40 CFR 51.165(a)(3)(ii)(C)(1), which deals with offsets, states that reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may generally be credited in NSR permitting actions if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In contrast to the meaning given to it in the District's comment, the provision serves the narrow purpose of stating that ERCs generated by shutting down a source or curtailing production or operating hours can only be used if there is an EPA-approved attainment plan and if the item is ''explicitly'' included in the most recent emissions inventory. The provision is essentially a safeguard to make sure that emissions from defunct sources are not replaced with new emissions without appropriate review to ensure that such replacements are consistent with attainment purposes for the area. The provision in no way limits or changes the necessity that all emission reductions used for NSR offsetting purposes be incorporated into the area's emission inventory, either explicitly or implicitly. The use of emission reductions for NSR purposes whose original emissions are not included in the emissions inventory, and therefore not considered in the planning process, would be adding new unaccounted emissions into the area thus potentially jeopardizing attainment goals. As such, EPA has maintained the definition for this category as originally proposed.

Comment 3: CCEEB commented that ''if an air district includes banked ERCs as a line item in its portion of the SIP, the ERCs are accounted for as emissions in the air and are mitigated by measures in the plan. To discount such ERCs at the time of use would result in a ''double mitigation.'' CCEEB requests that EPA clarify in the future related notices that EPA does not require discounting of ERCs at time of use where the use of ERCs has been mitigated by other specific measures for rate of progress or attainment demonstration purposes.''

Response 3: EPA disagrees with CCEEB on its comment. CCEEB's approach would essentially allow any

emission reduction to be used for NSR offset purposes even if it was required by a provision of the CAA as long as it was incorporated into the area's emissions inventory and accounted for in the area's attainment plan. CCEEB justifies this proposition by the fact that the ERC ''has been mitigated by other specific measures for rate of progress or attainment demonstration purposes,'' and therefore should be allowed as an NSR offset. Allowing the use of such an ERC as an NSR offset, however, would be counter to section 173(c)(2)'s prohibition against use of emission reductions that are otherwise required by the CAA. The mere fact that an ERC is recognized in the inventory and accounted for in the attainment plan and rate of progress in no way ''mitigates'' the fact that the reduction was elsewhere required under the CAA.[7]

Comment 4: Item number 5 in the list of categories of non-surplus emission reductions in the proposed approval reads ''any emission reduction required by a condition of a permit issued to comply with NSR CAA requirements.'' CCEEB commented that ''[t]his item is of concern because air permits in California will typically include requirements that are not required under Federal law. Such requirements are not required by the federal Clean Air Act and should be considered surplus to Federal requirements. This item should not be listed in its current form as an emission reduction that is required by the Act.'' WSPA provided an almost identical comment.

Response 4: We agree with CCEEB and WSPA, and modified item number 5 accordingly. Specifically, in the updated interpretation provided in this final action and embodied in the MOU, we recognize that the following requirements contained in a federally enforceable NSR permit should not automatically disqualify the emission reduction from use as an NSR offset: (1) Requirements to make the reduction federally enforceable to meet Federal creditability criteria for use of the reduction as an offset for new source review purposes, or (2) requirements to assure compliance with a state or local requirement that is not federally enforceable. This change addresses the commentors' concerns.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is approving these rules into the California SIP.[8]

IV. Statutory and Executive Order Reviews

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

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

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

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

[7] In fact, emission reductions used for NSR offset purposes *must* be included in an area's inventory and attainment plan to be considered for use as an offset in the first place. The 1992 ''General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990'' (''General Preamble'') describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of the use emission reductions for NSR purposes and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of emission reduction credits are rate of progress plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo. Thus, inclusion of ERCs in required plans is a precondition to satisfying the statutory requirements of section 173(c)(2), but does not by itself fulfill the statutory requirements.

CCEEB and WSPA may be taking their argument one step further, however, by implying that the creation of a growth allowance in an attainment plan would enable a permitting authority to issue permits that allow new emissions despite the source's reliance on non-surplus ERCs. A growth allowance is defined as a ''pollutant-specific allowance for additional growth in any designated nonattainment area by controlling existing source emissions beyond the amount of reduction required to demonstrate [reasonable further progress].'' 57 FR 13554 (April 16, 1992). CCEEB and WSPA cannot rely upon a growth allowance as a justification for use of non-surplus ERCs, however, as the 1990 CAA amendments restricted the use of new growth allowances with the exception of areas that have been targeted by the administrator, in consultation with the Secretary of Housing and Urban Development (''HUD''), for economic growth. *Id.; see also* CAA sections 172(c)(4) and 173(a)(1)(B). Ventura County is not a designated economic growth area.

[8] On February 13, 2003, EPA proposed to find that the California SIP was substantially inadequate due to Health & Safety Code Section 42310(e), which exempts certain agricultural sources from all permitting actions, including NSR permitting actions. 68 FR 7237. This SIP-call, if finalized, will not reactivate the sanctions clock permanently stopped by this final action.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: February 18, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(305) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(305) Amended regulations for the following APCD were submitted on May 20, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(1) Rules 10, 26.1, 26.2, 26.3, 26.4, 26.6, and 26.11 adopted on May 14, 2002.

* * * * *

[FR Doc. 03–4628 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND–001–0007; FRL–7453–4]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective March 31, 2003.

ADDRESSES: Documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405. Copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

I. Background

On October 7, 2002 (67 FR 62432), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. As indicated in the NPR, the submittal also included direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program, which we will handle separately.

The revisions being addressed in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to exclusions from Title V permit to operate requirements only); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. For a detailed description of the revisions, please refer to our October 7, 2002 NPR (62 FR 62432).

A brief summary of the revisions is as follows. In the General Provisions chapter, the definition for ''public nuisance'' was removed and changes were made to clarify reporting requirements when stack testing for air contaminant emissions. In the Emissions of Particulate Matter Restricted chapter, the State incorporated reference information from the Federal rules. Also, the State repealed its requirements for existing infectious waste incinerators because these requirements are now addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). In the Restriction of Fugitive Emissions chapter, the State deleted a reference to nuisances and replaced it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (the State believes that its definition of ''air pollution'' covers nuisances). The above changes are consistent with Federal requirements and, therefore, are approvable.

In the Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate chapter, a new subsection entitled ''Source Exclusions from Title V Permit to Operate Requirements'' was added to provide an exemption from the

Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule does not exclude these certain sources from North Dakota's construction or minor source operating permit programs. We are approving this new subsection, 33–15–14–07, under section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules.

In the Prevention of Significant Deterioration (PSD) chapter, the definition of ''significant'' was updated to match the Federal definition. In addition, a provision was removed that required the North Dakota Department of Health (NDDH) to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. These revisions are consistent with Federal requirements and, therefore, are approvable.

II. Response to Comments

We received adverse comments from the Dakota Resource Council, submitted in a letter dated November 6, 2002, regarding our proposed approval of the revisions to the North Dakota PSD rule (NDAC 33–15–15). Specifically, the commenter disagrees with our approval of the repeal of the provision that required NDDH to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. It is the commenter's belief that removal of this provision relaxes the SIP and is in conflict with section 110(a)(2)(D)(i)(II) of the Clean Air Act, which requires SIPs to include provisions prohibiting any source within a state from emitting any air pollutant which will interfere with measures to prevent significant deterioration of air quality in any other state's applicable implementation plan. The commenter believes that we must not approve the removal of this provision without the State demonstrating that there are other provisions in the North Dakota SIP that ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality.

We agree with the need for such a demonstration from the State and specifically requested it during our review of these revisions in draft form. In a November 28, 2000, letter from Jeffrey L. Burgess, NDDH, to Dick Long, EPA Region VIII, the State provided such assurances. Specifically, the State indicated that its PSD rules contain all of the notification requirements in the Federal rules (*see* 40 CFR 51.166 and 40 CFR 52.21), including notification during the public comment period to an affected state (see North Dakota Administrative Code (NDAC) 33–15–15–01.5.b.). Although there is no longer a consultation requirement, there are still requirements under North Dakota's PSD program for the NDDH to provide notice to any state, Federal Land Manager, or Indian governing body whose lands may be significantly affected by emissions from a proposed source or modification (*see* NDAC 33–15–15–01.5.b(4)). This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. The deletion of the language regarding consultation with an affected state was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement).

Since the revisions to this chapter are consistent with Federal requirements, and the State has demonstrated that there are other provisions in the SIP to ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality, we believe the revisions are approvable.

III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The repeal of requirements for existing infectious waste incinerators does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because these requirements are addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled ''Potential to Emit (PTE) Guidance for Specific Source Categories.'' The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term ''nuisance'' does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of ''air pollution.''

IV. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve sections of the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33–15–14–07, Source Exclusions from Title V Permit to Operate Requirements); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 11, 2003.

Max H. Dodson,

Acting Regional Administrator, Region 8.

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

PART 52—[AMENDED]

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

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

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(32) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated June 21, 2001. The revisions address air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04, 33–15–01–12, and 33–15–01–15; Emissions of Particulate Matter Restricted 33–15–05–04.1; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33–15–14–02.13.b.1, 33–15–14–03.1.c, and 33–15–14–07; Prevention of Significant Deterioration of Air Quality 33–15–15–01.1.hh and 33–15–15–01.2; and Restriction of Fugitive Emissions 33–15–17–01, effective June 1, 2001.

(B) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33–15–05–03.1, repealed effective July 12, 2000.

[FR Doc. 03–4770 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 414, and 485

[CMS–1204–F2]

RIN 0938–AL21

Medicare Program; Physician Fee Schedule Update for Calendar Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the estimates used to establish the sustainable growth rates (SGRs) for fiscal years 1998 and 1999 for the purposes of determining future updates to the physician fee schedule and announces a 1.6 percent increase in the calendar year (CY) 2003 physician fee schedule conversion factor (CF) for March 1 to December 31, 2003. The physician fee schedule CF from March 1 to December 31, 2003, will be

$36.7856. The anesthesia CF for this period will be $17.05. Any information contained in this final rule related to the CY 2003 physician or anesthesia CFs takes the place of the information contained in the December 31, 2002, final rule. All other provisions of the December 31, 2002, final rule are unchanged by this final rule.

DATES: *Effective date:* This rule is effective on March 1, 2003.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4539.

SUPPLEMENTARY INFORMATION:

I. Provisions of the Final Rule

In the physician fee schedule final rule with comment period published on December 31, 2002 (67 FR 80018), following notice and comment, we announced a 4.4 percent reduction in the physician fee schedule conversion factor (CF) for 2003. As explained in the December 31, 2002, final rule, we determined the 4.4 percent reduction to the CF using the formula specified in statute. We explained that the statute did not allow us to use later, after the fact, data to revise estimates that were used to determine the sustainable growth rates (SGRs) for fiscal year (FY) 1998 and FY 1999 for the purposes of determining future updates to the physician fee schedule. We further indicated our preference for revising these estimates and establishing a positive update to CY 2003 physician fee schedule rates, if the Congress changed the law to permit these revisions, and we requested comments on how physician fee schedule rates could and should be recalculated prospectively in the event that the Congress provided the Department with legal authority to revise estimates used to establish the SGRs for FY 1998 and FY 1999 and the MVPS for 1990 through 1996.

On February 13, 2003, the Congress enacted the Consolidated Appropriations Resolution of 2003 (CAR), (Pub. L. 108–7) that was signed into law by the President on February 20, 2003. Before enactment of section 402(a) of the CAR, section 1848(i)(1)(C) of the Social Security Act (the Act) precluded judicial review of ''the determination of conversion factors under subsection (d).'' Section 402(a) of the CAR amended section 1848(i)(1)(C) of the Act to preclude judicial review of ''the determination of conversion factors under subsection (d), including without limitation a prospective redetermination of the sustainable growth rates for any or all previous fiscal years.'' We believe that with this amendment, section 1848, read as a whole, now permits revision of all earlier fiscal year SGRs for the purposes of allowing prospective application of those revisions to future physician fee schedule updates (that is, to the CY 2003 physician fee schedule update). Thus, we are now revising the FY 1998 and FY 1999 SGRs for the purposes of determining future updates to the physician fee schedule including a new physician fee schedule update that will apply from March 1 to December 31, 2003.

As we noted in our final rule of December 31, 2002, CMS believes the estimates used to set the SGRs for FY 1998 and FY 1999 were 6.4 percent lower than if after-the-fact, actual data could have been used, with the greatest differences arising from fee-for-service enrollment in Medicare and real per capita growth in the gross domestic product (GDP). The reasons for the differences between these estimates and later, after-the-fact actual data for 1998 and 1999 are described in more detail below. We noted in our December 31, 2002, final rule that as a result of using estimates in determining the SGRs for FY 1998 and FY 1999, physicians would receive lower payments for their services than if the SGRs and allowed expenditures for those fiscal years were recalculated to reflect later, after-the-fact actual data.

Although the estimates used to set the SGRs for 1998 and 1999 may have been different from later, after-the-fact actual data, before the enactment of section 402(a) of the CAR, section 1848 of the Act did not permit the SGRs for these two fiscal years (1998 and 1999) to be revised later, once ''actual'' data, or better estimated data became available.

In addition to our final rule of December 31, 2002, we set forth this position in several of our annual notices in previous years in which we announced the CF for the coming year. (''We will not be able to make adjustments to the [1998 and 1999] SGRs based on later data.'' 64 FR 53394. *See also* 63 FR 69188.) These notices indicated that section 1848 of the Act did not provide the necessary authority to revise the original estimates used to establish the SGRs for FY 1998 and FY 1999 for the purposes of establishing physician fee schedule updates for future years. We believe that as amended by the recently enacted CAR, section 1848 as a whole now permits the prospective redetermination of SGRs for these two previous years.

Section 402(a) of the CAR added language to the ''non-reviewability'' provisions of section 1848(i) of the Act. Section 402(a) added the phrase ''including without limitation a prospective redetermination of the sustainable growth rate for any or all previous fiscal years'' to a non-reviewability provision that already existed at section 1848(i)(1)(c). Use of the word ''including'' in statutory language is typically constructed to mean ''including but not limited to.'' In other words, we believe that the Congress added the new language as a new, non-exclusive example of the instances of non-reviewability that already exist. The example in the added phrase refers to a ''prospective redetermination of the sustainable growth rate for any or all fiscal years.'' (Emphasis added). Prior to the enactment of section 402(a) of the CAR, the substantive provisions of section 1848 of the Act provided only for the prospective redetermination of the SGR for one ''fiscal year,'' that ''fiscal year'' being FY 2000. The Balanced Budget Refinement Act of 1999 (BBRA) amended section 1848(f)(3) of the Act to change the physician fee schedule to a calendar year system of calculating the SGR beginning in ''calendar year'' 2000. Thus, we believe that section 402(a) demonstrates the Congress's intent that section 1848 as a whole be read to permit a prospective redetermination of the SGRs for ''any or all'' ''fiscal'' years in the plural, to wit, fiscal years 1998 and 1999, in addition to fiscal year 2000. Section 402(a) of the CAR calls for a change in the agency's prior interpretation of section 1848 of the Act as precluding any revision of the SGRs for fiscal years 1998 and 1999 to permit prospective redetermination of SGRs for these ''fiscal years'' in addition to existing authority for fiscal year 2000. This reading of section 402(a) of the CAR is consistent with the congressional intent behind section 402(a). The Conference Report for the CAR notes that section 402(a) is intended to ''[provide] legal protection for the Administration should they make corrections to data errors in the physician payment formula for past fiscal years.'' (House Rpt. 108–10).

These prospective redeterminations will not have, and are not intended to have, any effect on physician fee schedule payment rates for previous years. (We are making no further revisions to the FY 2000 SGR because section 1848(f)(3) of the Act expressly specifies that we were to make the final revisions to the FY 2000 SGR on the basis of the best data available to the Secretary as of September 1, 2001. Accordingly, we made our final revisions to the FY 2000 SGR in a final rule published in the **Federal Register** on November 1, 2001 (66 FR 55319).)

In this final rule, we are announcing that for the purposes of determining

future physician fee schedule updates, including the update for 2003, the SGR was 3.2 percent for FY 1998 and 4.2 percent for FY 1999. This is a change of 1.7 percentage points for FY 1998 and 4.5 percentage points for FY 1999. We will make no further revisions to the SGRs for these years. We are also announcing a 1.6 percent increase to the physician fee schedule CF that will apply from March 1 to December 31, 2003. Therefore, the physician fee schedule CF from March 1 to December 31, 2003, will be $36.7856, an increase of 1.6 percent from the 2002 CF. The anesthesia CF for this period will be $17.05, an increase of 2.7 percent from the 2002 anesthesia CF. In our December 31, 2002 final rule (67 FR 80032), we described our calculation of the 2003 physician fee schedule and anesthesia fee schedule CFs. Any information contained in this final rule related to the 2003 physician or anesthesia fee schedule CFs replaces the information contained in the December 31, 2002, final rule. Further, we are making one revision to our estimate of the CY 2002 SGR. As described below, we are increasing our estimate of the 2002 SGR by 0.2 percentage points to reflect the costs of the new diabetes self-management training benefit. All other provisions of the December 31, 2002, final rule are unchanged by this final rule.

In the December 31, 2002, final rule, we specifically requested comments on the revision of estimates used to establish the Medicare Volume Performance Standard from 1990 through 1996 and the SGRs from FY 1998 and FY 1999. We will respond to any comments received on these issues in a future **Federal Register** publication.

II. Physician Fee Schedule Update

A. Calculation of the Physician Fee Schedule Update

The physician fee schedule update is determined under a methodology specified by statute. Under section 1848(d)(4) of the Act, the update is equal to the product of 1 plus the percentage increase in the Medicare Economic Index (MEI) (divided by 100) and 1 plus the update adjustment factor. For CY 2003, the MEI is equal to 3.0 percent (1.030). The update adjustment factor is now equal to −1.1 percent (0.989). Section 1848(d)(4)(F) of the Act requires an additional −0.2 percent (0.998) reduction to the update for 2003. Thus, the product of the MEI (1.030), the update adjustment factor (0.989), and the statutory adjustment factor (0.998) equals the CY 2003 update of 1.66 percent (1.0166). As described below, we are also making an adjustment of −0.04 percent to maintain budget neutrality for the increase in anesthesia work. With the budget-neutrality adjustment, the increase in the physician fee schedule CF will be 1.62 percent (1.0162).

B. The Update Adjustment Factor

Section 1848(d) of the Act provides that the physician fee schedule update is equal to the product of the MEI and an ''update adjustment factor.'' The update adjustment factor is applied to make actual and target expenditures (referred to in the law as ''allowed expenditures'') equal. Allowed expenditures are equal to actual expenditures in a base period updated each year by the SGR. The SGR sets the annual rate of growth in allowed expenditures and is determined by a formula specified in section 1848(f) of the Act.

Under section 1848(d)(4)(A) of the Act, the physician fee schedule update for a year is equal to the product of—(1) 1 plus the Secretary's estimate of the percentage increase in the MEI for the year, divided by 100 and (2) 1 plus the Secretary's estimate of the update adjustment factor for the year. Under section 1848(d)(4)(B) of the Act, the update adjustment factor is equal to the sum of the following—

i. *Prior Year Adjustment Component.* An amount determined by—

- Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services for the prior year (the year prior to the year for which the update is being determined) and the amount of the actual expenditures for such services for that year;
- Dividing that difference by the amount of the actual expenditures for such services for that year; and
- Multiplying that quotient by 0.75.

ii. *Cumulative Adjustment Component.* An amount determined by—

- Computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services from April 1, 1996, through the end of the prior year and the amount of the actual expenditures for such services during that period;
- Dividing that difference by actual expenditures for such services for the prior year as increased by the sustainable growth rate for the year for which the update adjustment factor is to be determined; and
- Multiplying that quotient by 0.33.

As explained above, we are making final prospective redeterminations to the FY 1998 and FY 1999 SGRs in this final rule for the purposes of determining future physician fee schedule updates. We are also making prospective redeterminations to allowed expenditures for the period from April 1, 1997, to March 31, 1999, because allowed expenditures during this period are affected by revisions to the FY 1998 and FY 1999 SGRs. Further, allowed expenditures in all subsequent periods are based on allowed expenditures from this period and are also being prospectively redetermined. Table 1 shows annual and cumulative allowed expenditures for physicians' services from April 1, 1996, through the end of the current CY, including the transition period to a CY system that occurred in 1999, incorporating the redeterminations we are making to the SGRs for FY 1998 and FY 1999.

TABLE 1

Period	Annual allowed expenditures (billion)	Cumulative allowed expenditures (billion)	FY or CY SGR (percent)
4/1/96–3/31/97	$48.9	$48.9	N/A
4/1/97–3/31/98	50.5	99.4	FY 1998=3.2%
4/1/98–3/31/99	52.6	152.0	FY 1999=4.2%
1/1/99–3/31/99	13.3	(1)	FY 1999=4.2%
4/1/99–12/31/99	42.1	(2)	FY 2000=6.9%
1/1/99–12/31/99	55.3	194.1	FY 1999/FY 2000 [3]
1/1/00–12/31/00	59.4	253.4	CY 2000=7.3%
1/1/01–12/31/01	62.0	315.5	CY 2001=4.5%
1/1/02–12/31/02	67.6	383.1	CY 2002=9.0%

TABLE 1—Continued

Period	Annual allowed expenditures (billion)	Cumulative allowed expenditures (billion)	FY or CY SGR (percent)
1/1/03–12/31/03	72.8	455.9	CY 2003=7.6%

[1] Included in $152.0.
[2] Included in $194.1.
[3] **Note:** Allowed expenditures for the first quarter of 1999 are based on the FY 1999 SGR and allowed expenditures for the last three quarters of 1999 are based on the FY 2000 SGR. Allowed expenditures in the first year (April 1, 1996, through March 31, 1997) are equal to actual expenditures during the year. All subsequent figures are equal to quarterly allowed expenditure figures increased by the applicable SGR. Cumulative allowed expenditures are equal to the sum of annual allowed expenditures. We provide more detailed quarterly allowed and actual expenditure data on our Web site under the Medicare Actuary's publications at the following address: *http://www.cms.hhs.gov/statistics/actuary/.* We expect to update the web site with the most current information, including our estimate of the physician fee schedule update for 2004 on or about March 1.

Consistent with section 1848(d)(4)(E) of the Act, Table 1 includes our final revision of allowed expenditures for 2001 and prior periods, a recalculation of allowed expenditures for 2002, and our initial estimate of allowed expenditures for 2003. We will be making further revisions to the 2002 and 2003 SGRs and allowed expenditures later this year through the normal rulemaking process. To determine the update adjustment factor for March 1 to December 31, 2003, we are using cumulative allowed expenditures from April 1, 1996, through December 31, 2002, actual expenditures through December 31, 2002, and the SGR for 2003, as well as annual allowed and actual expenditures for 2002. We are using estimates of allowed expenditures for 2002 and 2003 that will subsequently be revised consistent with section 1848(d)(4)(E) of the Act. Because we are continuing to receive expenditure data for 2002, we are using an estimate for this period. Any differences between current estimates and final figures will be taken into account in determining the update adjustment factor for future years.

We are using figures from Table 1 in the statutory formula illustrated below:

$$\mathrm{UAF} = \frac{\mathrm{Target}_{02} - \mathrm{Actual}_{02}}{\mathrm{Actual}_{02}} \times .75 + \frac{\mathrm{Target}_{4/96\text{-}12/02} - \mathrm{Actual}_{4/96\text{-}12/02}}{\mathrm{Actual}_{02} \times \mathrm{SGR}_{03}} \times .33$$

UAF = Update Adjustment Factor
Target_{02} = Allowed Expenditures for 2002 or $67.6 billion
Actual_{02} = Estimated Actual Expenditures for 2002 = $69.1 billion
$\mathrm{Target}_{4/96–12/02}$ = Allowed Expenditures from 4/1/1996—12/31/2002 = $383.1 billion
$\mathrm{Actual}_{l4/96–12/02}$ = Estimated Actual Expenditures from 4/1/1996–12/31/2002 = $381.9 billion
SGR_{03} = 7.6 percent (1.076)

$$\frac{\$67.6 - \$69.1}{\$69.1} \times .75 + \frac{\$383.1 - \$381.9}{\$69.1 \times 1.076} \times .33 = -0.011$$

Section 1848(d)(4)(A)(ii) of the Act indicates that 1 should be added to the update adjustment factor determined under section 1848(d)(4)(B) of the Act. Thus, adding 1 to −0.011 makes the update adjustment factor equal to 0.989.

III. Medicare Sustainable Growth Rate

As discussed above, the SGR is an annual growth rate that applies to physicians' services paid for by Medicare. The use of the SGR is intended to control growth in aggregate Medicare expenditures for physicians' services. Payments for services are not withheld if the percentage increase in actual expenditures exceeds the SGR. Rather, the physician fee schedule update, as specified in section 1848(d)(4) of the Act, is adjusted based on a comparison of allowed expenditures (determined using the SGR) and actual expenditures. If actual expenditures exceed allowed expenditures, the update is reduced. If actual expenditures are less than allowed expenditures, the update is increased.

Section 1848(f)(2) of the Act specifies that the SGR is equal to the product of the following four factors:

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real GDP per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

In this final rule, we are making prospective redeterminations of the SGRs for FY 1998 and FY 1999 for the purposes of determining future physician fee schedule updates, including the update for 2003. We are also making a minor revision to the SGR for 2002.

A. Revised Sustainable Growth Rate for FY 1998

The revised FY 1998 SGR is 3.2 percent. Table 2 shows the estimated figures that we used to determine the FY 1998 SGR from the October 31, 1997, **Federal Register** (62 FR 59263), and the revised final figures.

TABLE 2

Statutory factors	10/31/97 estimate (percent)	Revised final (percent)
Fees	2.3 (1.023)	2.0 (1.020)
Enrollment	−2.4 (0.976)	−2.3 (0.977)
Real Per Capita GDP	1.1 (1.011)	3.2 (1.032)
Law and Regulation	0.6 (1.006)	0.3 (1.003)
Total	1.5 (1.015)	3.2 (1.032)

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for FY 1998

This factor was calculated as a weighted average of the FY 1998 fee increases for the different types of services included in the definition of physicians' services for the SGR that applied in FY 1998. Medical and other health services paid using the physician fee schedule accounted for approximately 91.5 percent of total allowed charges included in the SGR in FY 1998 and are updated using the MEI. The weighted average of the MEI that applied for the calendar years included in FY 1998 was 2.2 percent. (''Incident to'' drugs, which are also included in the SGR, are paid using the average wholesale price methodology. Consistent with the methodology used prior to 2003, we used the MEI as a proxy for growth in ''incident to'' drug prices for both the FY 1998 and FY 1999 SGRs). Diagnostic laboratory tests represent approximately 8.5 percent of Medicare allowed charges included in the SGR in FY 1998. The costs of these tests are typically updated by the CPI-U. Although section 1833(h)(2)(A)(ii)(IV) of the Act required a 0.0 percent update for laboratory services for 1998 to 2002, we used a 3.0 percent update for laboratory services in 1998 to determine the estimated SGR. We are now using a 0.0 percent update for laboratory services for the 9 months of calendar year 1998 that are included in FY 1998. The weighted average of the laboratory update applied in the calendar years included in FY 1998 was 0.8 percent. We determined a weighted average of the MEI and the laboratory updates that applied in FY 1998 using the following information:

TABLE 3

	Weight	Update
MEI	0.915	2.2
Laboratory	0.085	0.8
Weighted Average	1.000	2.0

After taking into account the elements described in table 3, we now estimate that the weighted-average increase in fees for physicians' services in FY 1998 under the SGR (before applying any legislative adjustments) was 2.0 percent. This figure is 0.3 percentage points lower than the estimate we made of this factor in the October 31, 1997, **Federal Register** (62 FR 59265) because of the revision we have made to the update for laboratory services.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees for FY 1998

This factor is our estimate of the percent change in the average number of fee-for-service enrollees from FY 1997 to FY 1998. Services provided to Medicare+Choice (M+C) plan enrollees are outside the scope of the SGR and are excluded from this estimate. Our actuaries have now determined that the average number of Medicare Part B fee-for-service enrollees actually decreased by 2.3 percent from FY 1997 to FY 1998. Table 4 illustrates how this figure was determined:

TABLE 4

	FY 1998	FY 1999
Overall	36.368 million	36.685 million
Medicare+Choice	4.463 million	5.510 million
Net	31.905 million	31.175 million
Percent Increase		−2.3 percent

As we have stated repeatedly, an important factor affecting fee-for-service enrollment is beneficiary enrollment in M+C plans. Because it is difficult to estimate the size of the M+C enrollee population before the start of a calendar year, we cannot predict how actual enrollment in M+C plans during the year will compare to our Actuary's estimates. Despite the difficulty in predicting these figures, the actual decrease in Medicare fee-for-service enrollment of 2.3 percent was almost identical to the Actuary's estimate in 1997 (−2.4 percent).

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth for FY 1998

Actual growth in real per capita GDP from FY 1997 to FY 1998 was 3.2 percent or 2.1 percentage points higher than the 1.1 percent estimate we made in 1997. The large difference between our estimate and the actual growth in real per capita GDP reflects the difficulty in predicting economic growth before the beginning of a year.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in FY 1998 Compared With FY 1997

The Balanced Budget Act (BBA) of 1997 established or changed coverage for screening mammography, colorectal cancer screening, and screening PAP smears. The BBA also included payment provisions related to nurse practitioners, clinical nurse specialists and physician assistants, Medicare secondary payer, and clinical diagnostic laboratory services. In 1997, we estimated that the net cost of these provisions would increase the FY 1998 SGR by 0.6

percent. Based on the lower than anticipated expenditures for screening mammography and nurse practitioners, clinical nurse specialists and physician assistants, we now estimate that the net cost of these provisions increased the FY 1998 SGR by 0.3 percent.

B. Revised Sustainable Growth Rate for FY 1999

The revised SGR for FY 1999 is 4.2 percent for the purposes of determining future physician fee schedule updates. Table 5 shows the estimated figures that we used to determine the FY 1999 SGR from the November 2, 1998, **Federal Register** (63 FR 59188), and the revised final figures.

TABLE 5

Statutory factors	11/2/98 estimate (percent)	Revised final (percent)
Fees	2.1 (1.021)	2.1 (1.021)
Enrollment	−4.3 (0.967)	−1.1 (0.989)
Real Per Capita GDP	1.3 (1.013)	3.3 (1.033)
Law and Regulation	0.7 (1.007)	−0.1 (0.999)
Total	−0.3 (0.997)	4.2 (1.042)

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for FY 1999

This factor was calculated as a weighted average of the FY 1999 fee increases for the different types of services included in the definition of physicians' services for the SGR that applied in FY 1999. Medical and other health services paid using the physician fee schedule accounted for approximately 92 percent of total allowed charges included in the SGR in FY 1999 and are updated using the MEI. The weighted average of the MEI that applied for the calendar years included in FY 1999 was 2.3 percent. Diagnostic laboratory tests represent approximately 8.0 percent of Medicare allowed charges included in the SGR in FY 1999. During FY 1999, section 1833(h)(2)(A)(ii)(IV) of the Act required a 0.0 percent update for laboratory services. We determined a weighted average of the MEI and the laboratory updates that applied in FY 1999 using the following information:

TABLE 6

	Weight	Update
MEI	0.920	2.3
Laboratory	0.080	0.0
Weighted Average	1.000	2.1

After taking into account the elements described in table 6, we now estimate that the weighted-average increase in fees for physicians' services in FY 1999 under the SGR (before applying any legislative adjustments) was 2.1 percent. This figure is unchanged from our original estimate of the weighted-average increase in fees for physicians' services in FY 1999.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees for FY 1999

This factor is our estimate of the percent change in the average number of fee-for-service enrollees from FY 1998 to FY 1999. Our actuaries have now determined that the average number of Medicare Part B fee-for-service enrollees (net of M+C enrollees) actually decreased by 1.1 percent. Table 7 illustrates how this figure was determined:

TABLE 7

	FY 1998 (million)	FY 1999 (million)
Overall	36.685	36.951
Medicare+Choice	5.510	6.109
Net	31.175	30.841
Percent Increase	.....	−1.1

As indicated above, the difficulty in predicting growth in M+C enrollment before the beginning of the year explains the 3.2 percentage point difference between our 1998 estimate of this factor (−4.3 percent) and the actual measured decrease.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth for FY 1999

Actual growth in real per capita GDP from FY 1998 to FY 1999 was 3.3 percent or 2.0 percentage points higher than the 1.3 percent estimate we made in 1997. The large difference between our estimate and the actual growth in real per capita GDP reflects the difficulty predicting economic growth before the beginning of a year.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in FY 1999 Compared With FY 1998

In the November 2, 1998, **Federal Register** (63 FR 59189) we increased the SGR by 0.7 percentage points to reflect the effects of the BBA on expenditures for physicians' services included in the SGR. However, we are now reducing the SGR by 0.1 percent for savings associated with BBA provisions. These savings are largely associated with the residual effects of the BBA's Medicare secondary payer provisions. We are also removing the costs associated with diabetes self-management training from the FY 1999 SGR because Medicare coverage associated with this service did not become effective until 2001.

C. Revised Sustainable Growth Rate for 2002

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting from Changes in Law or Regulations in 2002 Compared to 2001 Changes

Based on Medicare data from 2001, we have observed very little utilization of diabetes self-management training services. However, we believe it is likely that utilization of this new benefit increased in 2002 and are including an adjustment to the 2002 SGR for this factor. This adjustment will increase the law and regulation factor and the total SGR for 2002 by 0.2 percentage points relative to the figures included in the December 31, 2002, final rule (67 FR 80028). All other factors included in the 2002 SGR are unchanged at this time. As indicated earlier, we expect to make revisions to all figures included in the 2002 SGR for the final time later this year.

IV. Anesthesia and Physician Fee Schedule Conversion Factors

The 2003 physician fee schedule CF will be $36.7856. The 2003 national average anesthesia CF will be $17.05.

The specific calculations to determine the physician fee schedule and anesthesia CFs for 2003 are explained below.

• *Physician Fee Schedule Conversion Factor.*

Under section 1848(d)(1)(A) of the Act, the physician fee schedule CF is equal to the CF for the previous year multiplied by the update determined under section 1848(d)(4) of the Act. In addition, section 1848(c)(2)(B)(ii)(II) of the Act requires that changes to relative value units (RVUs) cannot cause the amount of expenditures to increase or decrease by more than $20 million from the amount of expenditures that would have been made if such adjustments had not been made. We implement this requirement through a uniform budget neutrality adjustment to the CF. There is one change that will require us to make an adjustment to the CF to comply with the budget neutrality requirement in section 1848(c)(2)(B)(ii)(II) of the Act. We are making a 0.04 percent reduction (0.9996) in the CF to account for the increase in anesthesia work resulting from the 5-year review.

We illustrate the calculation for the 2003 physician fee schedule CF in table 8:

TABLE 8

2002 Conversion Factor	$36.1992
2003 Update	1.0166
Budget-Neutrality Adjustment: Increase in Anesthesia Work	0.9996
2003 Conversion Factor	$36.7856

• Anesthesia Fee Schedule Conversion Factor.

As described in the December 31, 2002, final rule (67 FR 80032), anesthesia services do not have RVUs like other physician fee schedule services. For this reason, we are accounting for the changes to anesthesia work and practice expenses through a 1.6 percent (1.016) adjustment to the anesthesia fee schedule CF. In addition, we are also applying the physician fee schedule update and the budget neutrality adjustment for the increase in anesthesia work that also apply to the physician fee schedule CF. To determine the anesthesia fee schedule CF for 2003, we used the following figures:

TABLE 9

2002 Conversion Factor	$16.6055

TABLE 9—Continued

Adjustments for Work and Practice Expense	1.0106
2003 Update	1.0166
Budget-Neutrality Adjustment: Increase in Anesthesia Work	0.9996
2003 Conversion Factor	$17.0522

V. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on a proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. In addition, the Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. Furthermore, the Congressional Review Act (CRA) generally requires an agency to delay the effective date of a major rule by 60 days in order to allow for congressional review of the agency action.

We find it unnecessary to undertake notice-and-comment rulemaking prior to implementation of the revisions contained in this final rule. The revisions in this final rule constitute technical corrections to the final rule published on December 31, 2002, which are necessary in order to implement the Congress's decision to confer authority for CMS to make prospective redeterminations of the SGRs for the FY 1998 and FY 1999 but do not otherwise change the policies announced in the final rule. In the December 31, 2002, final rule we expressly indicated that we would make these changes in the event that the Congress conferred the requisite authority upon the agency prior to the March 1, 2003, effective date of the rule. Accordingly, because this final rule simply makes technical modifications to a final rule that has previously gone through notice-and-comment rulemaking, we do not believe that this final rule is subject to notice-and-comment or the 30-day delay in the effective date under the APA. Even if this rule were something other than a technical correction or amendment to the final rule published on December 31, 2002, we believe good cause would exist under the APA to waive the requirements of notice-and-comment rulemaking and the 30-day delay in the effective date.

As indicated above, on December 31, 2002, we announced that, effective March 1, 2003, Medicare physician fee schedule rates would be reduced by an average of 4.4 percent. We indicated in our December 31, 2002, final rule (67 FR 79966) that the 4.4 percent reduction would be inappropriate because it would occur under a statutory methodology that did not allow us to reflect actual, after-the-fact data from earlier years in the determination of the SGR and allowed expenditures. We stated the Department was unable to revise those estimates without further congressional action. (''The Department intends to work closely with Congress to develop legislation that could permit a positive update, and hopes that such legislation can be passed before the negative update takes effect.'' Since we published the December 31, 2002, final rule, as described above, the Congress has taken action that evinces the Congress's intent to permit revisions of all prior FY SGRs for the purposes of allowing for prospective application of those revisions to future physician fee schedule updates (that is, to the 2003 physician fee schedule update.)

To go through further notice-and-comment rulemaking at this time would be unnecessary, impracticable, and contrary to the public interest because, in our December 31, 2002, final rule we unequivocally expressed our intent to prospectively redetermine the SGRs for FYs 1998 and 1999 in order to establish the 2003 CF. ''Because the Department would adopt a change in the formula that determines the physician update if the law permitted it, we have examined how proper adjustments to past data could result in a positive update.'' To go through notice-and-comment rulemaking at this point, when we have already stated unequivocally our intent to recompute the CF for 2003 if the Congress were to act to permit a prospective redetermination of the SGRs for fiscal years 1998 and 1999, would be unnecessary and contrary to the public interest.

Because the Department wished to make changes to the physician fee schedule update promptly in the event that the Congress acted legislatively, our December 31, 2002, final rule specifically requested public comment on revisions to the estimates that were used to establish the FY 1998 and FY 1999 SGRs, if the statute were to be amended to provide us with this authority. Because we have already requested public comments on the issues included in this final rule, we believe it is unnecessary and contrary to

the public interest to engage in further notice-and-comment rulemaking.

The comment period for the December 31, 2002, rule has not yet closed, but in the event we receive any comments in response to our December 31, 2002, final rule, we will address them in a subsequent publication in the **Federal Register**. No comments have been received to date.

Further, we believe engaging in notice-and-comment rulemaking and delaying the effective date of this final rule would be contrary to the public interest because the Congress specifically sought to avert the negative update to the physician fee schedule for 2003 that we announced on December 31, 2002, by enacting a law conferring upon CMS the authority to reflect actual, after-the-fact data from earlier fiscal years in the determination and allowed expenditures for the purposes of determining future physician fee schedule updates: the very authority, as previously stated in the **Federal Register**, that we would need to revise our prior estimates of the FY 1998 and FY 1999 SGRs to avoid the 4.4 percent reduction in rates on March 1 and establish a 1.6 percent increase in the physician fee schedule CF. Any delay in implementation of this 1.6 percent increase would be contrary to the public interest of the CAR and would run precisely counter to the intent of the Congress in enacting section 402(a) of the CAR to enable CMS to ''make corrections to data errors in the physician payment formula for past fiscal years.'' (*See* House Rpt, 108–10). Moreover a delay in enacting this final rule could adversely affect the provision of services to Medicare beneficiaries because any delay in implementation of the payment increases for physician services provided under the Medicare program may have an adverse impact on Medicare beneficiaries' access to important healthcare services.

Finally, we also note that notice-and-comment rulemaking is not required in this instance because section 1871(b)(2) of the Act provides that when an effective date is within 150 days of enactment of a law, the notice-and-comment requirement does not apply.

With respect to the requirement of a 60-day delay in the effective date of any final rule pursuant to the CRA, *see* 5 U.S.C. section 801, the CRA provides that the 60-day delayed effective date shall not apply to any rule ''which an agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. section 808(2)). For the reasons set forth above, we believe that additional notice-and-comment rulemaking on this subject would be impracticable, unnecessary, or contrary to the public interest. Therefore, we do not believe that the CRA requires a 60-day delay in the effective date of this final rule. Moreover, the Congress had 60 days to review the December 31, 2002, final rule. The Congress responded to that final rule by enacting a law to clarify the fee schedule update mechanism described and set forth in the December 31, 2002, final rule. Because we are incorporating this very statutory clarification as the basis for this new final rule, we believe it would be contrary to the CRA and the public interest to provide yet another 60-day review period under the CRA.

VI. Collection of Information Requirements

This document does not impose information collection and record keeping requirements. Consequently, it does not need review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for final rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would 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). We estimate that the changes to the physician fee schedule update will increase Medicare expenditures for physicians' services by $1.1 billion in FY 2003, $2.0 billion in FY 2004 and $2.8 billion in FY 2005 or an estimated $15.7 billion over 5 years and $49.6 billion over ten years. Therefore, this rule is considered to be a major rule because it is economically significant, and, thus, we have prepared a regulatory impact analysis.

The RFA requires that we analyze regulatory options for small businesses and other entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a statement in support of the objectives underlying the action being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives with less significant adverse economic impact on the small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area or New England County Metropolitan Area (NECMA) and has fewer than 100 beds.

For purposes of the RFA, physicians, non-physician practitioners, and suppliers, are considered small businesses if they generate revenues of $8.5 million or less. Approximately 96 percent of physicians are considered to be small entities. There are about 700,000 physicians, other practitioners and medical suppliers that receive Medicare payment under the physician fee schedule.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not result in any unfunded mandates for State, local or tribal governments or the private sector, as defined by section 202.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule in accordance with Executive Order 13132

and have determined that this regulation would not have any significant impact on the rights, roles, or responsibilities of State, local, or tribal governments.

We have prepared the following analysis, which together with the rest of this preamble meets all assessment requirements. It explains the rationale for, and purposes of, the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we are using to minimize the burden on small entities. As indicated elsewhere, we are increasing the physician fee schedule CF for March 1 to December 31, 2003, by 1.6 percent. The provisions of this rule are changing only Medicare payment rates for physician fee schedule services, and are not imposing any new regulatory requirements that will impose a burden on small entities.

Table 10 shows the average change in Medicare payment by specialty. It shows the impact of changes in RVUs, the physician fee schedule update, the combined impact, and includes the effect of corrections made to the RVUs for several procedure codes. The table is analogous to Table 24 in the December 31, 2002, final rule (67 FR 80037) but includes the revised physician fee schedule update. The tables reflect application of the revised CF for the full calendar year. However, because the increased CF is only in effect from March 1 to December 31, 2003, the actual impacts will be somewhat less than those shown here.

BILLING CODE 4120–01–P

Table 10
Estimated Impact All Changes
on Total Medicare Allowed Charges
by Specialty

Category	Medicare Allowed Charges ($ in Billions)	5 Year Review/ RVU Changes	Physician Fee Schedule Update	Total
Physicians:				
ALLERGY/IMMUNOLOGY	0.14	2%	1.6%	3%
ANESTHESIOLOGY	1.24	1%	1.6%	3%
CARDIAC SURGERY	0.28	-1%	1.6%	0%
CARDIOLOGY	4.75	1%	1.6%	3%
CLINICS	2.57	0%	1.6%	2%
DERMATOLOGY	1.55	-4%	1.6%	-2%
EMERGENCY MEDICINE	1.17	0%	1.6%	1%
ENDOCRINOLOGY	0.21	0%	1.6%	2%
FAMILY PRACTICE	3.43	0%	1.6%	2%
GASTROENTEROLOGY	1.34	-1%	1.6%	1%
GENERAL PRACTICE	0.84	0%	1.6%	2%
GENERAL SURGERY	1.98	0%	1.6%	1%
GERIATRICS	0.08	0%	1.6%	1%
HEMATOLOGY/ONCOLOGY	0.95	2%	1.6%	3%
INFECTIOUS DISEASE	0.28	-1%	1.6%	1%
INTERNAL MEDICINE	6.77	0%	1.6%	2%
INTERVENTIONAL RADIOLOGY	0.14	-1%	1.6%	1%
NEPHROLOGY	1.09	-4%	1.6%	-2%
NEUROLOGY	0.91	2%	1.6%	4%
NEUROSURGERY	0.38	-1%	1.6%	1%
OBSTETRICS/GYNECOLOGY	0.48	1%	1.6%	3%
OPHTHALMOLOGY	3.86	-1%	1.6%	1%
ORTHOPEDIC SURGERY	2.40	-2%	1.6%	0%
OTOLARNGOLOGY	0.66	0%	1.6%	1%
PATHOLOGY	0.69	0%	1.6%	2%
PEDIATRICS	0.05	1%	1.6%	2%
PHYSICAL MEDICINE	0.49	2%	1.6%	4%
PLASTIC SURGERY	0.25	0%	1.6%	2%
PSYCHIATRY	1.00	-1%	1.6%	1%
PULMONARY DISEASE	1.12	1%	1.6%	2%
RADIATION ONCOLOGY	0.81	1%	1.6%	3%
RADIOLOGY	3.47	1%	1.6%	3%

RHEUMATOLOGY	0.30	0%	1.6%	2%
THORACIC SURGERY	0.43	-1%	1.6%	1%
UROLOGY	1.36	2%	1.6%	4%
VASCULAR SURGERY	0.37	1%	1.6%	3%
Other Practitioners:				
AUDIOLOGIST	0.02	3%	1.6%	4%
CHIROPRACTOR	0.50	-1%	1.6%	1%
CLINICAL PSYCHOLOGIST	0.40	0%	1.6%	2%
CLINICAL SOCIAL WORKER	0.23	-1%	1.6%	1%
NURSE ANESTHETIST	0.38	1%	1.6%	3%
NURSE PRACTITIONER	0.30	0%	1.6%	1%
OPTOMETRY	0.54	-1%	1.6%	1%
PHYSICAL/OCCUPATIONAL THERAPY	0.61	2%	1.6%	4%
PHYSICIANS ASSISTANT	0.23	-1%	1.6%	1%
PODIATRY	1.17	0%	1.6%	1%
Suppliers:				
DIAGNOSTIC TESTING FACILITY	0.51	4%	1.6%	5%
INDEPENDENT LABORATORY	0.43	4%	1.6%	5%
PORTABLE X-RAY SUPPLIER	0.07	4%	1.6%	6%
ALL OTHER	0.29	-1%	1.6%	0%
ALL PHYSICIAN FEE SCHEDULE	53.53	0%	1.6%	2%

Table 11 shows the difference between 2002 and 2003 payment rates (March 1 to December 31) for selected high volume procedures. This table shows the combined impact of changes in RVUs and the physician fee schedule update on total payment for each procedure. The table is analogous to Table 25 in the December 31, 2002, final rule (67 FR 80037) with the revised physician fee schedule update. There are separate columns that show the change in the facility rates and the nonfacility rates. For an explanation of facility and non-facility practice expense refer to § 414.22(b)(5)(i).

Table 11

Impact of Final Rule and Physician Fee Schedule Update

on Medicare Payment for Selected Procedures

			Non-Facility			Facility		
HCPCS	MOD	DESC	Old	New	% Change	Old	New	% Change
11721		Debride nail, 6 or more	$ 36.92	$ 37.52	2%	$ 28.96	$ 29.06	0%
17000		Destroy benign/premlg lesion	$ 62.62	$ 61.43	-2%	32.94	$ 33.11	1%
27130		Total hip arthroplasty	N/A	N/A	N/A	1,452.31	$1,343.41	-7%
27236		Treat thigh fracture	N/A	N/A	N/A	1,113.85	$1,068.99	-4%
27244		Treat thigh fracture	N/A	N/A	N/A	1,137.38	$1,155.44	2%
27447		Total knee arthroplasty	N/A	N/A	N/A	1,514.21	$1,445.67	-5%
33533		CABG, arterial, single	N/A	N/A	N/A	1,827.34	$1,799.18	-2%
35301		Rechanneling of artery	N/A	N/A	N/A	1,061.36	$1,073.77	1%
43239		Upper GI endoscopy, biopsy	$354.75	$337.69	-5%	154.93	$ 155.97	1%
45385		Lesion removal colonoscopy	$571.22	$545.53	-4%	287.78	$ 290.61	1%
66821		After cataract laser surgery	$229.50	$229.17	0%	213.94	$ 212.99	0%
66984		Cataract surg w/iol, 1 stage	N/A	N/A	N/A	669.32	$ 670.60	0%
67210		Treatment of retinal lesion	$603.08	$604.39	0%	546.61	$ 548.47	0%
71010	26	Chest x-ray	$ 9.05	$ 9.20	2%	9.05	$ 9.20	2%
71020	26	Chest x-ray	$ 11.22	$ 11.04	-2%	11.22	$ 11.04	-2%
76091		Mammogram, both breasts	$ 90.50	$ 94.17	4%	N/A	N/A	N/A
76091	26	Mammogram, both breasts	$ 43.44	$ 44.14	2%	43.44	$ 44.14	2%
76092		Mammogram, screening	$ 81.81	$ 82.77	1%	N/A	N/A	N/A
76092	26	Mammogram, screening	$ 35.48	$ 36.05	2%	35.48	$ 36.05	2%
77427		Radiation tx management, x5	$167.96	$168.11	0%	167.96	$ 168.11	0%
78465	26	Heart image (3d), multiple	$ 74.93	$ 75.41	1%	74.93	$ 75.41	1%
88305	26	Tissue exam by pathologist	$ 40.54	$ 40.83	1%	40.54	$ 40.83	1%
90801		Psy dx interview	$144.80	$148.98	3%	137.19	$ 140.52	2%
90806		Psytx, off, 45-50 min	$ 95.93	$ 96.38	0%	91.22	$ 92.70	2%
90807		Psytx, off, 45-50 min w/e&m	$103.53	$102.63	-1%	98.82	$ 100.06	1%
90862		Medication management	$ 51.04	$ 50.76	-1%	46.33	$ 47.82	3%
90921		ESRD related services, month	$273.30	$262.28	-4%	273.30	$ 262.28	-4%
90935		Hemodialysis, one evaluation	N/A	N/A	N/A	76.38	$ 71.36	-7%
92004		Eye exam, new patient	$123.44	$123.60	0%	87.96	$ 88.29	0%
92012		Eye exam established pat	$ 61.18	$ 61.43	0%	35.84	$ 36.05	1%
92014		Eye exam & treatment	$ 91.22	$ 90.86	0%	58.64	$ 58.86	0%
92980		Insert intracoronary stent	N/A	N/A	N/A	790.59	$ 800.45	1%
92982		Coronary artery dilation	N/A	N/A	N/A	584.26	$ 594.46	2%
93000		Electrocardiogram, complete	$ 25.34	$ 26.12	3%	N/A	N/A	N/A
93010		Electrocardiogram report	$ 9.05	$ 8.83	-2%	9.05	$ 8.83	-2%
93015		Cardiovascular stress test	$ 99.91	$104.10	4%	N/A	N/A	N/A

93307	26	Echo exam of heart	$ 48.14	$ 48.19	0%	48.14	$ 48.19	0%
93510	26	Left heart catheterization	$230.59	$231.38	0%	230.59	$ 231.38	0%
98941		Chiropractic manipulation	$ 35.48	$ 35.68	1%	31.13	$ 31.27	0%
99202		Office/outpatient visit, new	$ 61.54	$ 62.54	2%	45.61	$ 45.98	1%
99203		Office/outpatient visit, new	$ 91.95	$ 92.70	1%	69.50	$ 70.26	1%
99204		Office/outpatient visit, new	$130.68	$132.06	1%	102.81	$ 103.74	1%
99205		Office/outpatient visit, new	$166.15	$168.48	1%	136.47	$ 137.58	1%
99211		Office/outpatient visit, est	$ 20.27	$ 20.60	2%	8.69	$ 8.83	2%
99212		Office/outpatient visit, est	$ 36.20	$ 36.42	1%	23.17	$ 23.17	0%
99213		Office/outpatient visit, est	$ 50.32	$ 51.13	2%	34.03	$ 34.58	2%
99214		Office/outpatient visit, est	$ 78.91	$ 79.82	1%	56.11	$ 56.65	1%
99215		Office/outpatient visit, est	$115.84	$116.98	1%	90.50	$ 91.23	1%
99221		Initial hospital care	N/A	N/A	N/A	65.16	$ 65.85	1%
99222		Initial hospital care	N/A	N/A	N/A	108.24	$ 109.25	1%
99223		Initial hospital care	N/A	N/A	N/A	150.95	$ 151.92	1%
99231		Subsequent hospital care	N/A	N/A	N/A	32.58	$ 32.74	0%
99232		Subsequent hospital care	N/A	N/A	N/A	53.57	$ 54.07	1%
99233		Subsequent hospital care	N/A	N/A	N/A	76.38	$ 76.88	1%
99236		Observ/hosp same date	N/A	N/A	N/A	214.66	$ 216.67	1%
99238		Hospital discharge day	N/A	N/A	N/A	66.24	$ 69.16	4%
99239		Hospital discharge day	N/A	N/A	N/A	90.86	$ 93.80	3%
99241		Office consultation	$ 47.06	$ 47.45	1%	33.30	$ 33.11	-1%
99242		Office consultation	$ 87.24	$ 88.29	1%	68.05	$ 68.05	0%
99243		Office consultation	$115.84	$116.61	1%	90.14	$ 90.49	0%
99244		Office consultation	$164.34	$165.90	1%	133.58	$ 134.27	1%
99245		Office consultation	$212.85	$215.20	1%	177.01	$ 177.67	0%
99251		Initial inpatient consult	N/A	N/A	N/A	34.75	$ 34.95	1%
99252		Initial inpatient consult	N/A	N/A	N/A	69.86	$ 70.26	1%
99253		Initial inpatient consult	N/A	N/A	N/A	95.20	$ 96.01	1%
99254		Initial inpatient consult	N/A	N/A	N/A	136.83	$ 137.95	1%
99255		Initial inpatient consult	N/A	N/A	N/A	188.60	$ 189.81	1%
99261		Follow-up inpatient consult	N/A	N/A	N/A	21.72	$ 22.07	2%
99262		Follow-up inpatient consult	N/A	N/A	N/A	43.44	$ 43.77	1%
99263		Follow-up inpatient consult	N/A	N/A	N/A	64.80	$ 65.11	0%
99282		Emergency dept visit	N/A	N/A	N/A	26.43	$ 26.85	2%
99283		Emergency dept visit	N/A	N/A	N/A	59.37	$ 60.33	2%
99284		Emergency dept visit	N/A	N/A	N/A	92.67	$ 94.17	2%
99285		Emergency dept visit	N/A	N/A	N/A	144.80	$ 146.77	1%
99291		Critical care, first hour	$208.87	$210.05	1%	198.37	$ 200.11	1%
99292		Critical care, addl 30 min	$108.24	$107.78	0%	98.82	$ 100.06	1%
99301		Nursing facility care	$ 70.23	$ 71.00	1%	60.09	$ 61.06	2%
99302		Nursing facility care	$ 95.57	$ 96.75	1%	80.72	$ 81.30	1%
99303		Nursing facility care	$118.73	$119.92	1%	100.27	$ 101.16	1%
99311		Nursing fac care, subseq	$ 40.18	$ 40.83	2%	30.05	$ 30.53	2%
99312		Nursing fac care, subseq	$ 61.90	$ 62.54	1%	49.95	$ 50.40	1%

99313	Nursing fac care, subseq	$ 84.34	$ 85.71	2%	70.95	$ 71.73	1%
99348	Home visit, est patient	$ 73.85	$ 74.31	1%	N/A	N/A	N/A
99350	Home visit, est patient	$166.52	$167.74	1%	N/A	N/A	N/A
G0008	Admin influenza virus vac	$ 3.98	$ 7.72	94%	N/A	N/A	N/A
G0009	Admin pneumococcal vaccine	$ 3.98	$ 7.72	94%	N/A	N/A	N/A
G0010	Admin hepatitis b vaccine	$ 3.98	$ 7.72	94%	N/A	N/A	N/A

BILLING CODE 4120–01–C

Impact on Beneficiaries

We do not believe that any problems regarding beneficiary access to care will result from changes in this rule. Moreover, it is possible that potential problems regarding beneficiary access to care that could have resulted from the 4.4 percent reduction contained in the December 31, 2002, final rule (67 FR 79966) will be alleviated by the increase in payment being announced in this rule. Nevertheless, we believe it remains important to continue our efforts to monitor beneficiary access to care.

Any change in Medicare payments will have an impact on beneficiary cost-sharing. If the 4.4 percent reduction were to go into effect and beneficiary access to care were reduced, it is possible that beneficiaries would have lower coinsurance costs but might have problems with access to services (for example, whether physicians continue to see existing or new Medicare beneficiaries). Because we do not know the impact of the 4.4 percent reduction on beneficiary access to care, it is difficult to estimate the effect on out-of-pocket costs. Assuming beneficiary access to care were unaffected, we estimate that the increase in the 1.6 percent increase in the CF compared to a 4.4 percent reduction would increase beneficiary coinsurance liabilities by approximately $300 million in FY 2003 or about $80 million more than if the rates applied in 2002 remained in effect for the remainder of 2003. Some of the increased costs of beneficiary coinsurance may be incurred by the many policies that supplement Medicare. We would note that the 1.6 percent increase will only marginally increase out-of-pocket costs for beneficiaries that do not have any insurance other than Medicare.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this regulation.

This final rule is issued under the authority of sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 19, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: February 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–4862 Filed 2–26–03; 11:47 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 214

Defense Federal Acquisition Regulation Supplement; Technical Amendments; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 68 FR 7438–7441 on February 14, 2003, making technical amendments to the Defense Federal Acquisition Regulation Supplement. This correction is needed because the February 14, 2003, final rule contained an incorrect paragraph designation.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

Correction

In the issue of Friday, February 14, 2003, on page 7439, in the third column, amendatory instruction 16 and the corresponding regulatory text are corrected by removing ''(vii)'' and adding in its place ''(viii)''.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–4699 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030108004–3044–02; ID 010303B]

RIN 0648–AQ28

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This final rule implements management measures for the 2003 fishing year, including a days-at-sea (DAS) adjustment, and continuation of a Sea Scallop Area Access Program (Area Access Program) for 2003. The intent of this action is to achieve the goals and objectives of the FMP under the Magnuson-Stevens Fishery Conservation and Management Act and to achieve optimum yield (OY) in the scallop fishery. In addition, this final rule includes regulatory text that codifies an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS (Regional Administrator) in 2001.

DATES: Effective March 1, 2003.

ADDRESSES: Copies of Framework Adjustment 15, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. A copy of the Final Regulatory Flexibility Analysis (FRFA) is available from Patricia A. Kurkul,

Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 78–281–9135; e-mail *peter.christopher @noaa.gov*.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Council adopted Framework 15 to the FMP, which includes annual management measures for the 2003 fishing year (March 1, 2003, through February 29, 2004). On January 16, 2003, NMFS published a proposed rule for Framework 15 (68 FR 2303). Framework 15 increases the annual DAS allocation and extends the Area Access Program in the Hudson Canyon and Virginia Beach Access Areas (Access Areas) for 2003. The only modification to the measures that have been in effect for the 2002 fishing year is an increase in the possession limit allowed to vessels participating in the Area Access Program. Framework 15 was developed during the latter stages of development of Amendment 10 to the FMP (Amendment 10) because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. Additional details concerning the justification for and development of Framework 15 and the implementing regulations were provided in the preamble to the proposed rule and are not repeated here.

Framework 15 increases the annual DAS allocation from the DAS allocations scheduled to take effect in 2003 under Amendment 7 to the FMP. Framework 15 implements 120 full-time, 48 part-time, and 10 occasional DAS, which is an increase from the scheduled DAS of 45, 18, and 4 DAS allocations for full-time, part-time, and occasional vessels, respectively. These DAS allocations in Framework 15 are the same as the DAS that have been implemented since 1999. Framework 15 also extends the Area Access Program in the Access Areas for 2003.

The DAS allocations in Framework 15 are intended to achieve a fishing mortality rate (F) that is consistent with the F target in the FMP. The DAS allocations in Framework 15 are expected to achieve an F of approximately 0.155 for the resource overall. Although this F is still well below the F target, it reduces the potential for more damaging effects on the scallop resource and for impacts on the physical environment that may be associated with higher DAS allocations.

The increase in the Area Access Program possession limit is intended to create an incentive for vessels to fish within the Area Access Program and is consistent with increasing catch rates in the areas. Due to stock abundance in the Areas, a higher level of F can occur in the Areas. This higher F allows for more trips and a higher trip limit, thereby creating more opportunity for vessels to fish in the Areas. The increased opportunity to fish in the Areas should create an incentive for vessels to utilize the Area Access Program where the scallop resource can be harvested at higher rates, thereby removing fishing pressure from other areas that may be more sensitive to fishing pressure.

Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, for the 2003 fishing year. This represents an increase over the DAS allocations that would otherwise have become effective March 1, 2003, under Amendment 7 to the FMP (i.e., 45 full-time, 18 part-time, and 4 occasional). The 120, 48, and 10 DAS allocations have been in place each year since 1999, due to better conditions in the scallop resource than were anticipated in Amendment 7.

This final rule continues the Area Access Program that was implemented in the 2001 and 2002 fishing years. The Area Access Program allows controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of the Area Access Program is to prevent the uncontrolled harvest of a sensitive portion of the scallop resource while increasing the social benefits by allowing all limited access vessels the opportunity to fish in the Areas without creating a derby fishery, thereby increasing economic benefits by promoting an orderly fishery.

The 2003 Area Access Program begins on March 1, 2003. The 2003 Area Access Program will end when the total allowable catch (TAC) allocated to the Area Access Program is caught, or when vessels have used up their allocated number of trips.

The Area Access Program includes a TAC of 17.06 million lb (7,740 mt) and 0.23 million lb (105 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs are expected to achieve an F of 0.32 in each of the two areas. Although this F exceeds the target F of 0.22 for the scallop fishery, it is not expected to jeopardize the rebuilding potential for the Mid-Atlantic stock. Rather, it is anticipated that the higher F for the Access Areas will allow greater levels of effort and catch within the Access Areas, thereby reducing effort and catch in other areas of the Mid-Atlantic. Therefore, overall F for sea scallops in the 2003 fishing year is expected to be 0.155. This anticipated impact on the distribution of fishing effort is expected to continue to provide for rebuilding of the Mid-Atlantic scallop stock and the scallop resource as a whole.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips into the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip into either of the Areas will count as one of the allowed trips. Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1, and only two of the three allocated trips before June 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category are allowed to conduct only one trip into the Area of their choice. Participating scallop vessels are allowed to possess and land from the Areas up to 21,000 lb (9,525.4 kg) of scallop meats per trip.

After taking into account data on the number of eligible vessels participating, and on the total number of trips taken, the Regional Administrator will consider adjusting the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and, on or after October 1, 2003, will consider allocating one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips that may be allocated on or after October 1, 2003, that vessel must have started at least one Area Access Program trip prior to September 1, 2003. Vessels with

occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less by a vessel fishing in the Area Access Program will be counted as 10 DAS. Any trip of over 10 DAS will be counted as the actual DAS used (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The purpose of the minimum 10 DAS count is to reduce the number of DAS that are available for use by vessels to fish in other areas, thereby reducing fishing mortality on the scallop resource overall by potentially reducing the number of scallops caught under DAS.

Vessels are allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10–inch (25.40–cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program are required to have installed on board an operational vessel monitoring system (VMS) unit that meets the minimum performance criteria as specified at § 648.9(b). Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit and would, therefore, be required to install an approved VMS unit in order to participate in the Area Access Program. Scallop vessels planning to fish in the Area Access Program are required to so declare by notifying the Regional Administrator through the VMS as described below.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25). This notification requirement facilitates placement of observers and provides for an estimate of the number of potential Area Access Program participating vessels in order to make preliminary projections of potential TAC harvest rates.

Vessel operators are required to report the following information to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the anticipated number of trips to be taken in the area in question.

In addition, for the purpose of selecting vessels for observer deployment, a vessel's operator is required to provide notice to NMFS of the time, port of departure, and specific Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Area Access Program.

On the day the vessel leaves port to fish under the Area Access Program, the vessel owner or operator must declare into the Program through the VMS. Declaration into the fishery allows for more accurate and timely monitoring of the catch in the fishery.

The operator of each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel's operator is required to report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessel operators on vessels carrying an observer are required to provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed on that trip.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) shell-stock or 400 lb (181.4 kg) of meats of shell stock when outside the Access Areas. This limit for shell stock is considered part of the overall Area Access Program possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock helps satisfy a market for large, whole scallops, without compromising the enforceability of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Access Areas, except they are allowed to possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program are allowed to transit the Access Areas with more than these possession limits on board, provided their gear is properly stowed according to § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the Access Areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Access Areas pursuant to the applicable gear stowage requirements specified in § 648.23. A new dredge gear stowage requirement included in this rule improves safety on board vessels transiting to and from the Access Areas. Finally, to ensure effective enforcement of the Area Access Program measures, vessels participating in the Area Access Program must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended 10–percent observer coverage for the Hudson Canyon Access Area and 20–percent observer coverage for the Virginia Beach Access Area. Observers will obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner is responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 155 mt or 2 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers may not exceed a value equal to 2 percent of the overall scallop TAC. One percent of the scallop TAC for both the Hudson Canyon and Virginia Beach Access Areas has been set aside to pay for observers. Similarly, a value equal to 1 percent of the overall TAC has been added on to the amount of observer TAC, also to help vessels pay for the cost of observers. The allocation of 1 percent set-aside and 1 percent

additional observer TAC is consistent with the Area Access Program in 2001 and 2002, as well as the Georges Bank Closed Area Exemption Program. A TAC set-aside of 1 percent to fund research is also included as part of the Area Access Program. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs are limited, by area, up to 77 mt or 1 mt for the Hudson Canyon and Virginia Beach Access Areas, respectively. This research program for the Access Areas is modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice published in the **Federal Register** on January 17, 2003 (68 FR 2527), provides information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements.

Finally, this final rule codifies a scallop dredge gear stowage provision that was established by the Regional Administrator in 2001. The new provision eliminates the need for vessel operators to disconnect towing wires and reel them fully onto the winch in order for the gear to be considered properly stowed. Reconnecting the wires at sea was determined to be dangerous, particularly in rough seas. The Regional Administrator has the authority to establish new gear stowage provisions through notification through a permit holder letter. Subsequent codification of the provision ensures proper implementation of the requirement.

A discussion of comments received in response to the proposed rule for Framework 15, and their responses, follows.

Comments and Responses

Two comments were received on the proposed rule for Framework 15. While one comment was generally in support of the action, the other opposed it. Many of the specific issues raised in each comment highlight issues that were analyzed in Framework 15. Many of the issues and analyses included in Framework 15 are summarized in the following responses and the commenters and other interested members of the public should refer to the Framework 15 document for a more detailed discussion of the analyses (See **ADDRESSES** for a copy of Framework 15).

Comment 1: The Fisheries Survival Fund (FSF) commented in support of the measures contained in Framework 15, and urged timely implementation in order to avoid ''economically devastating'' default DAS reductions. The FSF urged NMFS to give more emphasis in the final rule to the habitat and bycatch benefits of the 120–DAS allocation compared to the higher DAS allocation of 140 DAS that was calculated to be more consistent with the FMP's target F.

Response: NMFS acknowledges FSF's comments in support of Framework 15. With respect to the benefits of implementing 120 full-time DAS versus other DAS alternatives, NMFS has relied on the comparisons of costs and benefits of the various alternatives included in Framework 15. The habitat and bycatch benefits cannot be precisely determined because it is not possible to predict fully the behavior of the fishing fleet in response to these regulations. The amount of habitat and bycatch impact depends not only on the total fleet activity, but also on the distribution of fishing activity relative to the distribution of vulnerable habitats and bycatch. While less fishing usually means fewer impacts, and distribution of habitat or bycatch is known at a broad scale, the response of the fleet to changes in resource distribution and different DAS allocations is not well known. If reductions in DAS allocations were to cause industry to concentrate effort in less remote but more sensitive areas with respect to habitat and bycatch, then the benefits of lower DAS would be reduced. The Council recommended, and NMFS concurs, that the 120 full-time DAS allocation (48 part-time and 10 occasional DAS), combined with the Area Access Program, as a 1–year action, complies best with the goals and objectives of the Scallop FMP. Given the uncertainties of the fleet response to this action, the action is intended to balance conservation of the scallop resource and the economic benefits derived from fishing while minimizing, to the extent practicable, the known adverse effects on the environment, including habitat and species caught as bycatch, in the scallop fishery.

Comment 2: The FSF urged NMFS to reconsider industry recommendations for measures to address the issue of trips into the Area Access Program that are terminated unexpectedly. They advocate more flexibility in determining if such ''broken'' trips should be charged fewer DAS than the 10 DAS that are automatically charged under the Area Access Program. The FSF believes this is required by National Standard 10 of the Magnuson-Stevens Act, concerning safety at sea.

Response: NMFS understands the problems that arise as a result of the automatic deduction of 10 DAS for Area Access trips, but the Council, working within the short-term context of this action, was unable to develop measures necessary to address broken trips that are clearly understood and can be effectively administered. There are alternatives being developed in Amendment 10 to address this concern. In the meantime, NMFS has determined that this concern can be addressed sufficiently through ad hoc determinations for each instance of a broken trip.

Comment 3: Oceana and the Conservation Law Foundation (Oceana/CLF) commented that Framework 15 allows overfishing in the open areas on Georges Bank and in the Mid-Atlantic. Oceana/CLF contends that the DAS alternative selected (120 full-time, 48 part-time, and 10 occasional DAS) does not constitute a sustainable management strategy for the sea scallop resource and is, therefore, inconsistent with the Magnuson-Stevens Act requirements to prevent overfishing. In addition, Oceana/CLF commented that overfishing in the Mid-Atlantic continues, despite actions under previous Frameworks that were intended to redirect effort into controlled access programs, but failed to do so. Oceana/CLF asserts that NMFS should adequately justify its support of the 120 DAS (''risk-prone'') alternative and better elaborate on the long-term effects of the action in the environmental analyses.

Response: The FMP and overfishing definition do not consider the open and closed areas separately (with the exception of the special program for the Area Access Program). While projections indicate that the DAS allocations, if analyzed according to discrete areas, may result in overexploitation of scallops in some areas, Framework 15 is based on analyzing fishing mortality on the resource as a whole. Under this analysis, the fishery overall would not exceed the F target of 0.22, due in part to continued large concentrations of scallops that cannot be fished in the Georges Bank and Southern New England groundfish closed areas.

The analyses in Framework 15 indicate that the 120–DAS alternative complies with the Magnuson-Stevens Act and achieves the goals and objectives of the FMP. Framework 15 clearly demonstrates that overfishing will not occur on the resource as a whole and that F will likely be less than Amendment 7 targets. The current condition of the scallop resource is rebuilt for both the Georges Bank and Mid-Atlantic stocks. To fish at the DAS level scheduled in Amendment 7 would cause the fishing level to fall

unnecessarily well below OY and cause substantial adverse economic and social effects on the scallop industry under rebuilt resource conditions.

The F in the Mid-Atlantic continues to be high, despite efforts in recent years to reduce the effective F through the Area Access Program. However, the FMP does not prescribe different management measures for each stock, consistent with National Standard 3. To enhance the incentive to fish in the Access Areas, Framework 15 allows for an increase in the F for the Area Access Program, which results in an increase in the possession limit. It is expected that this enhanced incentive will reduce fishing pressure in the Mid-Atlantic region outside of the Access Areas.

Comment 4: Oceana/CLF commented that the 100 DAS alternative has greater environmental, biological, and economic benefits than the 120–DAS alternative. Oceana/CLF commented that it is unclear what rationale NMFS is using to justify its proposed action of 120 DAS, when the analyses in Framework 15 clearly support the 100–DAS allocation alternative, touting the following environmental, biological and economic benefits: (1) Reduced unsustainable fishing mortality in the open fishing areas; (2) higher long-term net benefit ($38 - $42 million); (3) likely increase in future landings, rather than the sharp decline predicted under the proposed action; (4) reduced area affected by scallop dredging; and (5) reduced operational costs, and increased producer surplus and net benefits.

Response: Oceana/CLF has focused on the long-term effects of the DAS to be implemented through Framework 15. Framework 15 is intended as a short-term action while the comprehensive Amendment 10 is developed and implemented. In light of the short-term context of Framework 15, NMFS disagrees that Framework 15 clearly supports the 100 DAS alternative, since short-term losses associated with the alternative are not clearly outweighed by the benefits of the reduced DAS. The analysis demonstrates that the 120–DAS alternative, combined with the Area Access Program, has noticeably higher economic and social benefits with only marginal loss of benefits to the scallop resource overall and the environment in the short-term. NMFS believes that the short-term effects of the action are more relevant, because Framework 15 does not contemplate continuation of these measures alone for more than 1 year, despite the analyses that project the effects of the action over as many as 10 years.

Comment 5: Oceana/CLF commented that Framework 15 does not contain measures adequate to minimize adverse fishing impacts on known gravel habitats and sensitive EFH in open areas on Georges Bank. Oceana/CLF asserts that the 120–DAS alternative in Framework 15 ''dramatically increases'' the amount of EFH impacted by scallop dredging by 60 to 80 percent. Oceana/CLF also commented that the increase in EFH affected by scallop dredging under the 120–DAS alternative is exacerbated by a lack of management measures specifically designed to protect EFH. Oceana/CLF contends that prior scallop amendments modified the framework process ''...so that habitat conservation measures may be approved by the Council in a more timely manner than the plan amendment process.'' Oceana/CLF commented that NMFS and the Council cannot rely on future amendments in the Scallop and Northeast Multispecies FMPs to implement appropriate measures to minimize the impacts on EFH. Finally, Oceana/CLF urged NMFS to take immediate action under Framework 15 to minimize fishing impacts on known gravel habitats and sensitive juvenile cod EFH and other groundfish EFH in the open areas on Georges Bank.

Response: NMFS disagrees that Framework 15 dramatically increases the amount of EFH impacted by scallop dredging. To draw that conclusion, Oceana/CLF compares the action in Framework 15 to the default measures that would otherwise become effective March 1, 2003. These measures include 45 full-time, 18 part-time, and 4 occasional DAS allocations that are well below any level of fishing effort that has occurred in the scallop fishery under recent management and recent historical scallop fishing activity. This conclusion ignores the practicability standard for analyzing the appropriateness of habitat mitigating measures. The 120–DAS alternative maintains the DAS allocations that have been in place since 1999. Therefore, the Framework 15 DAS allocation does not actually increase impacts on EFH at all, when compared to the status quo of current fishing activities.

Frameworks are required to comply with the Magnuson-Stevens Act and minimize the adverse effects of fishing on EFH to the extent practicable. In light of the drastic DAS reductions that would occur under Amendment 7, Framework 15 implements a more appropriate DAS allocation and takes practicable steps to minimize the impacts of the scallop fishery on EFH in order to comply with the Magnuson-Stevens Act and to meet the goals and objectives of the FMP. It is not correct that framework actions must necessarily include a full reconsideration of EFH, or of any of the other 21 frameworkable measures included in the FMP.

Framework 15 was developed during the latter stages of development of Amendment 10 because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. The Council is required to adjust management measures on an annual basis in order to make measures consistent with the condition of the resource and the status of the fishery. The Council and NMFS are maintaining extensive closures of areas of high scallop abundance and potential prime scallop fishing areas on Georges Bank and in Southern New England waters, which provide substantial protection of habitat. The Council is carrying out a full reconsideration of measures to address EFH through the more extensive public process associated with Amendment 10. NMFS notes that the measures have been highly controversial and complex and have been the subject of lengthy debate.

Taking into account the short-term context of Framework 15, the OY calculations, the areas closed to scallop fishing, and other measures already in place that provide extensive EFH protection, Framework 15 minimizes the impacts on EFH to the extent practicable.

Comment 6: Oceana/CLF commented that Framework 15 does not contain measures adequate to accurately report or minimize bycatch of overfished groundfish, skates and other marine life. Specifically, Oceana/CLF commented that high levels of bycatch of fish and other marine life continue in the scallop fishery--most of it unaccounted for due to a lack of observer coverage and unreliable vessel trip report data. Oceana/CLF urged NMFS to improve its compliance with the Endangered Species Act (ESA) with regard to the scallop fishery and to complete a Biological Opinion (BO) for Framework 15 prior to its approval and implementation. Oceana/CLF concluded by requesting that NMFS not approve Framework 15 until it contains adequate measures to: (1) protect sensitive juvenile cod and other sensitive groundfish EFH; (2) increase levels of observer coverage throughout the entire scallop fishery; and (3) stop all illegal takes of threatened and endangered sea turtles and minimize bycatch of other overfished and at-risk species (e.g.,

barndoor skate, monkfish, and other skates).

Response: National Standard 9 requires that FMPs minimize, to the extent practicable, bycatch and bycatch mortality. Measures currently in place in the scallop fishery, and the measures included in Framework 15, take practicable steps to reduce bycatch in the sea scallop fishery. Gear restrictions, i.e. increasing the minimum twine top mesh size to 10 inches (25.40 cm), in the Area Access Program are intended to reduce bycatch in scallop dredge gear. NMFS is attempting to improve observer coverage in this and other fisheries, i.e. increased percentage coverage in access areas (10–20 percent) although a large increase in observer coverage is limited by Agency resources. Limiting the number of trips by month in the Area Access Program is also designed to reduce bycatch. In addition, maintaining groundfish closed areas will reduce bycatch of such species as yellowtail flounder and skates in the scallop fishery overall. Oceana/CLF specifically noted that much bycatch is unaccounted for due to lack of observer coverage. The lack of more specific information about bycatch and how to avoid it complicates efforts to develop specific management measures to reduce it. In light of the limited scope and context of Framework 15, NMFS has determined that Framework 15 complies with the Magnuson-Stevens Act concerning bycatch requirements. The specific concerns raised by Oceana/CLF have been addressed in Framework 15.

In response to reports of sea turtle takes in the sea scallop fishery, NMFS reinitiated consultation under section 7 of the ESA on December 21, 2001. NMFS completed a BO for the scallop fishery as a whole, including the measures included in Framework 15, on [insert date BO completed]. The BO concluded that the continued implementation of the scallop fishery and the proposed activity may adversely affect but is not likely to jeopardize the continued existence of loggerhead, Kemp's ridley, green, and leatherback sea turtles. In the BO, NMFS provides an incidental take statement allowing the annual take of 88 loggerhead (up to 25 lethal), 7 Kemp's ridley (2 lethal), and 1 green (lethal or non-lethal) sea turtles in the sea scallop dredge fishery. In addition, the incidental take statement allows the lethal or non-lethal observed annual take of one loggerhead, Kemp's ridley, green, or leatherback sea turtles in the scallop trawl fishery.

Changes From the Proposed Rule

One change to the regulatory text in the proposed rule has been made. In § 648.58, paragraph (c)(6) is revised to more clearly address the intent of the prohibition to prevent vessels participating in the Area Access Program from loading up on shell-stock and then shucking the scallops inside the VMS demarcation line.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 15 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

For the reasons stated below, the Assistant Administrator for NOAA (AA) waives the 30–day delay in effectiveness for the Framework 15 measures under 5 U.S.C. 553(d)(1) because this rule relieves a restriction.

This action implements DAS allocations of 120, 48, and 10 DAS for full-time, part-time, and occasional scallop vessels, respectively, and continues the Hudson Canyon and Mid-Atlantic Area Access Program with an increase in the possession limit for vessels participating in the Area Access Program. Scallop vessels are precluded from: exceeding the DAS that are allocated to the vessel based on its permit category; fishing in the Hudson Canyon or Virginia Beach Access Areas unless they are participating in the Area Access Program; fishing for more than three trips in the Area Access Program; possessing more than the sea scallop possession limit in the Area Access Program; and violating any provisions of the regulations of the Northeastern United States that are not modified by this action.

The annual DAS allocations implemented in this final rule are less restrictive than the DAS allocations that would otherwise go into effect on March 1, 2003. The DAS scheduled to take effect on March 1, 2003, would have considerable negative economic and social impacts because limited access scallop vessels would only be able to fish 45 full-time, 18 part-time, and 4 occasional DAS, as compared to 120 full-time, 48 part-time and 10 occasional DAS under the preferred alternative. Further, the DAS allocation under Framework 15 would be the same as the allocation last year and therefore would be no more restrictive. In addition, the Area Access Program is a continuation of the program that has been in place for the last 2 years. The only change to the program is an increase in the possession limit. The Council prepared an environmental assessment (EA) for this framework and the Assistant Administrator for Fisheries, NMFS, concluded that there will be no significant impact on the human environment as a result of this rule. This action will result in a minor increase in fishing mortality on sea scallops and will allow continued economic viability of the fishery. The Area Access Program will provide an incentive for vessels to direct fishing effort away from more sensitive open areas in the Mid-Atlantic. A copy of the EA is available from the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act, NMFS prepared an FRFA for Framework 15, which consists of the IRFA, comments and responses contained in this final rule, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The reasons why action by the agency is being considered and the objectives of the action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain reporting and recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 648.

Public Comments

Two sets of comments were received on the proposed rule and are responded to in this rule. One comment addressed indirectly the results of the IRFA and the second set of comments related to issues other than economic impacts. In this comment, the FSF urged timely implementation of the Framework 15 measures in order to avoid ''economically devastating'' default DAS reductions. NMFS agrees with the FSF that the DAS reductions included in Amendment 7 to the FMP and scheduled to take effect on March 1, 2003, under the no action alternative will have substantially negative economic impacts for vessels participating in the sea scallop fishery and would not be necessary, given the

condition of the scallop resource. This ''no action'' alternative would be inconsistent with National Standard 1 because it would fail to achieve OY in the scallop fishery. It may also cause safety at sea concerns, as vessels may push crews and trip lengths to hazardous levels.

Number of Small Entities

This action and its alternatives could affect any commercial vessel holding an active Federal permit for sea scallops. Data from the 2001 Northeast permit database show that 310 commercial vessels were permitted with limited access scallop permits, and 2,293 commercial vessels were permitted with general category (open access) scallop permits. Information from the 2002 fishery remains incomplete. The majority, if not all, of the federally permitted vessels readily fall within the Small Business Administration's (SBA) definition of small business and the Regulatory Flexibility Act's definition of ''small entity.'' The management measures included in this final rule propose to increase DAS allocations in the same proportion for each category of the limited access scallop permit. The resulting increase in profits, costs and net revenues are not expected to be disproportional for small versus large entities.

Minimizing Economic Impacts on Small Entities

Framework 15 contains six alternatives, including no action and status quo alternatives. Each alternative, with the exception of the no action alternative, consists of DAS allocations for full-time, part-time, and occasional scallop vessels and a TAC and possession limit derived from a target F for the Access Areas. The alternatives are described in this discussion as the full-time DAS allocation and the target F rate in the Area Access Program. The no action alternative would implement 45 full-time, 18 part-time, and 4 occasional DAS and would open the Hudson Canyon and Virginia Beach Access Areas to general scallop fishery management. The status quo alternative includes 120 full-time DAS and an Area Access Program F of 0.2.

This final rule will implement the 120 full-time DAS with an Area Access Program F = 0.32, which minimizes economic impacts on small entities. The impacts of the proposed alternatives on revenues, costs, and profits of an average vessel were analyzed. The increase in the days-at-sea allocations to 100, 120 or 140 full-time DAS allocations from the 45 full-time DAS allocation scheduled for the 2003 fishing year under Amendment 7 and the Area Access Program will have positive economic impacts on the vessels. The revenues per full-time vessel in 2003 are expected to increase by 56 percent for the preferred action (120 DAS, F=0.22), and by 38 percent (100 DAS, F=0.2) to 58 percent (140 DAS, F=0.32) for non-preferred alternatives compared to the no action (45 full-time DAS, no Area Access Program). The no action alternative would represent a 15–percent decline in revenues from actual revenues in 2002. The profits are expected to more than double under all alternatives including the preferred action relative to the no action alternative. Although the analysis in this section is conducted for an average full-time vessel in the scallop fishery, the results are expected to be positive for all full-time, part-time and occasional vessels as well since their DAS allocations will also be adjusted upwards and they will be able to participate in the Area Access Program.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic sea scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: *http://www.nmfs.gov/ro/doc/nero.html.*

A formal section 7 consultation under the ESA was initiated for the scallop fishery, including the measures contained in Framework 15. In a BO dated [insert date of BO], the AA determined that fishing activities conducted in the scallop fishery, including activities under Framework 15 and their implementing regulations, are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.23, paragraph (b)(2) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

* * * * *

3. In § 648.53, the table in paragraph (b) is revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full–time	120	120	120	120	120	34	35	38	36	60
Part–time	48	48	48	48	48	14	14	15	17	24

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Occasional	10	10	10	10	10	3	3	3	4	5

* * * * *

4. In § 648.57, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area*. Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area*. Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

5. In § 648.58, paragraphs (c)(1), (c)(4), (c)(6), (e)(2), (e)(3)(ii), (e)(4)(ii), and (f) are revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

* * * * *

(c) * * *

(1) *Season*—From March 1, 2003, through February 29, 2004, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2002 fishing year season be closed early (i.e., prior to February 28, 2003), as described in this paragraph (c)(1), the Sea Scallop Area Access Program season for fishing year 2003 will begin on April 1, 2003.

* * * * *

(4) *Number of trips*—(i) *Full and part-time vessels*. Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either Area counts as one trip. Full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2003, and no more than two of their three allowed Area Access Program trips before June 1, 2003.

(ii) *Occasional scallop vessels*. Occasional vessels may fish only one trip under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 at any time during the season, as specified in paragraph (c)(1) of this section.

* * * * *

(6) *Possession and landing limits*—Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2003, a vessel owner or operator may fish for, possess, and land up to 21,000 lb (9,525.4 kg) of scallop meats per trip. No vessel participating in the Sea Scallop Area Access Program may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

* * * * *

(e) * * *

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas*. On or after October 1, 2003, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing year 2003 in paragraph (f) of this section, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1, 2003. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Vessels with occasional permits would not be allocated an additional trip.

(3) * * *

(ii) *Observer set-aside limits by area*. The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 155 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 2 mt.

* * * * *

(4) * * *

(ii) *Research set-aside limits and number of trips by area*. The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 77 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 1 mt.

* * * * *

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Hudson Canyon Sea Scallop Access Area*. The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 7,585 mt of sea scallops (the TAC less the observer and research set-asides) will be caught

by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Virginia Beach Sea Scallop Access Area*. The Virginia Beach Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 103 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

* * * * *

[FR Doc. 03–4782 Filed 2–25–03; 2:55 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA81

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to increase certain fees by approximately 4.1 percent; *i.e.*, contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.1 percent January 2003 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $685,000 in additional revenue.

DATES: March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by E-mail to: *comments.gipsa@usda.gov.* Please state that your comments refer to RIN No. 0580–AA81. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In Fiscal Year (FY) 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were $23,812,292 with revenue of $23,322,247 that resulted in a negative margin of $490,045. The current reserve negative balance of $3,318,041 is well below the desired 3-month reserve of approximately $6 million. GIPSA recognizes the fact that retained earnings are well below the desired level. This proposed action will not have a major impact on improving GIPSA's financial position. GIPSA has been reviewing the fees and will propose changes that will address this deficit in the near future.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.1 percent for GIPSA employees, effective January 2003, will increase GIPSA's costs by approximately $685,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.1 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the

Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on March 21, 2002 (67 FR 13084), and became effective on April 22, 2002.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. In FY 2001, GIPSA's operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886 and a negative reserve balance of $2,572,080. Using the most recent data available, GIPSA's FY 2002 operating costs were $23,812,292 with revenue of $23,322,247 that resulted in a negative margin of $490,045. The current reserve negative balance of $3,318,041 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2003 averages 4.1 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $685,000. GIPSA recognizes that retained earnings are well below the desired level and that this proposed action will not have a major impact on improving its financial position. As a result, GIPSA has been reviewing its overall fee structure. Changes that will address this structure will be considered in the near future and will be proposed as appropriate. GIPSA remains committed to providing the most cost-effective services possible to the grain industry while maintaining program quality and integrity.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload of 78 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.1 percent increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime	Holidays
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00
Noncontract	41.80	44.00	53.40	65.40

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.1 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.1 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.1 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3—Miscellaneous Services.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because the anticipated Federal pay increase is scheduled to become effective on January 1, 2003, and grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

[(1) Inspection and Weighing Services Hourly Rates (per service representative)]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
1-year contract	$29.80	$32.60	$42.10	$50.60
6-month contract	33.00	34.80	44.60	58.40
3-month contract	37.00	38.80	48.60	60.40
Noncontract	43.60	45.80	55.60	68.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	12.50
(viii) Vomitoxin (quantitative)	18.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton) [4]	
(a) 1–1,000,000	$0.1199
(b) 1,000,001–1,500,000	0.1094
(c) 1,500,001–2,000,000	0.0591
(d) 2,000,001–5,000,000	0.0437
(e) 5,000,001–7,000,000	0.0239
(f) 7,000,001 +	0.0109

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.80
(b) Railcar (per carrier)	29.50
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.80
(b) Warehouseman inspection (per sample)	20.00
(c) Factor only (per factor—maximum 2 factors)	5.30
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour per service representative)	57.40
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.80
(b) Aflatoxin (per test—TLC method)	113.00
(c) Corn oil, protein, and starch (one or any combination)	9.00
(d) Soybean protein and oil (one or both)	9.00
(e) Wheat protein (per test)	9.00
(f) Sunflower oil (per test)	9.00
(g) Vomitoxin (qualitative)	31.00
(h) Vomitoxin (quantitative)	38.50

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1,2]—Continued

(i) Waxy corn (per test)	10.30
(j) Canola (per test—00 dip test)	10.30
(k) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	
(a) Factor only (per factor—max 2 factors)	82.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	43.00
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	30.00
(b) Aflatoxin (TLC)	120.00
(c) Corn oil, protein, and starch (one or any combination)	17.20
(d) Soybean protein and oil (one or both)	17.20
(e) Wheat protein (per test)	17.20
(f) Sunflower oil (per test)	17.20
(g) Vomitoxin (per test—qualitative)	41.00
(h) Vomitoxin (per test—quantitative)	46.00
(i) Vomitoxin (per test—HPLC Board Appeal)	140.00
(j) Pesticide Residue Testing [3].	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	114.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	82.60
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative)[2]	$57.40
(2) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	57.40
(3) Special weighing services (per hour per service representative)[2]	
(i) Scale testing and certification	57.40
(ii) Evaluation of weighing and material handling systems	57.40
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	57.40
(iv) NTEP Prototype evaluation of Railroad Track	57.40
Scales (plus usage fee per day for test car)	110.00
(v) Mass standards calibration and reverification	57.40
(vi) Special projects	57.40
(4) Foreign travel (per day per service representative)	510.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.65
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $57.40 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: February 24, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4688 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA82

Fees for Rice Inspection Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an approximate 4.1 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the rice inspection program. These increases are needed to cover increased operational costs resulting from the January 2003 Federal pay increase.

DATES: Written comments must be submitted on or before March 31, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail or Internet to: *comments.gipsa@usda.gov.* All comments should make reference to the date and page number of this issue of the **Federal Register** and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@.usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This proposed rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. An anticipated January 2003 general and locality salary increase that averages 4.1 percent for all GIPSA employees will increase program costs in the rice inspection program.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In Fiscal Year (FY) 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. Using the most recent data available, GIPSA's FY 2002 operating costs were $3,382,574 with revenue of $3,385,121 that resulted in a positive margin of $2,547. The current positive reserve balance of $311,596 is well below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of our rice inspection program based on the anticipated increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that it cannot absorb the increased costs caused by the anticipated 4.1 percent salary increase with the small positive reserve balance. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

This fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the proposed increase will not be excessive (4.1 percent) and should not significantly affect those entities. Those entities are under no obligation to use GIPSA's service and, therefore, any decision on their part to discontinue the use of service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this proposed action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have a retroactive effect. This proposed action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The current rice fees were published in the **Federal Register** on April 4, 2001 (66 FR 17775), and became effective on May 4, 2001. Under the provisions of the AMA (7 U.S.C. 1621, (*et seq.*)), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 2000, operating costs in

the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. Using the most recent data available, GIPSA's FY 2002 operating costs were $3,382,574 with revenue of $3,385,121 that resulted in a positive margin of $2,547. The current positive reserve balance of $311,596 is well below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of its rice inspection program based on the anticipated salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that with the small positive reserve balance it cannot absorb the increased costs caused by the 4.1 percent salary increase. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $44.60 and $54.30, respectively, while the nonregular workday contract and noncontract fees are $61.80 and $75.00, respectively. The unit rate per hundredweight for export port services is currently $0.054 per hundredweight. The rice current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid		42.60	42.60
Interpretive line samples:			
(a) Milling degree (per set)			91.00
(b) Parboiled light (per sample)			22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because the anticipated Federal pay increase is scheduled to become effective on January 1, 2003, rice inspection volume and associated requests for official services for such rice inspection requests are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Contract (per hour per Service representative)	$46.40	$64.40
Noncontract (per hour per Service representative)	56.60	78.00
Export Port Services (per hundredweight) [2]	.056	.056

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$35.50	$30.50	$22.00
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.50	27.50	
(b) All other factors (per factor)	13.20	13.20	13.20
Total oil and free fatty acid		43.00	43.00

TABLE 2.—UNIT RATES—Continued

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Interpretive line samples: [2]			
(a) Milling degree (per set)			94.00
(b) Parboiled light (per sample)			23.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: February 24, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–4689 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Rulemaking on Controlling the Disposition of Solid Materials: Scoping Process for Environmental Issues and Notice of Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments on scope of proposed rulemaking and notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on alternatives for controlling the disposition of solid materials that originate in restricted or impacted areas of NRC-licensed facilities, and that have no, or very small amounts of, radioactivity resulting from licensed operations. The NRC is seeking stakeholder participation and involvement in identifying alternatives and their environmental impacts that should be considered as part of the rulemaking. Considerable information collection effort has been conducted in this area and the Commission is building on existing information to focus on potential solutions. To assist in this process, the NRC is holding a workshop to solicit new input with a focus on the feasibility of alternatives identified in this notice that would limit where solid material can go. The NRC has not made a decision on the scope or details of a regulation and is continuing to develop a solid technical basis for the rulemaking.

DATES: Submit comments by June 30, 2003. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

In addition to providing opportunity for written (and electronic) comments, a workshop to solicit comments on alternatives, with a focus on the feasibility of alternatives identified in this notice that would limit where solid materials can go, will be held on May 21–22, 2003 from 8:30 a.m.–5 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov* (then select ''Information/Comment Requests'' from left-hand column). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web page, contact Ms. Carol Gallagher, (301) 415–5905 (*cag@nrc.gov*).

Copies of any comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Frank Cardile, telephone: (301) 415–6185; e-mail: *fpc@nrc.gov,* Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001. Specific comments on the public meeting process should be directed to Chip Cameron; e-mail *fxc@nrc.gov*, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington, DC 20555–0001. Specific comments on the environmental scoping process discussed in Section VI should be directed to Phyllis Sobel; e-mail *pas@nrc.gov,* telephone: (301) 415–6714; Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is conducting a rulemaking to evaluate alternatives for controlling the disposition of solid materials with no, or very small amounts of, radioactivity resulting from licensed operations. This **Federal Register** Notice (FRN) provides information on this effort as follows:

(1) *Sections II.1–II–7:* These sections provide background information about why we are conducting this effort and what are some alternatives for controlling the disposition of solid materials.

(2) *Sections III.1–III.2:* These sections discuss the considerable information collection efforts we have conducted to date in this area and what we have learned about the alternatives.

(3) *Sections IV and V:* These sections discuss our current effort to build on information previously collected in this area. The NRC has not made a decision on any alternatives for controlling the disposition of solid materials and invites stakeholders to present new information on alternatives. In particular, Section IV asks specific questions about the feasibility of alternatives that would limit where solid material can go, and Section V announces a workshop scheduled for May 21–22, 2003.

(4) *Section VI:* This section announces a re-opening of the scoping process and requests input on environmental impacts of alternatives.

To further assist stakeholders, the staff is also placing on its website an

information packet which discusses ways in which stakeholders can review the alternatives and issues involved, provide comments to the NRC, and link to other documents (Go to *http://www.nrc.gov/materials.html* and select ''Controlling the Disposition of Solid Materials.'').

II. Background

The information below in Sections II.1–II.7 has been discussed in various NRC documents and public meetings.[1] It is provided here in summary form as background information on the issues involved and on alternatives for controlling the disposition of solid materials.

1. Solid Materials Being Considered

Just as is the case for many industrial operations (or in a home), there are ''solid materials'' that are no longer needed or useful at facilities licensed by NRC. This can occur, for example, during normal facility operations when: (a) Metal equipment and tools become surplus, obsolete or worn; (b) glass, plastic, paper, or other trash-like materials are no longer useful; or (c) concrete from a building being renovated or soil being excavated from a site is no longer needed. This can also occur at the end of facility operations when a licensee seeks to terminate its NRC license. At such times, NRC's licensees seek disposition alternatives for solid material that are protective of public health and safety and are economical.

NRC licensees fall into broad categories that include: (a) Academic—university laboratories and small reactors that use radioactivity for research and teaching purposes; (b) medical—hospitals and clinics that use radioactivity for diagnostic and therapeutic medical purposes; (c) manufacturing—facilities and labs that manufacture products that use radioactivity, *e.g.*, smoke detectors, certain types of gauges; and (d) power production—reactor facilities and fuel cycle facilities that handle radioactivity as part of the generation of electricity.

2. The Nature of These Solid Materials

This effort is focused on controlling the disposition of solid materials that are present in areas in NRC-licensed facilities where radioactive materials are used or stored. These areas of the facilities are generally referred to as either ''restricted[2]'' or ''impacted[3]'' areas. Despite their location in these restricted or impacted areas, much of this solid material has no, or very small amounts of, radioactivity resulting from licensed operations either because the material was exposed to radioactivity in the facility to only a limited extent or because it has been cleaned. These solid materials can include furniture and ventilation ducts in buildings; metal equipment and pipes; wood, paper, and glass; laboratory materials (gloves, beakers, etc); routine trash; site fences; concrete; soil; or other similar materials.

Other solid materials in these restricted or impacted areas can contain more appreciable levels of radioactivity. However, these are separated from those materials with no, or very small amounts of, radioactivity at the licensed facility and are required to be disposed of at licensed low-level waste (LLW) disposal sites under NRC's existing regulations in 10 CFR part 61. Solid materials containing appreciable levels of radioactivity are not the subject of this NRC rulemaking.

Solid materials not located in restricted or impacted areas, and considered to be free of radioactivity resulting from licensed operations, are not currently required to be part of a disposition radiological survey program. Such materials can include furniture, glass bottles, paper, equipment, or trash in administrative buildings or office areas. This rulemaking does not propose to alter this approach, and therefore, these materials are also not the subject of this NRC effort.

The remainder of this FRN discusses those solid materials from restricted or impacted areas of an NRC-licensed facility that have no, or very small amounts of, radioactivity resulting from licensed operations. For ease of reference, these are referred to as ''solid materials.''

3. The NRC's Current Approach for Controlling the Disposition of Solid Materials

Currently, the NRC has requirements in its regulations in 10 CFR part 20 that require that solid materials that have been in restricted or impacted areas be surveyed before leaving the site. Solid materials can currently be released for any unrestricted use if the survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety and the environment.

However, 10 CFR part 20 does not currently specify the level below which the material can be released. Decisions on disposition of solid materials are currently made using levels contained in a set of existing guidelines that are based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.[4]

4. Why NRC Is Examining This ''Current Approach''

A report by the National Academies indicates that NRC's current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping.

However, the National Academies report also indicates that the current approach is incomplete and inconsistent and that NRC's approach should be based more directly on a risk basis. As a result, the National Academies study states that NRC should conduct a process to evaluate alternatives to provide clear risk-informed direction on controlling the disposition of solid materials.

5. Why NRC Is Conducting a Rulemaking to Potentially Revise its Current Approach

The NRC agrees with the findings in the National Academies report regarding the need to consider modifying its current approach to provide specific direction on controlling the disposition of solid materials.

The generally accepted process that Federal Agencies use to examine or replace an approach that needs improvement is to conduct a rulemaking to amend the Code of Federal Regulations (CFR). A rulemaking is an open process that evaluates the advantages and disadvantages of a range of alternatives and that invites public input on the alternatives early on and throughout the process.

6. NRC's Guiding Policy in Conducting a Rulemaking To Develop a Regulation

NRC's overall policy, as discussed in NUREG–1614 entitled ''U.S. Nuclear Regulatory Commission Strategic Plan, Fiscal Year 2000–2005,'' is that the nation's use of radioactive material be conducted in a manner that protects

[1] Many of the documents, as well as summaries of public meetings and other background information, discussed in this paper are available via the NRC's web page at *http://nrc.gov/materials.html*.

[2] A restricted area is defined in the NRC's regulations in 10 CFR 20.1003.

[3] An impacted area is defined in the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) which was jointly prepared by the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Defense, and the NRC. An impacted area is defined in MARSSIM as an area with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

[4] These guidelines are discussed in the June 1999 Issues Paper and in an All-Agreement States letter (STP–00–070), dated August 22, 2000.

public health and safety and the environment. In carrying out this policy, the NRC is guided by broad ''performance goals'' that include:

(1) Maintain safety, protection of the environment, and the common defense and security;

(2) Increase public confidence in our regulatory process;

(3) Make NRC's activities and decisions effective, efficient, and realistic;

(4) Reduce unnecessary regulatory burden on stakeholders.

As discussed in NUREG–1614, protection of public health and safety is paramount among the NRC goals and it is likewise our principal goal in controlling the disposition of solid materials. We also recognize that, in considering alternatives in this area, our decision-making process needs to provide stakeholders with clear and accurate information about, and a meaningful role in, the process. In addition, any requirements we promulgate in this area must not impose unnecessary regulatory burdens beyond what is necessary and sufficient for providing reasonable assurance that public health and safety will be protected.

7. Alternatives for Controlling the Disposition of Solid Materials

Paths by which solid materials with no, or very small amounts of, radioactivity could leave a licensed facility fall into general disposition categories of ''release'' or ''disposal.'' A set of preliminary alternatives for controlling the disposition of solid materials along these paths was first described in an NRC Issues Paper published for public comment in the **Federal Register** (FR) on June 30, 1999 (64 FR 35090); these alternatives are summarized here:

A. Release: In this disposition path, solid materials could be released into general commerce if a radiation survey verifies that public health and safety is protected and if the materials have some benefit in either a recycled or re-used product. Alternatives for control include:

(1) *Unrestricted use:* Unrestricted use means that solid materials could be released for any use in general commerce after a radiation survey verifies that an allowable level has been met.[5] Two unrestricted use alternatives are:

Alternative 1: Continue NRC's current approach (see Section II.3) which allows unrestricted use based on existing guidance on survey capabilities;

Alternative 2: Amend the NRC's regulations to include a dose based criterion for unrestricted use.

(2) *Conditional use (Alternative 3):* In this alternative, solid material could be released but its further use would be restricted to only certain authorized uses with limited public exposures such as use in controlled or low exposure environments. Examples might include industrial uses such as metals in bridges, sewer lines, or industrial components in a factory, or concrete in road fill.[6]

B. Disposal: In this disposition path, solid materials would be prohibited from general commerce and isolated from the public. Alternatives[7] for control include:

(1) *Landfill disposal (Alternative 4):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an EPA-regulated landfill;

(2) *NRC/Agreement State (AS)-licensed low-level waste (LLW) disposal site (Alternative 5):* In this alternative, solid material would be prohibited from general commerce by requiring it to be placed in an NRC/AS-licensed LLW disposal site and regulated under the NRC's regulations in 10 CFR Part 61.

III. Summary of Efforts to Date and What NRC Has Learned About Alternatives

1. Efforts to Date To Examine Alternatives

The NRC's Issues Paper, published in the FR for public comment in June 1999, indicated that NRC was examining its alternatives for controlling the disposition of solid materials. To provide further opportunity for public input, NRC held a series of four public meetings during the fall of 1999.

The NRC received over 800 public comment letters from stakeholders representing the metals, metal scrap, and concrete industries; citizens groups; licensees and licensee organizations; landfill operators; Federal and State agencies; and Tribal governments. Comments were also received from stakeholders at the four public meetings. Comments were sharply diverse in the views expressed, and there was support and rationale provided by commenters for a range of alternatives for controlling the disposition of solid materials.

On March 23, 2000, the NRC staff provided the Commission with a paper (SECY–00–0070) on the diversity of views expressed in public comments received on the Issues Paper. Attachment 2 of SECY–00–0070 provides a summary of views and comments received; summaries of the comments can also be viewed in NUREG/CR–6682, ''Summary and Categorization of Public Comments on the Control of Solid Materials'' (September 2000). SECY–00–0070 also provided the status of the staff's technical analyses being developed as support for making decisions in this area and noted the related actions of international and national organizations and agencies that could be factors in NRC's decision-making.

To solicit additional input, the Commission held a public meeting on May 9, 2000, at which stakeholder groups presented their views and discussed alternatives for controlling the disposition of solid materials.

On August 18, 2000, the Commission decided to defer a final decision on whether to proceed with rulemaking and directed the staff to request that the National Academies conduct a study of alternatives for controlling the disposition of solid materials. The Commission also directed the staff to continue to develop technical information and to stay informed of international and U.S. agency activities in this area.

The National Academies study of alternatives for controlling the disposition of solid materials was initiated in August 2000. As part of the study, the National Academies held three information gathering meetings in January, March, and June of 2001, at which it obtained input from various stakeholder groups similar to those that presented information to the NRC earlier. Based on these meetings, and on its deliberations on this topic, the National Academies submitted a report to the NRC in March 2002. The report contains nine recommendations on the decision-making process, potential approaches for controlling the disposition of solid materials, and additional technical information needed. In particular, the National Academies report indicates that NRC's current approach for controlling the disposition of solid materials protects public health and does not need immediate revamping. However, the National Academies report also states that NRC's current approach is

[5] The term ''clearance'' is also used by various organizations and in various documents to mean removal from regulatory control of material that meets certain release criteria.

[6] Other terms have been used for this alternative, including ''conditional clearance'' and ''restricted use.'' However, the term ''Conditional use'' is deemed more appropriate and is used throughout the remainder of this document.

[7] Other terms have been used for this alternative, including ''prohibition'' and ''no release.'' The alternatives listed here are considered to be clearer in that they provide more information as to the destination of the material and hence are used throughout the remainder of this document.

incomplete and inconsistent and concludes that NRC should therefore conduct a process to evaluate a broad range of alternatives to provide clear risk-informed direction on controlling the disposition of solid materials. The report notes that broad stakeholder involvement and participation in the NRC's decision-making process on the alternatives is critical as the process moves forward. The report also notes that an individual dose standard of 10 μSv/yr (1 mrem/yr) provides a reasonable starting point for the process of considering alternatives for a dose-based standard. A summary of the National Academies report can be found in an NRC staff paper, SECY–02–0133, and a link to the National Academies report, itself, is contained in the Background section of the NRC's web page.

As noted above, the NRC has been conducting technical studies to provide additional analyses to better understand and evaluate the alternatives for controlling the disposition of solid materials. These studies are examining potential impacts of alternatives on human health and the environment; costs to licensees, other industries, and the public resulting from the alternatives; and the ability of radiation detectors to verify the radioactivity level on any solid material so that a licensee can verify compliance with an alternative. The results of some of these studies have been issued for public comment and are available on NRC's web page; additional results will be provided for public comment when they are available.

In addition to NRC efforts in this area, other scientific organizations are engaged in similar processes. Recognized radiation protection standards organizations like the National Council on Radiation Protection and Measurements (NCRP), International Commission on Radiological Protection (ICRP), and American National Standards Institute (ANSI) have issued findings about possible criteria for controlling the disposition of solid materials. The U.S. Department of Energy (DOE) is preparing a Programmatic Environmental Impact Statement on alternatives for disposition of DOE scrap metals. The U.S. Environmental Protection Agency (EPA) sets radiation protection standards in the general environment although they do not currently have a program on controlling the disposition of solid materials from licensed facilities. International agencies (such as the International Atomic Energy Agency and the European Commission) as well as other individual nations, are in the process of establishing standards for controlling the disposition of solid materials. These efforts are significant for the NRC because inconsistency in standards between the U.S. and other nations can result in confusion regarding international trade, in particular if materials released under other nations' regulations arrive as imports in the U.S.

2. Summary of Information and Comments Received to Date on Alternatives

As discussed in Section III.1, NRC has obtained information from public comments, from efforts by scientific organizations, and from various technical studies, including that done by the National Academies. The following sections summarize the information and views obtained about potential alternatives for controlling the disposition of solid materials, as well as the process for examining our approach. This material reflects the NRC performance goals noted in Section III.6, above.

A. Alternative 1—No Action: Retain Current Approach of Allowing Unrestricted Use Using Measurement-based Guidelines

All rulemakings include consideration of a no-action alternative that would continue NRC's current approach. As discussed in Section II.3, above, Alternative 1 permits solid materials that are in restricted or impacted areas to be released for unrestricted use if a radiation survey does not detect radioactivity from licensed operations on the material or, if it does detect radioactivity, the amount is below a level that is considered to be protective of public health and safety. NRC's regulations do not specify the level below which the material can be released; decisions are currently made using levels contained in a set of existing guidelines based primarily on the ability of survey meters to measure the radioactivity level on, or in, the solid material.

The advantages and disadvantages of Alternative 1 were discussed in SECY–02–0133 based on the public comments received on the June 1999 Issues Paper and on the National Academies report. As discussed in SECY–02–0133, advantages of Alternative 1 are that NRC's current approach: (a) Is sufficiently protective of public health and does not need immediate revamping; (b) is workable and familiar to licensees; and (c) requires no staff resources to amend regulations at this time which would allow NRC to focus on other higher-priority safety issues, whereas decommissionings on a large scale are not expected for some time. Disadvantages of Alternative 1 include: (a) Lack of an overall risk basis or consistent approach; (b) use of outdated measurement bases; (c) international consistency issues; (d) issues of regulatory finality caused by lack of regulation as the basis for the current approach; (e) licensees problems using the current approach when dealing with materials day-to-day, and (f) expenditure of NRC staff resources on case-specific reviews under the current approach, which are anticipated to possibly increase due to expanded use of radiation monitors for detecting solid materials with small amounts of radioactivity outside NRC-licensed facilities.

B. Alternative 2: Dose-Based Regulation on Unrestricted Use

As noted in Section II.7, Alternative 2 would allow solid materials to be released for use in general commerce if a radiation survey verifies that the level of radioactivity is protective of public health and safety and if there is some benefit in the materials' recycle or re-use. The June 1999 Issues Paper discussed a range of potential options for values for an allowable dose level, including 0, 1, 10, and 100 μSv/yr (0, 0.1, 1.0, and 10 mrem/yr). The National Academies recommended in their study that a value of 10 μSv/yr (1 mrem/yr) was a good starting point for discussion for a dose-based release standard.

(1) *Summary of information from scientific organizations on the unrestricted use alternative:*

A number of scientific organizations have provided information indicating that 10 μSv/yr (1 mrem/yr) presents a negligible level of risk to the public and is therefore protective of public health and safety. The National Academies report indicates that 10 μSv/yr (1 mrem/yr) is within the acceptable range of values used in U.S. health-based standards, is a small fraction of natural background, and is accepted by recognized national and international organizations. The NCRP and the ICRP both indicate that a 10 μSv/yr (1 mrem/yr) level poses a negligible risk. The Health Physics Society notes that 10 μSv/yr (1 mrem/yr) is well below doses received in routine activities without discernable health effect. EPA radioactive effluent standards in similar areas have safety goals that are comparable to 10 μSv/yr (1 mrem/yr). ANSI has concluded that a value of 10 μSv/yr (1 mrem/yr) is an appropriate criterion for release of solid materials and has published its findings in a standard entitled ''Surface and Volume

Radioactivity Standards for Clearance,'' N13.12–1999, August 1999; it is noted that the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to consider this type of technical standard in rulemakings in pertinent areas.

(2) *Summary of information received in public comments:*

Public comments generally fell into categories of issues related to (a) protection of public health and safety and (b) regulatory burden:

(a) Issues related to public health and safety:

Certain commenters agreed with use of the unrestricted use alternative for the reasons noted in the scientific studies. However, other commenters were concerned about an unrestricted use alternative, noting that risks associated with these solid materials are avoidable and involuntary; long term and cumulative impacts cannot be accurately modeled; there is a potential for exposures to multiple products; any dose increases cancer risk; even a small risk when spread over the U.S. population is too high; there is no justification for adding more dose to what we receive from background; releases would not be accurately measured and tracked; licensees and the government cannot be trusted to assure that any releases would be carefully monitored; and a contractor who participated in NRC's technical support analyses had a conflict of interest.

(b) Issues related to regulatory burden:

This alternative engendered strong comment on both sides of this issue. The metals and concrete industries opposed unrestricted use because it would result in a large negative economic impact on steel/concrete industries because consumers would not buy products made with recycled solid material; the amount of steel available from licensed facilities is small, and therefore the economic benefit of recycling is small; and generators of the solid material should handle their own problem and not pass it along to other stakeholders. Other commenters were in favor of unrestricted use because the alternative of disposal of all solid material with no, or very small amounts of, radioactivity in a licensed LLW disposal site is costly to licensees without an accompanying health and safety benefit; and would cause a severe economic impact for small licensees, *e.g.*, medical facilities, universities.

(3) *Summary:* Scientific studies, including the National Academies report, indicate that unrestricted use at a level in the range of 10 μSv/yr (1 mrem/yr) presents negligible risk and is therefore protective of public health and safety, however there was also significant stakeholder comment related to health impact and economic burden issues which could make this alternative potentially difficult to implement.

C. Alternative 3—Conditional Use

Conditional use is an alternative in which solid material could be released but its further use would be restricted to only certain authorized uses.

(1) *Summary of information received in public comments:*

Public comments received generally fell into categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) concern over feasibility of conditional use.

(a) Issues related to public health and safety:

Some commenters noted that a benefit of this alternative is that it could limit radiation dose by permitting the solid material to be released for only certain authorized uses (*e.g.*, industrial products, metal in sewer lines or bridges, concrete in construction fill) that have limited potential for public exposure.

(b) Issues related to regulatory burden:

A benefit cited with the conditional use alternative is that solid materials that have no, or very small amounts of, radioactivity could be used under certain authorized conditions rather than using the more costly licensed LLW disposal alternative.

(c) Concerns about feasibility of conditional use:

Some commenters expressed concern about the feasibility or viability of conditional use, noting: (a) It may not be viable economically to set up a recycling process dedicated only to the limited quantities of solid material from licensed facilities; (b) a regulatory system of restrictions to limit where solid material is used would be hard to establish and enforce; and (c) it is not clear that restrictions would work to limit where the material goes, *i.e.*, solid material could wind up being released for unrestricted use. Commenters also noted that, even if a system of restrictions was set up, the authorized use would have some limited lifetime and the solid material might ultimately end up in an unrestricted use, and therefore that it makes more sense to focus on establishing criteria for unrestricted use. Some commenters indicated that the only viable conditional use would be to retain the solid material within the NRC licensing arena or the DOE complex.

(2) *Summary:* Restricting the further use or disposition of solid materials from licensed facilities to only certain authorized uses can have merit in public health considerations in that exposure scenarios are minimized. However, based on the comments received in the NRC public comment process, it is not evident that conditional use is a technically viable way to make sure the material ends up in its authorized use or that it is an economically feasible approach that will work.

D. Alternatives 4 and 5—Disposal of Solid Materials in Either EPA-Regulated Landfills or NRC/AS-Licensed LLW Disposal Sites

In this alternative, solid material would be prohibited from general commerce. The solid material would be required to be disposed of at an EPA-regulated landfill (Alternative 4) or under NRC's existing regulations in 10 CFR Part 61 in an NRC/AS-licensed LLW disposal site (Alternative 5) (see Section II.7 above).

EPA regulates municipal and industrial solid waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated until its disposal. Under RCRA Subtitle D, the solid waste program encourages states to develop comprehensive plans for managing non-hazardous industrial solid waste and municipal solid waste and also sets criteria for municipal solid waste landfills and other solid waste disposal facilities. RCRA does not address radioactive material under NRC jurisdiction.

(1) *Summary of information on this alternative from scientific organizations:*

The National Academies report compared disposing of solid material in landfills and in licensed LLW disposal sites, and found that disposal of solid materials in EPA regulated Subtitle C or Subtitle D landfills would be substantially less costly than disposal in sites licensed by the NRC or Agreement States under 10 CFR Part 61.

(2) *Summary of information received in public comments:*

Public comments generally fell into the categories of issues related to (a) protection of public health and safety, (b) regulatory burden, and (c) feasibility of landfill disposal.

(a) Issues related to public health and safety:

A rationale for this approach is that it would prevent solid material from

licensed facilities from entering general commerce thus limiting the potential for radiation dose to the general public. Opponents of this approach cite the National Academies study and the NCRP which both indicate that 10 μSv/yr (1 mrem/yr) levels are trivial for health reasons and, therefore, a requirement for a general prohibition would have minimal positive health impact.

(b) Issues related to regulatory burden:

A principal comment regarding Alternative 5 is that requiring all material, even that which has no, or very small amounts of, radioactivity but which has some economic value, to be sent to NRC/AS-licensed LLW disposal sites would be costly to licensees, in particular smaller entities like hospitals, without an accompanying health and safety benefit. However, a regulation limiting disposal of these materials to an EPA-regulated landfill would have much smaller costs than disposal at a licensed LLW disposal site and place much smaller economic burden on licensees for controlling the disposition of solid materials.

(c) Issues related to concerns over feasibility of landfill disposal:

Some commenters expressed concern about the viability of landfill disposal, noting that a regulatory system of restrictions to limit solid materials would have to consider NRC, EPA, and State responsibilities. Also, it is not clear how restrictions would work to limit where material goes, and it is not clear that landfill operators would accept solid material released from NRC-licensed facilities.

(3) *Summary*—An alternative in which all material from a licensed facility is prohibited from release and instead disposed of either at an EPA-regulated landfill or an NRC/AS-licensed LLW disposal site would keep additional radioactivity out of general commerce, although would be likely more costly than unrestricted or conditional use. If all solid material is required to be disposed of at NRC/AS-licensed LLW sites, the economic burden imposed might be large, especially on small licensees, and the health benefit obtained would likely be small. The economic burden of disposing of this solid material in an EPA-regulated landfill should not be as large. However, some of the same concerns noted in Section III.2.C, above, would also exist for the landfill alternative, in particular regarding whether there would be assurance that the material would not be diverted from, or taken from, the landfill, and also whether landfills would accept all this material. EPA, in cooperation with the NRC, is considering a rulemaking that could permit disposal of certain NRC regulated material in a RCRA permitted facility subject to, if necessary, an appropriate NRC approval process (*e.g.*, a site-specific or general license, or exemption). EPA is working with NRC on an EPA Advance Notice of Proposed Rulemaking to solicit stakeholder comment on disposing of such materials in a RCRA regulated facility.

IV. Current Status of Efforts and Request for Additional Information

As discussed in Section III.1, there has been extensive and wide-ranging discussion of alternatives for controlling the disposition of solid materials as part of NRC and other organizations' efforts. Substantial and substantive information has been developed and input received on potential impacts of the various alternatives on public health and regulatory burden. NRC has received over 800 comment letters and held several public information meetings on controlling the disposition of solid materials. In addition, the National Academies conducted a study on this subject during which they held several information gathering meetings open to the public, and several scientific organizations are conducting studies and/or developing standards in this area.

Based on the National Academies report and on other factors affecting decision-making, the NRC staff developed a set of options for a regulatory process for examining alternatives for controlling the disposition of solid materials and presented these regulatory options to the Commission in SECY–02–0133 on July 15, 2002. Based on this information, the Commission, on October 25, 2002, directed the NRC staff to proceed with an enhanced participatory rulemaking to develop specific requirements for controlling the disposition of solid materials at licensed facilities. Subsequently the staff prepared a plan for conducting this rulemaking which the Commission approved on January 27, 2003.

In directions to the NRC staff, the Commission noted that the rulemaking should give fair consideration to all alternatives in developing a proposed rule so that a broad range of alternatives is identified and can be weighed by the Commission. In particular, the Commission indicated that the NRC staff should seek stakeholder participation and involvement in considering alternative approaches. The Commission noted that, in approaching stakeholders on this issue, the staff should reiterate the Commission's continuing support for the release of solid materials when there are no significant health consequences. This is consistent with the NRC's agency mandate to ensure that the nation's use of radioactive materials is carried out in a manner that protects the public health and safety and the environment.

In its direction to the staff, the Commission noted the considerable information on controlling the disposition of solid materials previously collected (see Section III.1) and indicated that, rather than duplicating these efforts, the staff should build on this existing information (including the concerns and comments expressed in public comment) and utilize it as a starting point to focus on potential solutions. In particular, the Commission directed the staff to explore increased use of web-based methods for interacting with stakeholders for issues that might not warrant additional discussion at a workshop, and to focus additional workshops on areas where substantial new input is needed.

With regard to Alternatives 1, 2, and 5 (no action, unrestricted use, and disposal in NRC-regulated LLW disposal sites), the efforts described in Section III.1 have provided substantial information. However, NRC is interested in obtaining any additional information, beyond that expressed earlier, that should be considered for each of the types of materials noted in Section II.1. This includes areas where:

(a) There has been modification of the views that have been expressed in earlier public comments on any of the alternatives;

(b) additional scientific information is available with regard to any of the alternatives;

(c) additional economic information is available with regard to any of the alternatives;

(d) there are new or modified alternatives beyond those discussed above.

In certain other areas, in particular with regard to Alternative 3 (conditional use) and Alternative 4 (EPA regulated landfill disposal), earlier information collection efforts did not obtain sufficient information to clearly indicate the viability or economic feasibility of these alternatives. Although these alternatives were noted by the National Academies report as potential methods for controlling the disposition of solid materials, earlier public comments raised concerns about their viability. Thus, the Commission specifically directed the staff to explore and document the feasibility of these alternatives and, in particular, noted

that the staff should have discussions with stakeholders with regard to whether the alternatives: (1) Are effective; (2) are reasonably possible to implement; and (3) would increase public confidence in the process. To further consider these issues, input on the following questions is requested for each of the types of materials noted in Section II.1:

With regard to conditional use:

(1) The intent of the conditional use alternative is that solid material would be restricted to only certain authorized uses and kept separate from general consumer uses. Consideration needs to be given as to whether this alternative can: (a) Provide assurance that solid material goes to its authorized use and is not diverted to unrestricted use and (b) be established and implemented in a manner that is both practical and economical. Specific questions are:

(a) Can a scrap/manufacturing/ distribution process that is not licensed by NRC provide assurance that the material is limited to its authorized use?

(b) Would it be necessary for NRC to maintain regulatory control by licensing all or some portion of the process (*e.g.,* only the scrap process or the scrap and manufacturing process)? Could involvement by another Federal Agency in the scrap/manufacturing/ distribution process provide assurance that the material remains with its authorized use? What are the feasibility, cost, and increased assurance aspects of NRC or other Federal agency involvement?

(c) What are the feasibility, economic, and assurance aspects of a smelter facility being dedicated to such material, either full-time or as a portion of its process capability?

(d) What end use products could be manufactured under such a conditional use, *e.g.,* bridge girders, sewer pipes, industrial coils? Would there be sufficient need for these products so that a process to manufacture them would be viable given the magnitude of material from NRC/AS licensed facilities and/or from other facilities having similar material?

(e) What typical lifetimes might the conditional (authorized) uses have, and what would likely happen to the solid material after the lifetime was over? Could the material continue to be part of a conditional use, or would it become available for unrestricted use?

(2) What criterion of acceptability should be used before allowing release of solid material to a conditional use (*e.g.,* should dose-based or concentration-based criterion be used and what should it be?)

With regard to landfill disposal:

(1) The intent of the landfill disposal alternative is that the solid material be isolated from the public, and not be diverted to unrestricted use, either in transit or after disposal. Specific questions are:

(a) Would placing the material in a RCRA Subtitle C site accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle C site to provide such assurance?

(b) Would placing the material in a RCRA Subtitle D landfill accomplish the goal of isolating the material from the public? If so, what controls are in place in a RCRA Subtitle D site to provide such assurance?

(c) What criteria of acceptability should be used before allowing disposal of solid material at a landfill such that the public and landfill workers are protected? In particular, should a different regulatory scheme be used depending on the radioactivity level of the material potentially to be placed in the landfill facility, *i.e.* lesser requirements if the potential dose is lower?

(d) Is it necessary for NRC to maintain regulatory control to achieve the desired isolation of NRC regulated material from the public? If so, is there a need for NRC to license a RCRA landfill either under a specific or general license, or is an exemption with specific conditions adequate to cover material that has come from NRC-licensed facilities?

What cost considerations need to be taken into account and what possible additional assurance of isolation might be realized under these regulatory approaches?

(2) If EPA and/or NRC rulemaking is developed in this area, would RCRA Subtitle C or Subtitle D landfill operators accept material which had been surveyed and released from a NRC-licensed facility?

For either conditional use or landfill disposal

(1) As a backup, should a ''cap'' be placed limiting the dose that would occur if the restrictions for the conditional use became no longer effective, or if the material being disposed of at a landfill was diverted or removed from the landfill, and the material wound up in an unrestricted use? If so, what should the cap value be?

V. Request for Comment and Announcement of Workshop

To provide opportunity to discuss the issues noted in Section IV, we invite written and electronic comment. To supplement this request for comment, we also plan to hold a workshop on May 21–22, 2003, at NRC headquarters to discuss the alternatives. The workshop agenda will afford an opportunity to discuss the National Environmental Policy Act (NEPA) process (see Section VI of this FRN) and the alternatives being considered, with specific emphasis on building on NRC's earlier information collection efforts (see Section III.1). Because these earlier efforts did not obtain sufficient information to clearly indicate the viability of conditional use or landfill disposal, the workshop will focus on the feasibility of these alternatives as discussed in Section IV above, in particular with regard to the questions raised in Section IV. The first half of the first day of the workshop will focus on background, the NEPA process, and the alternatives being considered for controlling the disposition of solid materials. The second half of the first day and the majority of the second day of the workshop will focus on conditional use and landfill disposal. A detailed agenda will be made available in advance of the workshop. In doing so, we will be receptive to a range of options or scenarios for conditional use or landfill disposal to determine the feasibility of these options that (1) are effective, (2) are reasonably possible to implement, and (3) would increase public confidence in the process.

VI. Scoping Process for Environmental Impact Statement

An environmental scoping process was initiated in June 1999 as part of issuance of the Issues Paper. The rationale for combining the two efforts was that issues raised in a scoping process and in the Issues Paper were similar and therefore it was an efficient use of stakeholder's time and energies to combine the two. As noted earlier, in August 2000 the Commission decided to defer a rulemaking in this area pending a study by the National Academies of alternatives for controlling the disposition of solid materials. Following completion of that study in March 2002, the Commission decided, in October 2002, to conduct an enhanced participatory rulemaking which considers alternatives for controlling the disposition of solid materials. Hence, this FRN provides an opportunity to announce this rulemaking effort and to re-open the earlier scoping process.

In a rulemaking, the Commission must consider the effect of its actions on the environment in accordance with the National Environmental Policy Act (NEPA). Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in

NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes.

NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill its responsibilities under NEPA, the NRC would prepare a generic environmental impact statement (EIS) by analyzing alternative courses of action and the impacts and costs associated with those alternatives. A generic EIS would analyze alternatives for establishing requirements for controlling the disposition of solid materials. All reasonable alternatives associated with the proposed action would be analyzed to determine their impacts and costs.

The Commission's regulations in 10 CFR 51.26 contain requirements for conducting a scoping process prior to preparation of an EIS, including preparation of a notice of intent in the **Federal Register** regarding the EIS and indication that the scoping process may include holding a scoping meeting. Requirements are contained in 10 CFR 51.27 regarding the content of the notice of intent, in particular that it should describe the proposed action and describe possible alternatives to the extent that information is available. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

Participants in this scoping process on the environmental impacts of controlling the disposition of solid materials from licensed facilities may provide written or electronic comments and/or attend the workshop indicated under the **DATES** heading of this notice and provide oral comments on the proposed action and possible alternatives. Written (and electronic) comments on the proposed action and alternatives from the public, as well as from meeting participants, can be submitted as indicated under the **DATES** and **ADDRESSES** heading of this notice.

According to 10 CFR 51.29, the scoping process is to address the following topics:

(1) *Define the proposed action.* The NRC is considering whether to develop a regulation for controlling the disposition of solid materials that have no, or very small amounts of, radioactivity resulting from licensed operations.

(2) *Determine EIS scope and significant issues to be analyzed in depth.* The NRC is considering analyzing the impacts and costs associated with rule alternatives for controlling the disposition of solid materials at licensed facilities. Information will be developed on (a) types, and contamination levels, of solid materials present at licensed facilities potentially available for release; (b) pathways of exposure to, and environmental impacts of, solid materials released from licensed facilities; and (c) regulatory alternatives and methods of approach for analysis of the alternatives. Information is specifically requested regarding inventory of solid materials at licensed facilities, including quantities and radioactivity levels, and how control processes at licensed facilities function so that materials from different areas of a facility are kept separate to assure that those materials with no, or very small amounts of, radioactivity do not become mixed with those with higher levels. Information is also requested on scenarios associated with the alternatives, and in particular with regard to viable conditional use and landfill disposal alternatives.

(3) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any issues. Analysis of the scope of environmental impacts for this effort would be principally intended to provide input to decision-making for establishing acceptable regulatory alternatives for controlling the disposition of solid materials, and would not involve analysis of site-specific issues which may arise in the licensing process at specific facilities. The extent to which the environmental analysis may be applicable to a site-specific NEPA process would be described in a draft EIS and draft rulemaking.

(4) *Identify any environmental assessments or environmental impact statements which are being or which will be prepared that are related but are not part of the scope of the EIS under consideration.*

None are being prepared by the NRC. The DOE is preparing a programmatic EIS on disposition of scrap metals.

(5) *Identify other environmental review or consultation requirements related to the proposed action.* The NRC is obtaining contractor assistance in preparation of the generic EIS and cost information for use in the environmental analyses. The NRC has also placed contracts to obtain specific technical assistance regarding material inventories, exposure pathways, collective doses, and the capability of radiation survey instruments to practically and accurately detect radioactive contamination at levels near background.

(6) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* A draft generic EIS is scheduled to be issued for public comment in September 2004.

(7) *Identify any cooperating agencies.* No cooperating agencies are involved at this time.

(8) *Describe the means by which an EIS would be prepared.* As part of its rulemaking effort, NRC will prepare a draft EIS in accordance with its regulations in 10 CFR Part 51. Specifically, in accordance with 10 CFR Part 51.71, a draft EIS will be prepared using the considerations of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

Martin Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4752 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to

certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide the flightcrew with procedures and limitations for operating the airplane with out-of-tolerance angle of attack (AOA) transducers. This proposal also would require, among other actions, measuring the vane angles and voltage of the AOA transducers; reworking the AOA transducer assemblies; repetitive measurements of the resistance of both AOA transducers; and follow-on and corrective actions, as applicable. This action is necessary to prevent flat spots on the potentiometers of the AOA transducers due to wear, which may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–157–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–157–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. TCCA advises that, during testing of an airplane, flat spots were discovered on the potentiometers of the angle of attack (AOA) transducers due to wear. Since the AOA transducers work in conjunction with the stall protection system (SPS), these flat spots, if not corrected, may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation.

Explanation of Relevant Service Information

The manufacturer has issued the applicable Canadair Challenger temporary revisions to the Airplane Flight Manual (AFM) listed in Table 2 of this AD. The temporary revisions describe procedures for revising the Limitations, Emergency Procedures, Normal Procedures, and Abnormal Procedures Sections of the FAA-approved Canadair Challenger AFM, as applicable, to provide the flightcrew with procedures and limitations for operating the airplane with out-of-tolerance AOA transducers.

The manufacturer also has issued the applicable Bombardier service bulletins listed in Table 3 of this AD, which describe the following procedures:

- Measuring the vane angles and voltage of the AOA transducers; follow-on and corrective actions, as applicable; and recording and reporting incorporation of the service bulletin to Bombardier. The follow-on and corrective actions include replacing the stall protection computer (SPC) with a new SPC; recording and repeating actions; disconnecting the breakout box; measuring the baseline resistance of the AOA transducer between certain pins; and measuring the baseline resistance of the other AOA transducer for temporary deferral of reworking the AOA transducer assemblies; as applicable. Certain follow-on actions eliminate the need for the AFM revisions described previously.
- Reworking the AOA transducer assemblies and measuring the baseline resistance of the applicable AOA transducers, which eliminate the need for the AFM revisions described previously;
- Performing repetitive measurements of the resistance of both AOA transducers, and doing applicable corrective actions. The corrective actions include replacement of the AOA transducer with new AOA transducer; visual inspection of the vane assembly; rework, if necessary; a test; and measurement of baseline resistance of the applicable AOA transducer.

In addition, the manufacturer has issued Bombardier Alert Service

Bulletin A601–0519, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes); Bombardier Alert Service Bulletin A600–0693, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–1A11 (CL–600) series airplanes); and Bombardier Alert Service Bulletin A604–11–009, dated July 30, 1999, including Service Bulletin Incorporation Sheet (for Model CL–600–2B16 (CL–604) series airplanes); as applicable. These service bulletins describe procedures for performing an inspection of the left- and right-side AOA vane decal to verify that the correct decal is installed; performing corrective action if necessary; and recording and reporting incorporation of the service bulletin to Bombardier. The corrective action includes replacing the incorrect AOA vane decal(s) with new, correct vane decal(s), and ensuring that the new decal(s) is the correct type; or removing existing decals, and doing alignment check(s) of the AOA vane transducers, if replacement decals are not available.

Accomplishment of the actions specified in the applicable temporary revisions and service bulletins is intended to adequately address the identified unsafe condition. TCCA has issued Canadian airworthiness directive CF–2002–05, dated January 18, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable temporary revisions and service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Canadain Airworthiness Directive

Operators should note that, although the parallel Canadian airworthiness directive requires operators to forward a copy of the Test Result Sheets and Service Bulletin Incorporation Sheets of the applicable service bulletin to Bombardier, this proposed AD would not require those actions.

Cost Impact

The FAA estimates that 424 Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes of U.S. registry would be affected by this proposed AD. Table—Cost Impact shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $60 per work hour.

TABLE.—COST IMPACT

Actions	Work hour(s)	Parts cost	Total cost per airplane
AFM revision	1	none	$60
Measurement of the vane angles and voltage of AOA transducers (Part A).	5	none	300
Rework the AOA transducer assemblies and measurement of the baseline resistance of the applicable AOA transducers (Part B).	17	$161	2,737
Measurement of the resistance of both AOA transducers (Part C)	1	none	60
Inspection of the left- and right-side AOA vane decal	1	none	60

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 2002–NM–157–AD.

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

TABLE 1.—APPLICABILITY

Model	Serial Nos.
CL–600–1A11 (CL–600) series airplanes.	1004 through 1085 inclusive.
CL–600–2A12 (CL–601) series airplanes.	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and –3R) series airplanes.	5001 through 5194 inclusive.
CL–600–2B16 (CL–604) series airplanes.	5301 and subsequent.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent flat spots on the potentiometers of the AOA transducers due to wear, which may cause a delay in the commands for stall warning, stick shaker, and stick pusher operation, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Before the accumulation of 300 total flight hours, or within 7 days after the effective date of this AD, whichever occurs later, revise the Limitations, Emergency Procedures, Normal Procedures, and Abnormal Procedures Sections, as applicable, of the applicable Canadair Challenger AFM by inserting a copy of the applicable Temporary Revision listed in Table 2 of this AD. Table 2 is as follows (some Temporary Revisions listed in Table 2 of this AD contain Product Support Publication (PSP) identifiers):

TABLE 2.—TEMPORARY REVISIONS

Model	PSP	Temporary revision	Date
CL–600–1A11 (CL–600) series airplanes	none	600/21	November 26, 2001.
	none	600/20	November 26, 2001.
	none	600–1/17	November 26, 2001.
	PSP 600–1–18	600–1/13	November 26, 2001
CL–600–2A12 (CL–601) series airplanes	none	601/25	November 26, 2001.
	PSP 601–1A–1	601/13	November 26, 2001.
	PSP 601–1A–17	601/24	November 26, 2001.
	PSP 601–1A–18	601/25	November 26, 2001.
	PSP 601–1B	601/17	November 26, 2001.
	PSP–601–1B–1	601/12	November 26, 2001.
CL–600–2B16 (CL–601–3A and –3R) series airplanes.	PSP 601A–1	601/23	November 26, 2001.
	PSP 601A–1–1	601/22	November 26, 2001.
	PSP 601A–1–17	601/22	November 26, 2001.
	PSP 601A–1–18	601/21	November 26, 2001.
	PSP 601A–1–18A	601/24	November 26, 2001.
	PSP 601A–1–20A	601/15	November 26, 2001.
CL–600–2B16 (CL–604) series airplanes	PSP 604–1	604/9	November 26, 2001.

Measurement

(b) Before the accumulation of 300 total flight hours, or within 200 flight hours after the effective date of this AD, whichever occurs later, measure the vane angles and voltage of the angle of attack (AOA) transducers by doing all actions specified in ''PART A—Initial Special Check'' of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD, per the applicable Bombardier alert service bulletin; except that it is not necessary to complete the Test Results and Service Bulletin Incorporation Sheets. Table 3 is as follows:

TABLE 3.—ALERT SERVICE BULLETINS

For model—	Alert service bulletin	Date	Including—
CL–600–1A11 (CL–600) series airplanes	A600–0715	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.
CL–600–2A12 (CL–601) series airplanes, and CL–600–2B16 (CL–600–3A and –3R) series airplanes.	A601–0550	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.
CL–600–2B16 (CL–604) series airplanes	A604–27–011	January 7, 2002	Service Bulletin Compliance Sheet and Appendices A and B.

Any Voltage Outside Tolerances: Replacement

(c) If, during the measurement required by paragraph (b) of this AD, any recorded voltage is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin identified in Table 3 of this AD, before further flight, replace the stall protection computer (SPC) with a new SPC and do the follow-on actions (*i.e.*, recording in Appendix A and repeat actions), per ''PART A—Initial Special Check'' of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD.

All Vane Angles Within Tolerances: Disconnection and Measurement

(d) If, during the measurement required by paragraph (b) of this AD, all of the recorded AOA vane angles for both AOA transducers are found to be within the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, before further flight, do the follow-on actions (*i.e.*, disconnect breakout box, and measure the baseline resistance of the AOA transducer between certain pins), per ''PART B—AOA Transducer Assembly Rework/Baseline Resistance Check'' of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD. After doing the follow-on actions, the applicable AFM revision required by paragraph (a) of this AD may be removed from the AFM.

One or More AOA Vane Angles Outside Tolerances, But All Vane Angles Within Tolerances

(e) If, during the measurement required by paragraph (b) of this AD, one or more of the recorded AOA vane angles for either or both AOA transducers are found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, but all recorded vane angles are within the expanded tolerances specified in ''Table A—Tolerances'' of ''PART A—Initial Special Check'' of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD, do the action specified in paragraph (e)(1) of this AD, except as provided by paragraph (e)(2) of this AD.

(1) Before further flight, do the actions specified in paragraph (g) of this AD.

(2) In lieu of doing the actions required by paragraph (e)(1) of this AD, do the actions specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

(i) Before further flight, measure the baseline resistance of the other AOA transducer (with recorded vane angles within the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD) per ''Table A—Tolerances'' of ''PART A—Initial Special Check'' of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD.

(ii) Within 150 flight hours after doing the measurement required by paragraph (b) of this AD, do the actions specified in paragraph (g) of this AD.

Any AOA Vane Angle Outside Tolerances

(f) If, during the measurement required by paragraph (b) of this AD, any recorded AOA vane angle of the AOA transducers is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD, before further flight, do the actions specified in paragraph (g) of this AD.

Transducer Assembly Rework and Baseline Resistance Measurement

(g) Except as provided by paragraph (e)(2) of this AD, before further flight after doing the measurement required by paragraph (b) of this AD, rework the AOA transducer assemblies and measure the baseline resistance of the applicable AOA transducers by doing all actions specified in ''PART B—AOA Transducer Assembly Rework/Baseline Resistance Check'' of the Accomplishment Instructions of the applicable Bombardier alert service bulletin identified in Table 3 of this AD, per the applicable Bombardier alert service bulletin. After doing the rework, the applicable AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Repetitive Measurements and Corrective Actions

(h) Within 300 flight hours after doing the measurement required by paragraph (b) of this AD, measure the resistance of both AOA transducers by doing all actions specified in ''PART C—Repetitive Resistance Check/AOA Transducer Assembly Rework'' of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD, per the applicable Bombardier alert service bulletin. Repeat the measurement at least every 300 flight hours.

(i) If, during the measurement required by paragraph (h) of this AD, any recorded resistance is found to be outside the tolerances specified in the applicable Bombardier alert service bulletin listed in Table 3 of this AD (*i.e.*, more than 20 ohms from its baseline resistance value), before further flight, do corrective actions (*e.g.*, replace AOA transducer with new AOA transducer; perform a visual inspection of the vane assembly; rework, if necessary; a test; and measure baseline resistance of applicable AOA transducer), as applicable, per PART C—Repetitive Resistance Check/AOA Transducer Assembly Rework'' of the Accomplishment Instructions of the applicable alert service bulletin listed in Table 3 of this AD.

Concurrent Requirements: Inspection

(j) For airplanes identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD: Before or at the same time with accomplishment of the requirements of paragraph (b) of this AD, inspect the left- and right-side AOA vane decal to verify that the correct decal is installed per paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable.

(1) For Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and –3R) series airplanes having serial numbers 3001 through 3066 inclusive, and 5001 through 5194 inclusive, respectively, on which AOA calibration decals, part numbers (P/N) 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A601–0519, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

(2) For Model CL–600–1A11 (CL–600) series airplanes having serial numbers 1004 through 1085 inclusive, on which AOA calibration decals, P/Ns 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A600–0693, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

(3) For Model CL–600–2B16 (CL–604) series airplanes having serial numbers 5301 through 5990 inclusive, on which AOA calibration decals, P/Ns 600–52267–5 and 600–52267–6, have been installed: Inspect per Bombardier Alert Service Bulletin A604–11–009, dated July 30, 1999, excluding Service Bulletin Compliance Sheet.

Concurrent Requirements: Corrective Actions

(k) If either of the AOA vane decals is found to be incorrect during the inspection required by paragraph (j) of this AD, before further flight, replace the AOA vane decal(s) with new vane decal(s), and ensure that the new decal(s) is the correct type, per the applicable alert service bulletin identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD; except as provided by paragraph (l) of this AD.

(l) If replacement decals are not available, before further flight, remove existing decals and do the alignment check(s) of the AOA vane transducers per the applicable alert service bulletin identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

Parts Installation

(m) As of the effective date of this AD, no person shall install an AOA transducer assembly on any airplane, unless the actions required by paragraphs (b) through (l) of this AD, as applicable, have been done.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–05, dated January 18, 2002.

Issued in Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4739 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–336–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This proposal would require operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. This action is necessary to detect and correct oxidation of the pitot-TAT relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the FADEC electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–336–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–336–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC reports several occurrences of smoke in the cockpit during flight, due to oxidation in the pitot-true air temperature (TAT) #2 relay caused by water leakage from the storm window located above the relay console. This condition, if not corrected, could result in increased resistance and overheating of the relay and consequent smoke in the cockpit.

In addition, the DAC reports a related incident in which oxidation at the connections of the full authority digital engine control (FADEC) interface resistor modules caused an in-flight uncommanded engine power back to idle. The oxidation was caused by water leakage from the storm window located above the console panel. This condition, if not corrected, could result in in-flight uncommanded engine power roll back to idle.

The cockpit design on Model EMB–135 and –145 series airplanes is identical; therefore, both airplane models are subject to the identified unsafe condition.

Explanation of Relevant Service Information

The manufacturer has issued EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001, which describes procedures for inspecting the pitot-TAT relays to detect contamination; cleaning the relay pins and sockets; replacing any contaminated relay, relay socket, or relay socket contact with a new part; modifying the seal between the cockpit console panels and the storm window; and installing new protective sheets at the relay supports.

The manufacturer has also issued EMBRAER Service Bulletin 145–76–

0003, dated April 22, 2002, which describes procedures for inspecting the FADEC electronic interface resistor modules to detect contamination (including moisture and corrosion). Corrective actions include cleaning the resistor modules and the electrical connector pins and replacing the modules and/or their electrical connectors with new parts.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directives 2001–05–01R1, dated February 6, 2002, and 2002–10–03, dated October 24, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Clarification of Inspection Type

Whereas the service bulletins specify that operators ''visually inspect'' (for contamination), this proposed AD would require a ''detailed inspection.'' The FAA has determined that the procedures as described in the service bulletins constitute a detailed inspection. Note 2 has been included in this proposed AD to define this type of inspection.

Cost Impact

The FAA estimates that 261 airplanes of U.S. registry would be affected by this proposed AD. The FAA provides the following cost estimates to accomplish the proposed actions:

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the pitot-TAT relay	1	$60	$0	$60
Inspect the FADEC resistor modules	2	60	0	120
Seal the lateral console panels and install protective sheets	3	60	660	840

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2002–NM–336–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct oxidation of the pitot-true air temperature (TAT) relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the full authority digital engine control (FADEC) electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle; accomplish the following:

Inspection and Cleaning of Pitot-TAT Relays

(a) For airplanes identified in paragraph 1.A.(1) (''PART I'') of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Within 400 flight hours

after the effective date of this AD, perform a detailed inspection to detect contamination of the pitot-TAT relays and clean the relay/connector pins and sockets, in accordance with the Accomplishment Instructions (''PART I'') of the service bulletin. If any contamination remains after cleaning: Prior to further flight, replace each contaminated relay, relay socket, and relay socket contact with a new part, in accordance with the service bulletin.

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

Inspection of FADEC Interface Resistor Modules

(b) For airplanes identified in paragraph 1.A.(3) (''PART III'') of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination (including moisture and corrosion) of the left- and right-hand FADEC electronic interface resistor modules, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002. Then do the applicable corrective actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) If any contamination is found during the inspection: Before further flight, clean the resistor modules and/or their respective electrical connector pins, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

(2) If any contamination remains after cleaning the modules and pins as specified in paragraph (b)(1) of this AD: Before further flight, replace the modules and connectors with new parts, as applicable, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

(3) Following accomplishment of any corrective action specified in paragraph (b)(1) or (b)(2) of this AD: Before further flight, perform the ohmic resistance test of the left- and right-hand FADEC electronic interface resistor modules, and accomplish applicable troubleshooting procedures, in accordance with Service Bulletin 145–76–0003, dated April 22, 2002.

Console Panel Sealing

(c) For airplanes identified in paragraph 1.A.(2) (''PART II'') of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Before further flight following accomplishment of the requirements of paragraph (a) of this AD, modify the seal between the cockpit console panels and the storm window by applying PVC foam adhesive tape and sealant, in accordance with the Accomplishment Instructions (''PART II'') of the service bulletin.

Protective Sheet Installation

(d) For airplanes identified in paragraph 1.A.(3) (''PART III'') of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001: Before further flight following accomplishment of the requirements of paragraph (b) of this AD, install new protective sheets at the relay supports in accordance with the Accomplishment Instructions (''PART III'') of the service bulletin.

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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Brazilian airworthiness directives 2001–05–01R1, dated February 6, 2002, and 2002–10–03, dated October 24, 2002.

Issued in Renton, Washington, on February 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–4738 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–147]

RIN 2115–AE47

Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Commercial Boulevard bridge (SR 870) across the Atlantic Intracoastal Waterway, mile 1059.0 in Lauderdale-by-the-Sea, Florida. This proposed rule would require the bridge to open on signal, except that from 7 a.m. to 6 p.m. daily, the bridge would be required to open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. This action is intended to improve the movement of vehicular traffic while providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–147], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On January 3, 2002, the City of Fort Lauderdale requested that the Coast Guard review the existing regulation of the Commercial Boulevard bridge (SR 870) because the City believed the existing regulations were not meeting the needs of vehicle traffic.

The existing regulation of the Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea, published in 33 CFR 117.261(ee), requires the draws to open on signal, except that, from November 1 through May 15, from 8 a.m. to 6 pm., Monday through Friday, the draws need open only on the hour, quarter-hour, half-hour, and three-quarter-hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

This proposed rule would make the seasonal openings effective year round. Traffic studies have shown that vehicular traffic has increased at this location year round and a seasonal schedule is no longer appropriate.

On March 18, 2002, the Coast Guard issued a temporary deviation published in the **Federal Register** (67 FR 11919, March 18, 2002). This deviation was effective from April 17, 2002 until July 16, 2002, and from 7 a.m. to 6 p.m., allowed the bridge to open on the hour, 20 minutes after the hour, and 40 minutes after the hour. We received 38 comments on this deviation, 31 were in favor of the 20-minute schedule and seven comments requested that the schedule be changed to an hour and half-hour schedule. Based on our evaluation of the comments received and neighboring bridge schedules, the Coast Guard proposes to make the 20-minute schedule permanent. A 20-minute schedule is necessary to keep vessel traffic on the waterway moving because the bridge immediately to the north of this bridge is on a 30-minute schedule and the bridge immediately to the south of this bridge is on a 20-minute schedule. If this bridge were placed on a 30-minute schedule, vessels would experience a greater delay in traversing the waterway.

Discussion of Proposed Rule

This proposed rule would require the Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea, to open on signal; except that, from 7 a.m. to 6 p.m. daily, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because this proposed rule only slightly modifies the existing bridge schedule and still provides for regular openings.

Small Entities

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

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway in the vicinity of Commercial Boulevard bridge, persons intending to drive over the bridge, and nearby business owners. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because this proposed rule would only slightly modify the existing schedule and would still provide for regular openings.

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 proposed rule would economically effect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reason discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.261(ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal, except that, from 7 a.m. to 6 p.m. daily, the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 10, 2003.

James S. Carmichael,

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

[FR Doc. 03–4760 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD08–02–045]

RIN 2115–AG54

Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico for Viasca Knoll 915

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in Viasca Knoll 915 of the Outer Continental Shelf in the Gulf of Mexico. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this facility would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in the specified area around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6271. Commander, Eighth Coast Guard District (m) 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 this docket and will be available for inspection or copying at Commander, Eighth Coast Guard District (m) between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Requests for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–02–035], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) 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 later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a safety zone around a petroleum producing facility in the Gulf of Mexico: Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll 915 (VK 915), located at position 29°06′27.46″ N, 87°56′37.14″ W.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico East-West Fairway, the entrance/exit route of the Mississippi River, and the Mobile Bay approaches. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Chas R. Havnen & Assoc, Inc., hereafter referred to as Havnen Group has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Marlin TLP.

The request for the safety zone was made due to the high level of shipping activity around the facility and the safety concerns for both the personnel on board the facility and the environment. The Havnen Group indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility would result in a catastrophic event. The Marlin TLP is a high production oil and gas drilling facility producing approximately 41,000 barrels of oil per day, 310 million cubic feet of gas per day and is manned with a crew of approximately 80 people.

The Coast Guard has reviewed the Havnen Group's concerns and agrees that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident warrants the establishment of this safety zone. The proposed regulation would significantly reduce the threat of allisions, oil spills and natural gas releases and increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Proposed Rule

The following specific risk factors that necessitate a safety zone exist at the Marlin TLP: (1) The facility is located approximately 80 nautical miles directly south of Mobile Bay, on a direct course for vessels not keeping to the fairways; (2) the facility has a high production capacity of 41,000 barrels of petroleum oil per day and 310 million cubic feet of gas per day; and (3) the facility is manned with a crew of 80.

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 (44 FR 11040; February 26, 1979).

We expect 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.

The impacts on routine navigation are expected to be minimal because the safety zone will not encompass any of the safety fairways within the Gulf of Mexico.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Since the Marlin TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area and alternate routes are available for those vessels. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and 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 LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we publish notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Add § 147.827 to read as follows:

§ 147.827 Marlin Tension Leg Platform safety zone.

(a) *Description.* The Marlin Tension Leg Platform (Marlin TLP), Viasca Knoll, Block 915 (VK 915), is located at position 29°06′27.46″ N, 87°56′37.14″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: December 9, 2002.

Roy J. Casto,

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

[FR Doc. 03–4900 Filed 2–26–03; 2:37 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401

[FRL–7456–4]

RIN 2040–AB74

Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of ''Waters of the United States''

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DoD; and Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On January 15, 2003, the Department of the Army (Army) and the Environmental Protection Agency (EPA) jointly published an Advance Notice of Proposed Rulemaking (ANPRM) on the Clean Water Act (CWA) regulatory definition of ''Waters of the United States'' (68 FR 1991). That ANPRM requests public input on issues associated with the definition of ''waters of the United States'' in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (*SWANCC*). It also solicits information or data from the general public, the scientific community, and Federal and State resource agencies on the implications of the *SWANCC* decision for jurisdictional decisions under the CWA. The input received from the public in response to the ANPRM will be used by the agencies to determine the issues to be addressed and the substantive approach for a future proposed rulemaking addressing the scope of CWA jurisdiction.

The Army and EPA sought responses to the ANPRM by March 3, 2003. In response to comments from the public requesting additional time to fully analyze the issues, gather requested information, and prepare comments, we are extending the comment period on the ANPRM to April 16, 2003.

DATES: In order to be considered, comments or information in response to the ANPRM must be postmarked or e-mailed on or before April 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or

through hand delivery/courier. Mail comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0050.

FOR FURTHER INFORMATION CONTACT: For information on the ANPRM, contact either Donna Downing, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue NW., Washington, DC 20460, phone: (202) 566–1366, e-mail: *CWAwaters@epa.gov,* or Ted Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 G Street NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail: *Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL.*

SUPPLEMENTARY INFORMATION: To submit comments or access the official docket, please follow the detailed instructions as provided in section I.B. of the **SUPPLEMENTARY INFORMATION** section of the January 15, 2003, **Federal Register** document (68 FR 1991). If you have questions, consult one of the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 21, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

Dated: February 24, 2003.

George S. Dunlop,

Deputy Assistant Secretary of the Army (Policy and Legislation), Department of the Army.

[FR Doc. 03–4768 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–7456–3]

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Routine Maintenance, Repair and Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking; extension of comment period.

SUMMARY: The EPA is hereby extending for 60 days the public comment period regarding the December 31, 2002 proposal proposing revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). *See* 67 FR 80290. The proposed changes provide a future category of activities that would be considered to be routine maintenance, repair and replacement (RMRR) under the NSR program. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the program. We believe that those changes will facilitate the safe, efficient, and reliable operation of affected facilities.

DATES: *Comments.* Comments must be received on or before May 2, 2003.

ADDRESSES: *Comments.* Comments may be submitted by mail (two copies) to U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Room B108, Mail Code: 6102T, Washington, DC 20406, Attention Docket ID No. A–1002–04.

Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dave Svendsgaard at (919) 541–2380, telefax (919)541–5509, E-mail: *svendsgaard.dave@epa.gov* or by mail at U.S. Environmental Protection Agency, OAQPS, Information Transfer and Program Integration Division, (C339–03), Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: *Comments:* This document extends the public comment period established in the **Federal Register** issued on December 31, 2002 (67 FR 80290). In that document, EPA proposed revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (CAA). EPA is hereby extending the comment period, which was set to end on March 3, 2003, to May 2, 2003.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. A–2002–04. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may also be sent by electronic mail (e-mail) to *A-and-R-Docket@epamail.epa.gov,* Attention Docket ID No. A–2002–04. In contrast to EPA's electronic public docket, EPA's email system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may also submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2. These electronic submissions will be accepted in

WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail code: 6102T, Washington, DC 20460, Attention Docket ID No. A–2002–04.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC 20004. Attention Docket ID No. A–2002–04. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742. A reasonable fee may be charged for copying.

4. By Facsimile. Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID. No. A–2002–04.

Dated: February 21, 2003.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–4769 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV055–6025b; FRL–7449–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of converting the partial approval and partial disapproval of West Virginia's minor new source review and existing stationary source operating permit program to the full approval. EPA also proposes to approve additional rule revisions, made to the minor new source review regulation. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no 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 action, no further activity is contemplated. 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2003.

ADDRESSES: Written comments should be addressed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Michael I. Ioff, P.E., (215) 814–2166, or by e-mail at *ioff.mike@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: January 31, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–4630 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7455–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of a portion of the South Indian Bend Wash Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX announces its intent to delete a portion of the South Indian Bend Wash (SIBW) Site located in Tempe, Maricopa County, Arizona, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

ADDRESSES: Comments may be mailed to: Melissa Pennington, Superfund Remedial Project Manager, U.S. EPA, Region IX [SFD–8–2], 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3153.

Information Repositories: Comprehensive information on the SIBW Site as well as information specific to this proposed partial deletion is available for review at EPA's Region IX office in San Francisco, CA and at the information repositories listed below. There are three Administrative Record files for the SIBW Site: one for the 1993 Record of Decision for VOCs in the Vadose Zone; one for the 1998 Record of Decision for VOCs in Groundwater; and one for the Plug-in Determination issued in January 2002. All three Administrative Record files and the Deletion Docket for this partial deletion are maintained at EPA Region IX's Regional Office Superfund Records Center and the Tempe Public Library. EPA's Superfund Records Center is located at 95 Hawthorne Street (Suite 403S), San Francisco, CA 94105 and the hours of operation are 8–5 p.m., Monday–Friday. The Records Center

staff can be reached at (415) 536–2000. The location of the other information repository where the Deletion Docket is available for public review is: Tempe Public Library (South Area), 3500 South Rural Road, Tempe, AZ 85282.

FOR FURTHER INFORMATION CONTACT: Melissa Pennington (415) 972–3153.

SUPPLEMENTARY INFORMATION: This partial deletion of the SIBW Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

In July 2002, the City of Tempe (the City) submitted a petition to EPA for Partial Deletion of a portion of the SIBW Site from the NPL. To help facilitate an ongoing redevelopment project, the City requested that EPA delete a 200-acre property known as the McClintock/Rio Salado Brownfield Redevelopment Area (Redevelopment Area). This proposal for partial deletion from the SIBW NPL Site pertains to the former Allstate Mine Supply Subsite, the Maricopa County Landfill, the Old Tempe Landfill, the Resources Reclamation Corporation of America Landfill, the First Street Landfill and the Bennett Family Trust Landfill, which properties comprise that portion of the Redevelopment Area presently part of the SIBW NPL Site. These properties subject to this proposal for partial deletion are collectively referred to hereafter as the ''SIBW Landfill Area''. The location of the SIBW Landfill Area is shown on Figure 1. Both Figures 1 and 2 are available for viewing in the Deletion Docket which is maintained at EPA Region IX's Regional Office Superfund Records Center and the Tempe Public Library (details below).

This proposal for partial deletion pertains to all of the soils in the SIBW Landfill Area and a majority of the groundwater underlying the SIBW Landfill Area hereinafter referred to as the ''SIBW Deletion Area''. The groundwater included in the SIBW Deletion Area is that groundwater with concentrations of trichloroethylene (TCE) less than 5 parts per billion (ppb). Based on existing data, the groundwater in the middle alluvial unit with concentrations of TCE less than 5 ppb is represented as that portion of the groundwater underlying the SIBW Landfill Area that is not within the 5 ppb TCE contour line as depicted on Figure 2 (available for viewing in the Deletion Docket). Once the partial deletion is effective, the only area remaining on the NPL north of Rio Salado Parkway will be the extent of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 (available for viewing in the Deletion Docket) as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

Additional data may be obtained prior to the final Notice of Deletion that would allow for refinement of the definition of extent of groundwater contamination exceeding 5 ppb TCE depicted on Figure 2 (available for viewing in the Deletion Docket). Such information would then be set out in the final Notice of Deletion.

The SIBW site was added to the NPL because of widespread groundwater contamination caused by numerous facilities within the City of Tempe. The contaminants of concern (COCs) are volatile organic compounds (VOCs), primarily TCE and tetrachloroethylene (PCE). In order to efficiently manage the site, SIBW was divided into two operable units: a soil operable unit and a groundwater operable unit. In 1993, EPA issued a Record of Decision for VOCs in the Vadose Zone (1993 Soils ROD) at SIBW which required investigation of several facilities referred to as subsites. If the subsite investigations indicated that any subsite posed a continuing threat to groundwater or indoor air quality, then Soil Vapor Extraction (SVE) would be required. To date, EPA has completed or has overseen the investigations of approximately twelve subsites. Among the twelve subsites, SVE was required at one subsite in accordance with the (1993 Soils ROD), SVE was voluntarily conducted by the responsible parties at two of the subsites, SVE was not required at seven of the subsites, and the remaining subsites are still under investigation. None of the subsites still under investigation are part of this partial deletion.

EPA has evaluated all existing data regarding the SIBW Landfills and concluded that the COCs are not present at the five landfills at levels which pose a continuing threat to groundwater or indoor air quality. The Focused Remedial Investigation Report for the Allstate Subsite concluded that this subsite does not pose a continuing threat to groundwater or indoor air quality. Therefore, in accordance with the 1993 Soils ROD, EPA has determined that these subsites do not pose a threat to groundwater and that no further federal CERCLA response actions are required at the SIBW Landfill Area with respect to the groundwater.

The focus of EPA's listing of this Site has been on the groundwater contamination and the sources of groundwater contamination. EPA did not intend to address all areas within the SIBW study area that might be contaminated, only those directly linked to the groundwater contamination. As a result of EPA's investigation, EPA has also determined that the contaminated levels in soil at these subsites do not pose a threat to indoor air. However, no determination has been made as to whether these properties are suitable for unrestricted uses. Any attempt to develop the SIBW Landfill Area should be coordinated with the Arizona Department of Environmental Quality (ADEQ), as well as other appropriate state and local agencies, to ensure that non-CERCLA environmental issues associated with these properties are fully investigated and addressed prior to development.

There are three separate plumes of contaminated groundwater (eastern, central and western), resulting from former disposal practices at various SIBW subsites. The remedies selected for the SIBW groundwater plumes are: monitored natural attenuation in the central and eastern plumes and extraction and treatment via air stripping in the western plume. The groundwater operable unit and the remaining subsites of the soil operable unit will remain on the NPL. This proposal to delete the SIBW Deletion Area from the SIBW NPL Site is based on the determination by EPA and ADEQ that all appropriate federal actions under CERCLA with regard to the SIBW Deletion Area have been completed. Based on EPA's discussions with ADEQ, it has also been determined that ADEQ's Voluntary Remediation Program is an option for addressing any remaining environmental issues at the SIBW Landfill Area.

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region IX announces its intent to delete a portion of the South Indian Bend Wash (SIBW) Site located in Tempe, Maricopa County, Arizona, from the National Priorities List (NPL) and requests public comment on this action. This proposal for partial deletion from the SIBW NPL Site pertains to the former Allstate Mine Supply Subsite, the Maricopa County Landfill, the Old Tempe Landfill, the

Resources Reclamation Corporation of America Landfill, the First Street Landfill and the Bennett Family Trust Landfill. These properties subject to this proposal for partial deletion are collectively referred to hereafter as the ''SIBW Landfill Area''. The location of the SIBW Landfill Area is shown on Figure 1 (available for viewing in the Deletion Docket).

This proposal for partial deletion pertains to all of the soils in the SIBW Landfill Area and a majority of the groundwater underlying the SIBW Landfill Area hereinafter referred to as the ''SIBW Deletion Area'.

The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion of the SIBW Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). This guidance allows EPA to delete portions of a site, including deletions by media.

The National Priorities List (NPL) is a list, maintained by EPA, of sites that EPA has determined present a significant risk to human health, welfare, or the environment. This proposal for partial deletion from the SIBW NPL Site pertains to the SIBW Deletion Area defined in the Summary section above (page 2). The location of the SIBW Landfill Area is shown on Figure 1 and the area of groundwater included within the SIBW Deletion Area is shown on Figure 2. Figures 1 and 2 are available for viewing in the Deletion Docket.

The SIBW study area covers approximately three square miles in Tempe, Arizona. The Site consists of groundwater contaminated with VOCs (primarily TCE and PCE) and soil contamination at the facilities on the surface that have contributed to or are contributing to the groundwater contamination. Groundwater at the Site is present in three separated levels or layers. These layers are referred to as the Upper, Middle, and Lower Aquifers. The groundwater contamination is present as three separate plumes known as the western plume, eastern plume and central plume. Land use in the vicinity of the Site includes residential, industrial/commercial, agricultural, public and private recreational (parks, golf courses, playing fields, etc.), undeveloped open space, and waterways.

There have been two Records of Decision (RODs) issued for SIBW to address VOC contamination at the Site, one for soil and one for groundwater. The soils ROD required Soil Vapor Extraction (SVE) at areas within SIBW (known as subsites) that meet specific criteria which are used to assess whether VOC levels at a subsite pose a threat to groundwater and ambient air. The soils ROD was issued in September 1993. The groundwater ROD required Monitored Natural Attenuation in the central and eastern plumes and extraction and treatment of the western plume. The groundwater ROD was issued in September 1998.

The approximate boundaries for the SIBW Landfill Area are the Rio Salado Parkway, which forms a portion of the boundary to the south; the Salt River to the north; Perry Lane, which makes up most of the western boundary; and the eastern boundary is between Rockford Drive and River Drive. However, the actual boundaries are the boundaries of the SIBW Landfill Area as depicted on Figure 1 (available for viewing in the Deletion Docket). The boundaries of the SIBW Deletion Area are defined as the boundaries of the SIBW Landfill Area (described above) with the exception of the area of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 (available for viewing in the Deletion Docket) as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

In July 2002, the city of Tempe (the City) submitted a petition to EPA for Partial Deletion of a portion of the SIBW Site from the NPL. To help facilitate an ongoing redevelopment project, the City requested that EPA delete a 200-acre property known as the McClintock/Rio Salado Brownfield Redevelopment Area (Redevelopment Area). EPA is proposing only the SIBW Deletion Area, as defined in the Summary section above (page 2), for deletion from the NPL Site (See Figure 1 which is available for viewing in the Deletion Docket). This is because EPA considers only a portion of the entire 200-acre Redevelopment Area to be part of the SIBW NPL Site. The SIBW NPL Site is defined as the groundwater plumes contaminated with VOCs and the facilities on the surface that have contributed to or are contributing contamination to the groundwater plumes.

The SIBW Landfill Area, which encompasses the SIBW Landfills and the Allstate Subsite, has been thoroughly investigated. In October 2001, a Focused Remedial Investigation Report (FRI Report) was prepared for the Allstate Subsite by EPA's contractor (CH2M Hill) and several documents have been prepared describing the conditions at the SIBW Landfills. In December 1993, ADEQ prepared a draft document entitled ''Indian Bend Wash (South) Superfund Site, Tempe, Arizona, Evaluation of Landfills.'' In 1999, ADEQ contracted Roy F. Weston to evaluate the existing landfill information and to prepare a report. This document was entitled ''Review of Previous Site Characterization Work at Former Landfills''. These documents recommended additional work be performed before a decision could be made regarding remediation at the landfills. In December 2002, EPA's contractor compiled all of the existing landfill data into a technical memorandum. The main objective of this technical memorandum was to utilize data from the landfills as well as groundwater data that had been collected as part of the ongoing groundwater remedy at SIBW to assess whether the soil contamination in, beneath, and in the vicinity of the landfill sites has contributed to the VOC contamination in the groundwater plumes.

For the purposes of this proposal, EPA has evaluated the conclusions regarding the Allstate Subsite in the Allstate FRI Report as well as the data and conclusions in CH2M Hill's December 2002 SIBW Landfill Sites Technical Memorandum. As a result, EPA has determined that the SIBW Landfill Area does not require soil remediation for protection of the groundwater in accordance with the 1993 Soils ROD. Therefore, no further federal CERCLA action is necessary for the SIBW Landfill Area to protect human health and the environment with respect to VOCs in soils contributing to the groundwater contamination. As indicated previously in this document, the 1993 Soils ROD addresses VOCs only. When placed on the NPL, the SIBW Site was defined as groundwater plumes contaminated with VOCs and the surface sources contributing to the VOC contamination in the groundwater. It was never EPA's intention that remediation of the SIBW site would include contaminants other than VOCs. Therefore, this proposed deletion does not draw any conclusions about the potential presence or absence of other contaminants in the SIBW Landfill Area. It is EPA's understanding that further investigation and remediation of the landfill properties will be conducted by the prospective developers prior to

redevelopment of the property. ADEQ is in agreement with this approach.

This proposed deletion specifically addresses the soils at the SIBW Landfill Area and the groundwater beneath the SIBW Landfill Area with concentrations of TCE less than 5 ppb. Groundwater associated with the SIBW Site with concentrations of TCE greater than 5 ppb is being addressed as part of the remedial action at the SIBW Site. The plume south of the SIBW Landfill Area is known as the eastern plume. The remedial design for monitored natural attenuation in the eastern plume is being implemented by an SIBW potentially responsible party. Response activities for the SIBW groundwater plumes are not yet complete and therefore the groundwater operable unit will remain on the NPL. Similarly, the remaining SIBW subsites are not subject to this partial deletion.

The NPL is a list, maintained by EPA, of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

A. Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

B. Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

C. Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. The following procedures were followed for the proposed deletion of the SIBW Deletion Area from the SIBW NPL Site:

(1) EPA received and evaluated a petition for partial deletion from the City of Tempe;

(2) The State of Arizona through the Arizona Department of Environmental Quality pledged support for the partial deletion and encouraged EPA to proceed with the deletion process;

(3) EPA preliminarily concurred with the recommendations for partial deletion and prepared the relevant documents;

(4) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(5) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the SIBW Deletion Area from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region IX to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is still appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the SIBW Deletion Area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the SIBW Deletion Area from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The entire study area of the Indian Bend Wash Superfund Site (Site) covers approximately 13 square miles in Scottsdale and Tempe, Arizona. EPA divided the Site into two areas known as the Indian Bend Wash Area—North (NIBW) and the Indian Bend Wash Area—South (SIBW). EPA is proposing to delete a portion of the SIBW site only; all of the NIBW Site and most of the SIBW Site will remain on the NPL.

As discussed below, there are numerous industrial facilities located within the boundaries of the Site study area. Up until the 1970s, industrial solvents containing VOCs were typically disposed of directly onto the ground or in dry wells. These disposal practices, along with other releases, resulted in soil and groundwater contamination at various locations throughout the Site. The groundwater contamination at NIBW was discovered in 1981 when elevated levels of VOCs, including TCE, were found in drinking water wells. Further investigation of regional groundwater quality led to the discovery and characterization of the three SIBW groundwater contamination plumes (western, central and eastern). The unacceptable risks associated with the contamination at SIBW is based on exposure to groundwater contamination. There were no significant levels of inorganic contaminants found in the

groundwater. Therefore, all remedial actions required at the SIBW Site were intended to address VOCs in groundwater and VOCs in soils which could contribute to groundwater contamination.

EPA and the State of Arizona have been involved in investigations and cleanup activities at the Site since the initial discovery of VOCs in the groundwater in 1981. The Site, including both NIBW and SIBW, was placed on EPA's NPL in 1983. On September 27, 1993, EPA issued a Record of Decision for VOCs in the Vadose Zone (the 1993 Soils ROD). This ROD selected soil vapor extraction (SVE) as the remedy for VOCs in soils at SIBW and is discussed in more detail below. EPA also characterized contamination in groundwater and issued a second Record of Decision on September 30, 1998 for VOCs in groundwater at SIBW. The groundwater ROD is not discussed in detail in this document.

The surface portion of the SIBW Site is divided into many small isolated locations where soil contaminated with VOCs was expected to be present. These locations are known as subsites. The 1993 Soils ROD utilized an approach called ''Plug-in,'' whereby the ROD did not directly apply the SVE remedy to any particular subsite. Rather, the ROD established criteria that EPA uses to determine whether pre-defined conditions exist at any given subsite thereby indicating that a subsite needs to be remediated using SVE. Each individual subsite had to be evaluated by EPA to determine whether it ''Plugged-in'' to the SVE remedy. These evaluations are based on the data collected at each of the subsites following issuance of the ROD. Implementation of SVE is required for subsites that ''Plug-in,'' or meet certain criteria, in accordance with the 1993 Soils ROD.

The risks associated with VOCs in the Vadose Zone at the SIBW Landfills and other SIBW subsites were risks solely attributable to the potential for VOCs in soils to enter the groundwater or the air (See Interim Risk Assessment, Operable Unit Feasibility Study, VOCs in Vadose Zone, Appendix A, June 1993). In the Interim Risk Assessment, direct contact and ingestion of VOCs in soil were not considered complete exposure pathways because surface VOCs would likely volatilize before direct contact or ingestion could occur. Therefore, there are no risks associated with direct human exposure to VOCs in soils. The FRI Report for the Allstate Subsite and the SIBW Landfills Technical Memorandum evaluated whether or not VOCs in the Vadose Zone had the potential to impact groundwater or air. If a particular subsite does not meet the plug-in criteria identified in the 1993 ROD, the risks posed by the residual VOC contamination, if any, do not warrant further action.

At the time that the 1993 ROD was issued at SIBW, approximately thirty facilities were considered potential source areas for VOC contamination in the groundwater. Five of these facilities had already been issued unilateral orders to complete site investigations. These five facilities were: DCE Circuits, Eldon Drapery, IMC Magnetics, Prestige Cleaners, and Unitog Cintas. Following additional screening, it was determined that investigations should also be conducted at Arizona Public Service (APS), Circuit Express, Allstate Mine Supply, Desert Sportswear, Cerprobe, Service and Sales, and the City of Tempe Right-of-Way.

In February 1994, EPA issued a Plug-in Determination requiring implementation of SVE at the DCE Circuits Subsite. This work has been conducted with fund-lead money and is currently nearing completion. APS made the determination that SVE was appropriate at its site in lieu of conducting additional investigations. APS implemented SVE successfully at its subsite, and EPA approved its closure report in April of 2001, documenting that soil cleanup had been completed at the APS Subsite.

In January 2002, EPA issued a Plug-in Determination that documented EPA's subsite-specific decision for the following seven SIBW subsites: Eldon; Circuit Express; Allstate Mine Supply; Desert Sportswear; Cerprobe; Service and Sales; and City of Tempe Right-of-Way. In the January 2002 Plug-in Determination, EPA concluded that all seven subsites fall within the Remedy Profile defined in the 1993 Soils ROD and that the subsites contain VOCs in soils at concentrations that do not exceed the Plug-In Criteria. Therefore, SVE was not required for any of these subsites.

The remaining SIBW subsites (IMC Magnetics, Prestige Drapery, and Unitog) are still being evaluated. EPA will address these subsites in future Plug-in Determinations.

Current Surface Conditions at the SIBW Deletion Area

The Allstate Subsite is located at 1926 East First Street, Tempe, Arizona. It is also within the footprint of the Maricopa County Landfill discussed below. Prior to 1963, the property was vacant and undisturbed.

From 1963 to 1976, the property was used in a gravel sorting operation and construction equipment and/or dumpsters became noticeable onsite. During this timeframe, the property served as a storage yard for A&B Enterprises (A&B). A&B was an operation that repaired garbage dumpsters. The repairs included painting, welding, and use of paint thinners.

Beginning in approximately April 1976, Allstate Mine Supply, Inc. and Canyon State Chemical, Inc. used this property to blend soaps, solvents, and other chemicals into finished products to be sold to clients. The products were ''specialty cleaning products'' which are made by compounding liquid raw materials (chemicals) onsite. The compounding, storing and shipping of raw materials and finished products occurs in 55-gallon drums.

EPA's FRI Report for the Allstate Mine Supply Subsite (Allstate FRI) found that VOCs are present in the soil vapor at the Allstate Subsite to a depth of approximately 43 feet below ground surface (bgs). Although as many as 10 VOCs were detected at the subsite, only 1,1,1-TCA and PCE were consistently present in both shallow and deep samples. Total xylenes were detected at depth in all three sampling events in 1998 and the 1999 sampling event. The maximum concentrations of these contaminants are as follows: PCE at 28 μg/L, 1,1,1-TCA at 210 μg/L, and total xylenes at 88 μg/L. In 1988, 1990 and 1994, shallow soil vapor data were collected for this subsite. Three sampling events were conducted in 1998 (August, September and November) and one sampling event was conducted in July 1999 from one soil vapor monitoring well (SVWM–6). Both shallow and deep soil vapor samples were collected. The soil vapor data show that PCE appears to persist through time and throughout the length of the vadose zone. 1,1,1-TCA and 1,1–DCE appear to decrease with time and depth in the vadose zone. Total xylenes are at the highest concentrations at 43 feet bgs and appear to be decreasing over time. The levels of VOCs at the Allstate Subsite were not high enough to cause the subsite to Plug-in to the 1993 Soils ROD.

The landfill properties are located along the north side of Rio Salado Parkway approximately one quarter of a mile east of McClintock Drive. The landfill property boundaries are shown on Figure 1 (available for viewing in the Deletion Docket). Since these landfills operated sometimes on top of one another, each landfill will be discussed separately. Since the state, county, and

local government agencies did not keep information on landfill activities until after the landfills were closed, little information is available. Most of the information available is from site investigation activities that began around 1988 as part of the SIBW Superfund Site investigation. Five landfills were operated on the property in the vicinity of the proposed redevelopment project in Tempe, Arizona. These landfills are: Maricopa County Landfill; Old Tempe Landfill; Resources Reclamation Corporation of America; First Street Landfill; and the Bennett Family Trust Landfill.

The Maricopa County Landfill operated on the southwest portion of the landfill area properties and consisted of approximately 40 acres. The landfill has two distinct areas, a northern portion and a southern portion, based on apparent differences in fill material, time of emplacement, and soil vapor sampling results.

A number of buildings were constructed on the southern portion of the landfill. None of the buildings were associated with the landfill operations. The buildings housed many industrial businesses, most notably the former Allstate Mine Supply. The Allstate Subsite was investigated as a separate and distinct subsite of SIBW as discussed above.

The Old Tempe Landfill was located on the northeast corner of the landfill properties and consisted of approximately 11.5 acres. This landfill operated between 1971 and 1977, prior to which it was a gravel quarry. Conflicting information exists regarding the operating timeframe of this landfill. According to various property owners in the area, the landfill was operated as a municipal landfill by the cities of Tempe, Mesa, Phoenix, and Scottsdale from 1968 to 1979. The landfill primarily accepted solid waste; however, liquid and/or hazardous wastes may also have been accepted, although never verified. Resources Reclamation Corporation of America (RRCA), discussed below, purchased the property and continued the municipal landfill operations from 1978 to 1982.

The RRCA property totaled approximately 104 acres and included the area of the First Street Landfill, the Old Tempe Landfill, and adjacent parcels in the northwest corner of the landfill properties. The landfill accepted demolition debris, municipal solid wastes, and recyclable material, including metals, glass, and paper from the Cities of Tempe and Mesa, Arizona and reportedly did not accept any liquid or hazardous wastes. Additionally, RRCA was supposedly producing combustible materials for fuel cubes (refuse-derived fuel) from non-recyclable products received at the landfill. RRCA disposed of the wastes over the area of the Old Tempe Landfill. The First Street Landfill property consisted of approximately 80 acres and included the area of the Old Tempe Landfill. The First Street Landfill accepted demolition debris and was to accept only inert materials such as dirt, concrete, and asphalt. Wood and uncontained refuse was also allowed if it was buried above the historical high water level.

The Bennett Family Trust Landfill is located adjacent to the First Street Landfill and is comprised of approximately seven acres. Little information is available for this property. The Bennett Family Trust obtained the property in the 1970s and used an onsite pit for storage of automobiles related to their scrap yard. The pit was susceptible to flooding, so the Bennetts decided to fill the pit with clean material. Supposedly, the Bennetts observed every load of material used to fill the pit and did not allow wood, garbage, tires, or the like to be disposed of in the pit.

The VOCs identified in the shallow soil-vapor within the SIBW Landfill Area include TCE, PCE and 1,1,1–TCA. These VOCs were identified because they were pervasive and persistent with respect to the three shallow soil vapor studies. In addition to the VOCs identified above, methane is also present in soil vapor at the SIBW Landfills. The methane concentrations are well below the lower explosive limit for methane, but still may cause a potential explosion risk if the gases build up inside of a structure.

The highest concentrations of 1,1,1–TCA or PCE observed within the SIBW Landfill Area were associated with the Allstate Subsite. None of the VOCs of concern were detected in the soil beneath the SIBW Landfills at concentrations that suggest that there could be a continuing source contamination to the groundwater into the future. 1,1,1–TCA contamination is present in soil vapor at concentrations ranging from 0.68 mg/L to 210 mg/L. The samples that contained the highest measured concentrations of 1,1,1–TCA are near the drywell on the former Allstate property. Data from SVMW–6, located at the former Allstate property, exhibited concentrations of 1,1,1–TCA that decreased with depth suggesting the 1,1,1–TCA source is above 30 feet bgs.

Within the SIBW Landfill Area, PCE contamination is present in soil vapor at concentrations ranging from 0.24 mg/L to 30 mg/L. The samples that contained the highest measured concentrations of PCE are associated with the former Allstate property. PCE concentrations appear to be decreasing with depth, peak at approximately 30 feet bgs, and decrease below 30 feet bgs at the former Allstate property.

TCE was observed only once within the SIBW Landfill Area in shallow soil vapor at a concentration of 0.55 mg/L in 1990. This TCE concentration was observed in SVMW–6 in 1998 and 1999 which is located at the former Allstate property. Unlike 1,1,1–TCA and PCE, the TCE concentrations do not appear to follow any identifiable pattern related to depth.

The 1993 Soils ROD identified very specific criteria that determines whether or not soil remediation is required at SIBW subsites. The subsite must meet the following criteria in order for EPA to require soil remediation:

(1) Present cancer risk (incremental risk) of more than one in one million to a person from both ingestion of VOCs in groundwater and inhalation of VOCs during other household uses of groundwater, such as showering, over a lifetime;

(2) Present a cancer risk to a person of more than one in one million from inhalation of air above the soils at the subsite itself, over a lifetime;

(3) Present a hazard index for non-cancer effects of more than one to a person from both ingestion of VOCs in groundwater and inhalation of VOCs during household uses of groundwater, over a lifetime;

(4) Present a hazard index for non-cancer effects of more than one to a person from inhalation of air above the soils at the subsite itself, over a lifetime; and

(5) Increase the concentration of VOCs in groundwater (incremental concentration) by an amount greater than the federal Maximum Contaminant Level (MCL) under the Safe Drinking Water Act.

The maximum concentrations of 1,1,1–TCA, TCE and PCE in soil gas at the SIBW Landfill Area were obtained from sample points at the Allstate facility, which did not plug in to the 1993 soils ROD Remedy. Therefore, since the concentrations observed on the landfill properties are less than or equal to the concentrations observed at the Allstate Subsite, EPA has determined that the landfill properties would not meet any of the criteria listed above and therefore would not Plug-in to the 1993 soils ROD Remedy.

In conclusion, the concentration of VOCs detected in soil gas at the SIBW Landfill Area do not require any soil

remediation to be conducted under CERCLA.

Current Groundwater Conditions at the SIBW Deletion Area

There are three separate plumes of contaminated groundwater (eastern, central and western), resulting from former disposal practices at various SIBW subsites. The primary contaminants of concern in the groundwater are VOCs, primarily TCE and PCE. EPA characterized contamination in groundwater and issued a Record of Decision on September 30, 1998 for VOCs in groundwater at SIBW (Groundwater ROD). The remedies selected for the SIBW groundwater plumes are: monitored natural attenuation in the central and eastern plumes and extraction and treatment via air stripping in the western plume. The cleanup levels for the SIBW plumes are based on the federal Safe Drinking Water Act Maximum Contaminant Levels (MCLs). The MCL for both TCE and PCE is 5 parts per billion (ppb).

The plume of groundwater with concentrations of TCE above 5 ppb in the vicinity of the SIBW Landfill Area is the eastern plume. This plume is located approximately 100 to 200 feet below ground surface (bgs) in a formation known as the Middle Alluvial Unit. The groundwater included in the SIBW Deletion Area is not part of the eastern plume and contains concentrations of TCE less than 5 ppb. Based on existing data, the groundwater in the middle alluvial unit with concentrations of TCE less than 5 ppb is represented as that portion of the groundwater underlying the SIBW Landfill Area that is not within the 5 ppb TCE contour line as depicted on Figure 2 (available for viewing in the Deletion Docket). Once the partial deletion is effective, the only area remaining on the NPL north of Rio Salado Parkway will be the extent of groundwater contamination in the middle alluvial unit above 5 ppb TCE. This area is shown on Figure 2 as the overlap of the southeast corner of the SIBW Landfill Area and the 5 ppb TCE contour. This overlap has been estimated to cover approximately 7.4 acres.

Additional data may be obtained prior to the final Notice of Deletion that would allow for refinement of the definition of extent of groundwater which is presently above 5 ppb TCE depicted on Figure 2 (available for viewing in the Deletion Docket). Such information would then be set out in the final Notice of Deletion.

Community Relations Activities

Community interest in this site has been relatively low. With the exception of persons wanting to purchase property in the area, very few calls are received from citizens interested in activities at SIBW. EPA issued a fact sheet in February 2002 which described the January 2002 Plug-in Determination for seven (7) SIBW Subsites including the Allstate Subsite. EPA has also conducted two formal public meetings. The first was on July 7, 1993 and was to present the proposed Soil Vapor Extraction Plug-in Remedy and the second was on September 24, 1997 to present the proposed groundwater remedy.

Current Status

The SIBW Landfill Area has been investigated and the plug-in analysis has been performed in accordance with the 1993 Soils ROD. As prescribed by the ROD, SVE remediation is not required and therefore, no further federal CERCLA action is necessary at the SIBW Landfill Area to protect human health and the environment with respect to VOCs in soils. However, any attempt to develop the SIBW Landfill Area should be coordinated with the Arizona Department of Environmental Quality (ADEQ), as well as other appropriate state and local agencies, to ensure that non-CERCLA environmental issues associated with these properties are fully investigated and addressed prior to development of the area. In accordance with 40 CFR 300.425(e)(1)(ii), EPA has determined that all appropriate Fund-financed response under CERCLA has been implemented in accordance with the 1993 Soils ROD, and no further response action by responsible parties is appropriate.

While EPA does not believe that any future response actions at the SIBW Deletion Area will be needed with respect to CERCLA, if future conditions warrant such action, the proposed deletion area of the SIBW Site remains eligible for future Fund-financed response actions. In order to be eligible for future Fund-financed response actions the deleted portion of the SIBW site would either have to be re-listed on the NPL or an imminent and substantial threat would have to be documented that would warrant a CERCLA removal action. Furthermore, this partial deletion does not alter the status of the groundwater operable unit or the remaining subsites of the SIBW Site which are not proposed for deletion and remain on the NPL.

In a letter dated July 2, 2002 the State of Arizona through its Department of Environmental Quality, has pledged its support for the partial deletion of this portion of the SIBW Site.

Dated: February 14, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03–4509 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

RIN 3067–AC75

Production or Disclosure of Information

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: On August 28, 1998, FEMA published a proposed rule concerning the production or disclosure of information, (63 FR 45982). There have been numerous changes to FEMA's program for the production or disclosure of information since FEMA published this notice of proposed rulemaking. Therefore, FEMA is withdrawing its notice of proposed rulemaking for the production or disclosure of information.

DATES: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Furtney, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (202) 646–4079, (facsimile) (202) 646–4536, or e-mail *Gayle.Furtney@fema.gov.*

SUPPLEMENTARY INFORMATION: On August 28, 1998, FEMA published a Notice for proposed rulemaking for the production or disclosure of information, (63 FR 45982). There have been numerous changes to FEMA's program for the production or disclosure of information since FEMA published its August 28, 1998 Notice of proposed rulemaking. Therefore, FEMA is withdrawing its notice of proposed rulemaking for the production or disclosure of information.

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

Dated: February 20, 2003.

Michael D. Brown,

Deputy Director.

[FR Doc. 03–4722 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 2115–AG07

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the alcohol testing requirements for commercial vessels following a serious marine incident. The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol-testing devices on board, and to authorize use of a wider variety of testing devices. This rulemaking would also make additional minor procedural changes to Part 4, including a time limit for conducting drug testing following a serious marine incident.

DATES: Comments and related material must reach the Docket Management Facility on or before June 30, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 29, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8773), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically 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 and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Robert C. Schoening, Coast Guard, at 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8773), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would be helpful to this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations in 46 CFR part 4 require marine employers to take all practicable steps after a serious marine incident (SMI) to ensure that chemical testing is conducted. The regulations do not specify a time requirement for completing the tests for alcohol or for dangerous drugs following an SMI. Without a specified timeframe to conduct alcohol or drug testing after an SMI, in some instances tests were not conducted, and in other instances tests were not completed soon enough for the results to provide a determination of whether alcohol was present in an individual's system at the time the SMI occurred.

In 1998, Congress passed Public Law 105–383 which revised Title 46, U.S. Code, by adding a new section 2303a—''Post serious marine casualty alcohol testing'' (hereafter section 2303a). Section 2303a requires the Coast Guard to establish procedures ensuring that after a serious marine casualty occurs, required alcohol testing is conducted no later than two hours after the casualty occurred. If the alcohol testing cannot be conducted within that timeframe because of safety concerns directly related to the casualty, section 2303a requires the alcohol testing to be conducted as soon thereafter as the safety concerns have been adequately addressed to permit such testing. However, section 2303a prohibits us from requiring alcohol testing to be conducted more than eight hours after the casualty occurs.

The Coast Guard requires that alcohol and drug testing be conducted after a serious marine incident. Section 2303a uses the term ''serious marine casualty.'' For the purpose of this rulemaking serious marine casualty means the same as *serious marine incident* (SMI) as defined in 46 CFR 4.03–2. Section 2303a also uses the phrase ''safety concerns directly related to the casualty'' as the only reason the marine employer may postpone alcohol testing following an SMI.

This rule would provide that alcohol testing requirements after an SMI will not prevent personnel who are required to be tested for alcohol from performing duties in the aftermath of an SMI when their performance is necessary to meet safety concerns directly related to the casualty.

Coast Guard regulations in 46 CFR part 4 mandating alcohol testing after an SMI currently require marine employers to collect blood or breath specimens from each individual who was directly involved in the SMI, and for breath specimens, to use an alcohol breath-testing device that can accurately determine the presence of alcohol in an individual's system. The regulations also require inspected vessels certificated for unrestricted oceans routes and inspected vessels certificated for restricted overseas routes to have onboard at all times an alcohol breath-testing device capable of determining the presence of alcohol in an individual's system. The voyages of oceangoing vessels take the vessel and its crew far from shore-based facilities where alcohol testing can be conducted. If an SMI were to occur during the voyage, the vessel would not be able to return to a shore-based facility soon enough to complete alcohol testing for the results to indicate whether alcohol was present in an individual's system at the time the SMI occurred. Requiring marine employers to have testing devices onboard these vessels at all times makes it possible for them to ensure that proper alcohol testing is conducted in a timely manner.

Section 2303a applies to all commercial vessels. The majority of these vessels are not currently required to carry alcohol-testing devices on board the vessel. A regulatory requirement to conduct testing within the statutory timeframes cannot, by itself, ensure that alcohol testing after an SMI will be done within 2 hours. For the same reason we currently require oceangoing vessels to carry alcohol breath-testing devices onboard at all times, all other commercial vessels should also carry testing devices onboard their vessels. Having the devices onboard would make it possible for a marine employer to conduct the required alcohol testing within two hours after the occurrence of an SMI.

Given a choice between Evidential Breath Testing (EBT) devices or breath Alcohol Screening Devices (ASDs), we believe that most commercial vessel owners and operators would elect to carry breath ASDs for determining the presence of alcohol in an individual's system. Our assumption is based on the cost differential between the more expensive EBT and less expensive breath ASD. However, the cost of the less expensive breath ASD could still be too expensive for the smallest commercial vessel owners and operators. Providing vessel owners and operators with a wider variety of alcohol-testing devices to choose from would give them more control over the cost of compliance. Therefore, we are proposing to allow commercial vessel owners or operators to carry either breath or saliva alcohol-testing devices to satisfy the requirement to carry alcohol-testing devices onboard their vessels.

Discussion of Proposed Rule

Statutory Time Requirements for Alcohol Testing After an SMI

The Coast Guard proposes adding § 4.06–3, ''Requirements for alcohol and drug testing following a serious marine incident,'' which would require commercial vessel marine employers to conduct alcohol testing within two hours after an SMI, unless precluded by safety concerns directly related to the casualty, as mandated by section 2303a. If alcohol testing is not completed within two hours based on this exception, it must be done within eight hours of the casualty. An explanation on the casualty report form CG–2692B would be required for alcohol testing that is not completed within the prescribed two-hour timeframe, and an additional explanation would be required when testing is not completed within the eight-hour timeframe.

We also propose adding a provision in this section requiring drug testing be conducted as soon as possible after an SMI but no later than 32 hours after its occurrence. We would require the same type of explanation on the casualty reporting form when drug testing is not completed within the prescribed times as when alcohol testing is not completed within provided timeframes.

Responsibility of Individuals Directly Involved in Serious Marine Incidents

We propose amending § 4.06–5, ''Responsibility of individuals directly involved in serious marine incidents,'' so that individuals subject to alcohol testing after an SMI would be prohibited from consuming alcoholic beverages for eight hours following the SMI, or until after the required alcohol testing is completed.

Adding a Requirement To Carry Alcohol-Testing Devices

We propose adding § 4.06–15, ''Availability of chemical testing devices,'' which would require marine employers to have sufficient breath- or saliva-alcohol testing devices capable of determining the presence of alcohol in an individual's system on board vessels. This requirement would make it possible for owners and operators to comply with the statute's two-hour timeframe for alcohol testing.

We would also move § 4.06–20(b), which requires commercial vessel owners and operators to have drug-testing kits readily available for use following an SMI, to this new section.

Allowing Use of Saliva-Alcohol Testing Devices

To prevent a redundancy, we propose moving the specimen collection requirements in § 4.06–10 to the specimen collection requirements in § 4.06–20. We also propose including saliva, along with blood and breath, as specimens that can be collected for alcohol testing. For alcohol testing conducted aboard vessels, we would allow vessel owners and operators to choose any breath- or saliva-alcohol testing device that can determine the presence of alcohol in a individual's system. For drug testing, we will keep the current requirement for testing kits complying with 49 CFR part 40.

Delay of Implementation

We propose a delayed implementation date of 180 days to ensure that all marine employers subject to a new carriage requirement have ample time to procure and learn how to use the required equipment.

Related Rulemaking

During the comment period of a recent rulemaking, docket number USCG 2000–7759 Chemical Testing (66 FR 42964), we received one comment letter that requested several changes to the regulations in 46 CFR part 4 requiring alcohol testing after an SMI. The comment recommended that we revise the regulations to allow the use of saliva-alcohol testing devices. The comment also requested that we remove the requirement to conduct alcohol or drug testing on human remains. A copy of this comment letter has been placed into this rulemaking docket. We have considered the comment and, as described in the discussion of proposed rule section of this notice, we are proposing to amend §§ 4.06–5, 4.06–10, and 4.06–20. However, at this time, we are not proposing to amend § 4.06–30 concerning testing of human remains.

Department of Transportation Drug and Alcohol Testing Regulations

This proposal would have no impact on any existing Department of

Transportation (DOT) or operating administration's drug and alcohol testing regulations. It is clear that the Coast Guard is not subject to the provisions of the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102–143), although it does apply to other DOT modes. OTETA does not apply to Coast Guard required alcohol testing of employees in the regulated maritime industry.

The provisions of 49 CFR part 40, the DOT's drug testing requirements, apply to Coast Guard required drug testing. The provisions in 49 CFR part 40 that relate to alcohol testing, including use of the DOT Alcohol Testing Form, however, do not apply to Coast Guard required alcohol testing.

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, however, considered ''significant'' under the regulatory policies and procedures of the DOT (February 26, 1979 (44 FR 11040)). A separate draft Regulatory Analysis is available in the docket as indicated under **ADDRESSES.** A summary of the analysis follows.

This proposed rulemaking would affect more than 183,400 commercial vessels. However, of those, approximately 2,600 vessels are already required to carry alcohol breath-testing devices. Since these vessels carry alcohol-testing devices on board, these marine employers can meet the statutory alcohol-testing timeframe requirement without additional cost. Thus, the number of vessels affected by the proposed requirement for the first time would be approximately 180,800.

Section 2303a of Title 46, U.S. Code, requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of an SMI. This proposal would establish a requirement for all marine employers to have alcohol-testing devices readily available for use to meet the requirements for alcohol testing following an SMI.

This proposed rule would require that alcohol testing be conducted within two hours of the incident, whereas the current regulation does not specify a time frame for testing. This proposal would help to ensure compliance with the alcohol testing requirements after a SMI.

The cost of this proposal is estimated by assuming that, of the available ASDs, 90 percent of vessels would choose the least costly option of purchasing disposable saliva alcohol testing devices, while only 10 percent of vessels would choose a breath ASD. The lowest price breath ASD is more than twice as expensive as the most expensive saliva ASD. We also assume that no vessels would choose an EBT device because of its much higher initial purchase cost and ongoing maintenance and training costs.

The draft Regulatory Analysis shows a $97 median price for the purchase of saliva ASDs and a $393 median price for a breath ASD. Using those median prices, this proposed rule would have an estimated total cost to industry of approximately $144 million throughout the 10-year analysis period. In the first year, affected vessels would incur approximately $40 million. For subsequent years, the average annual cost is approximately $18 million. The draft Regulatory Analysis available in the docket as indicated under **ADDRESSES** further compares the costs of EBT devices versus ASDs as alternatives.

Small Entities

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

This proposed rule could impact about 3,500 small entities, based on the determination made by the Small Business Administration (SBA) in the North American Industry Classification System (NAICS codes 4831, 4832, 4872, 48831, 48832, and 48833). The SBA defines small entities either by revenue size or by employee size for all NAICS sectors. Depending on the NAICS sectors, firms with revenues less than $5 million and firms with less than 500 employees are defined as Small Entities. For the NAICS sectors and sub-sectors that apply to this analysis, SBA defined NAICS sectors 4831 (Deep Sea, Coastal, and Great Lakes water transportation) and 4832 (Inland Water Transportation) by employee size and the rest by revenue size. Those sectors defined by revenue size are: Scenic and Sightseeing Transportation (water), Port and Harbor Operations, Marine Cargo Handling, and Navigational Services to Shipping.

To determine the impact of the cost of this rule on these companies, we made the following assumptions:

- We assumed if a firm's revenues are less than $500,000, or it employs less than 20 employees, then it owns 5 vessels; and
- We assumed if a firm's revenues are in the range of $500,000 to $5 million, or it employs between 20 to 500 employees, then it owns 10 vessels.

With these assumptions, we calculated the cost impact of selecting saliva versus breath ASDs. As shown in Table below, costs will be a very small percentage of revenues for almost all companies.

The initial cost burden of alcohol breath-testing devices for some firms owning 5 vessels is 6.12 percent. It is reasonable to assume that under these circumstances the companies in question would choose to use disposable saliva ASDs or the next lowest priced breath ASDs, which would be a much lower cost to them.

COST BURDEN AS A PERCENTAGE OF ANNUAL REVENUES FOR SMALL ENTITIES

For a Company that owns:	Using saliva ASDs		Using breath ASDs	
	Initial	Recurring annual	Initial	Recurring annual
5 vessels:				
Cost	$925	$750	$2,840	$525.
Impact (Cost/Avg. Revenue).	0.01% to 1.99%	0.01% to 1.62%	0.04% to 6.12%	0.01% to 1.13%.
10 vessels:				
Cost	$1,850	$1,500	$5,680	$1,050.
Impact (Cost/Avg. Revenue).	0.002% to 0.41%	0.001% to 0.33%	0.01% to 1.25%	0.001 to 0.23%.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain 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 (Pub. L. 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 consult Mr. Robert C. Schoening at 202–267–0684.

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

Collection of Information (OMB 2115–0003)

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, and a description of those who must collect the information follow.

The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Marine Casualty Information; Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; and Management Information System Requirements

Summary of the Collection of Information: The proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B. The requirement to report this information would be promulgated in 46 CFR 4.06–3. We would revise form CG–2692B accordingly to record the results of all types of alcohol testing (blood, breath, and saliva).

Need for Information: In accordance with 46 U.S.C. 2303a, the proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B if alcohol testing were not completed within the two-hour timeframe. If the alcohol test is not completed within the eight-hour timeframe, the marine employer must document the reason for the further delay of alcohol testing on form CG–2692B.

Proposed Use of Information: The information would be used to document the results of alcohol tests after SMIs.

Description of the Respondents: Marine employers whose employees, passengers, or vessels are involved in SMIs.

Number of Respondents: Currently, the approved OMB collection, estimates that 5,703 respondents fill out an accident report. This rulemaking would not change the number of incidents or accidents that trigger a response therefore the increase in respondents would be zero.

Frequency of Response: Continues to be once per incident.

Burden of Response: The possible additional burden imposed by this proposed rule is estimated to be so minimal that it does not merit changing the approved collection (a couple of additional minutes whenever documentation is needed). OMB approved, on previous submissions, the one-hour burden of completing each form CG–2692B.

Estimate of Total Annual Burden: The currently approved annual burden is 5,703 hours. Because the possible additional burden imposed by this proposed rule is estimated to be so minimal, it does not merit changing the approved annual burden.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Rules on testing merchant marine personnel for drugs and alcohol fall into the category of personnel qualification. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

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

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

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

Environment

We considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lC, this 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 46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes amending 46 CFR part 4 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for Part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

2. In § 4.06–1, in paragraph (b) add the phrase ''as required in this part'' at the end of the sentence, and revise paragraphs (c) and (d) as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(c) The determination of which individuals are directly involved in a serious marine incident (SMI) is to be made by the marine employer. A law enforcement officer may determine that additional individuals are directly involved in the SMI. In such cases, the marine employer shall take all practicable steps to have these additional individuals tested in accordance with this part.

(d) The requirements of this subpart do not prevent personnel who are required to be tested from performing duties in the aftermath of a SMI when their performance is necessary to respond to safety concerns directly related to the incident.

* * * * *

3. Add § 4.06–3 to read as follows:

§ 4.06–3 Requirements for alcohol and drug testing following a serious marine incident.

When a marine employer determines that a casualty or incident is, or is likely to become, an SMI, the marine employer must ensure the following alcohol and drug testing is conducted:

(a) *Alcohol testing.* (1) Alcohol testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The alcohol testing of each individual must be conducted within two (2) hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevented the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be conducted as soon as the safety concerns are addressed.

(iii) Alcohol testing is not required to be conducted more than eight (8) hours after the occurrence of the SMI.

(2) Alcohol-testing devices must be used in accordance with procedures specified by the manufacturer of the testing device and this part.

(3) If the alcohol testing required in paragraphs (a)(1)(i) and (a)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason the test(s) was not conducted.

(4) The marine employer may use alcohol testing results from tests conducted by Coast Guard or local law enforcement personnel to satisfy the alcohol-testing requirements of this part only if the alcohol testing meets all of the requirements of this part.

(b) *Drug testing.* (1) Drug testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The drug testing of each individual must be conducted within thirty-two (32) hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevented the drug testing from being conducted within 32 hours of the occurrence of the incident, then drug testing must be conducted as soon as the safety concerns are addressed.

(2) Specimen collection and shipping kits used to conduct drug testing must be used in accordance with 49 CFR part 40.

(3) If the drug test required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason the drug test was not conducted.

4. Revise § 4.06–5 to read as follows:

§ 4.06–5 Responsibility of individuals directly involved in serious marine incidents.

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a SMI must provide blood, breath, saliva, or urine specimens for chemical testing required by § 4.06–20 when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide blood, breath, saliva, or urine specimens, this refusal must be noted on form CG–2692B and in the vessel's official log book, if one is required. The marine employer must remove the individual from duties that directly affect the safe operation of the vessel as soon as practicable.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for eight (8) hours following the occurrence of the SMI, or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part; however, refusal is a violation of regulations and may subject the individual's to suspension and revocation proceedings under part 5 of this chapter and/or a civil penalty.

§ 4.06–10 [Removed]

5. Remove § 4.06–10.

6. Add § 4.06–15 to read as follows:

§ 4.06–15 Availability of chemical testing devices.

(a) *Alcohol testing.* The marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under § 4.06–3 of this part.

(b) *Drug testing.* The marine employer must have urine specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily available for use following SMIs. The specimen collection and shipping kits need not be carried aboard each vessel if obtaining the kits and conducting the required drug tests can be completed within 32 hours from the time of the occurrence of the SMI.

7. Revise § 4.06–20 to read as follows:

§ 4.06–20 Specimen collection requirements.

(a) *Alcohol testing.* (1) When conducting alcohol testing required in § 4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with § 4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with § 4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted in accordance with this subpart.

(b) *Drug testing.* When conducting drug testing required in § 4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine in accordance with 46 CFR part 16 and 49 CFR part 40.

8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: February 24, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–4809 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials or labor-hour contract unless otherwise prescribed in the contract Schedule. The proposed rule would permit, but not require, the administrative contracting officer (ACO) to withhold payment amounts if the ACO determines the withholding to be necessary to protect the Government's interests.

DATES: DoD will consider all comments received by April 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of $50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract.

This rule proposes to add DFARS 232.111(b) and DFARS 252.232–7XXX, Alternate A, to specify that, normally, there should be no need to withhold payments when dealing with contractors that typically comply with contractual requirements in a timely manner. This is in contrast to the current requirement in time-and-materials and labor-hour contracts that contracting officers must withhold payments unless other direction is provided in the contract.

DoD is considering revising its policy because the current withholding provisions are administratively burdensome and may, in some situations, result in the withholding of amounts that exceed reasonable amounts needed to protect the Government's interests. In addition, the contractor is already incentivized to execute and deliver the release discharging the Government from all liabilities, obligations, and claims under the contract, since this release is a condition for final payment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to time-and-materials and labor-hour contracts. Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 232 and 252 as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Section 232.111 is added to read as follows:

232.111 Contract clauses for non-commercial purchases.

(b) Use the clause at FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, with 252.232–7XXX, Alternate A, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(i) Alternate A permits the administrative contracting officer (ACO) to withhold 5 percent of the amount due until a reserve is set aside in an amount the ACO considers to be necessary, but not to exceed $50,000, to protect the Government's interests.

(ii) Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims.

(iii) If the ACO determines that it is necessary to withhold payment to protect the Government's interests, the ACO shall issue written direction to the contractor to withhold 5 percent of amounts due until a sufficient reserve is set aside.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232–7XXX is added to read as follows:

252.232–7XXX Alternate A.

Alternate A (XXX 2003)

As prescribed in 232.111(b), substitute the following paragraph (a)(2) for paragraph (a)(2) of the clause at FAR 52.232–7:

(a)(2) The Administrative Contracting Officer (ACO) may unilaterally issue written direction to the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the ACO considers necessary to protect the Government's interests. The ACO may withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

[FR Doc. 03–4700 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021903E]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would exempt one vessel from the minimum mesh size requirements for the Gulf of Maine (GOM) Regulated Mesh Area (RMA); regulations pertaining to the GOM Rolling Closure Areas II, III, IV, and V; days-at-sea (DAS) restrictions; and minimum fish size requirements. The experiment proposes to conduct a study to target cod and flounder using a modified trawl net constructed with a changeable inner mesh size codend surrounded by a small mesh codend cover to determine the selectivity of various square mesh sizes and mesh types. The EFP would allow these exemptions for one commercial vessel, for not more than 24 days of sea trials. All experimental work would be monitored at sea by a biologist from a contracted consulting group and supervised ashore and on board (during key trips) by the project coordinator for the Cooperative Research Partners Initiative-funded project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before March 17, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Cooperative Research Partners Initiative Gloucester, MA Trawl Selection Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fisheries Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: A completed application for an EFP was submitted by Joseph B. Novello as part of a Cooperative Research Partners Initiative-funded project on January 13, 2003. The EFP would exempt one federally permitted commercial fishing vessel from the following NE

multispecies provisions: The minimum mesh size requirements for the GOM RMA at 50 CFR 648.80(a)(3)(i); regulations pertaining to the GOM Rolling Closure Areas II, III, IV, and V at 50 CFR 648.81(g)(1)(ii), (iii), (iv), and (v), respectively; NE multispecies DAS restrictions at 50 CFR 648.82(a); and minimum fish size requirements specified at 50 CFR 648.83(a)(1).

The EFP would allow the commercial vessel to conduct the proposed study using a modified trawl net constructed with a changeable inner mesh size codend (liner) surrounded by a small mesh (3–inch (7.62–cm)) codend cover in order to determine the optimal square mesh net size and net type (knotted vs. unknotted) for bottom trawl gear for the purpose of reducing bycatch. A total of four liners would be constructed, including three using larger square panel knotted mesh nets (6.5, 7.0, and 7.4–inch (16.51–cm, 17.78–cm, and 18.80–cm, respectively)) and one consisting of 6.5–inch (16.51–cm) square panel unknotted mesh. For each liner, three 1–day fishing trips would be directed on cod, and three, 1–day trips would target witch flounder, for a total of 24 DAS. The incidental catch is expected to be primarily dogfish, skates, monkfish, and American lobster; however, summer flounder, winter flounder, yellowtail flounder, and American plaice may be caught during the targeted witch flounder trips.

The applicant requested that the research be conducted in the GOM in an area including 30–minute statistical squares 124, 125, 132, and 133, or between 42°00′ and 43°00′ N. lat. and between 70°00′ and 71°00′ W. long. The tows would take place between April 1 and December 31, 2003. Fish retained by the experimental net would be enumerated, weighed and measured, and returned to the sea as quickly as possible. Selection curves, 50–percent retention lengths, selection factors, and selection ranges would be determined for each of the four square-mesh liners. Since no fish would be landed as a result of this study, a NE multispecies DAS exemption would compensate for the fact that no economic benefit would result from fishing during the course of this EFP.

The participating vessel would be required to report all landings in its Vessel Trip Report. The data collection activities aboard the participating vessel would be conducted by a biologist with the Allan D. Michael & Associates consulting group and supervised ashore and aboard (on key trips) by the project coordinator, or his official designee, to ensure compliance with the experimental fishery objectives. The EFP would also contain a provision that the Regional Administrator has the authority to reconsider the continuation of the experimental fishery on a month-to-month basis, based upon a monthly status report outlining total catch and bycatch submitted by the applicant, and would authorize the Regional Administrator to terminate the experimental fishery at any time, at her discretion.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4681 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021403B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP are consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and the Atlantic Mackerel, Squid, and Butterfish FMP. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to 10 vessels to test the effectiveness of a 5.5–inch (13.97–cm) square mesh extension escapement panel for reducing bycatch of scup and retain Loligo squid inside the Gear Restricted Areas (GRAs), and up to 15 additional vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. In order to fund the survey, the 15 additional vessels would be fishing for specific amounts of named species under the Research Set-Aside (RSA) Program. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before 5 p.m. EST March 17, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NFI Squid Scup GRA EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, 978–281–9153.

SUPPLEMENTARY INFORMATION: The application process for an EFP was completed by the National Fisheries Institute (NFI) on January 28, 2002. To conduct the experiment, NFI, in cooperation with Rutgers University and Manoment Center for Conservation Sciences, requested EFPs for up to 10 vessels to test the effectiveness of a 5.5–inch (13.97–cm) square mesh extension escapement panel for reducing bycatch of scup and retaining Loligo squid inside the GRAs (mesh study), and for up to 15 additional vessels to harvest RSA allocations. Coordinates of the GRAs are listed at 50 CFR 648.122(a) and (b). The 10 vessels participating in the mesh study and up to 15 additional vessels would make additional compensation fishing tips, during closed seasons, to land up to the total RSA quota allocation of 140,543 lb (63,749 kg) of Loligo squid, 23,325 lb (10,580 kg) of scup, and 21,338 lb (9,679 kg) of black sea bass. However, no fish caught during these compensation fishing trips smaller than the legal minimum size would be sold, traded, bartered, or processed for sale. Landings from such trips would be sold to generate funds that would defray the costs associated with the research project.

The research project would be carried out by the research vessels conducting discard monitoring and net testing. Discard monitoring will rely on vessel reports to identify areas of high scup discarding. Once areas of high scup

discarding are identified, the research vessels would work in pairs to make coordinated trips of about 5 days duration. Each research vessel, working in close proximity to the paired research vessel, would conduct about 10 research tows for a total of about 20 research tows during a coordinated trip. One of the vessels would use unmodified gear (1.875–inch (4.76–cm) standard codend and unmodified extension) and the other would use modified gear (1.875–inch (4.76–cm)) standard codend with a square mesh panel in the extension or other configuration). Nets will be towed using an ABBA pattern of deployment. Approximately 80 combined two-hour research tows will be made to carry out the mesh study. Most tows would occur in March, but some tows may take place in November and December. The catch will be sorted by species and weighed. Target species in order of priority will be scup, Loligo squid, summer flounder, black sea bass, and whiting. Data will be statistically analyzed and a report prepared. Generally, where sampling permits, at least 100 lengths of discards and landings will be collected for each target species.

To conduct the mesh study, the research vessels would be granted exemptions to black sea bass quarterly quota closures at § 648.141; scup trimester quota closures at § 648.121(a); scup time and area restrictions at § 648.122(a) and (b); scup trawl gear restrictions at § 648.123; and *Loligo* squid trip and quarterly closures at § 648.22. In addition, in order to collect individual size measurements and other data, the EFP for the ten vessels identified as research vessels to conduct the mesh study would grant additional exemptions from the following regulations: Minimum sizes for scup at § 648.124(a), summer flounder at § 648.103(a), (b), and (c), and black sea bass at § 648.143. The 1 to 15 vessels that would be used to harvest the RSA would be exempt from the following: Black sea bass trip limits at § 648.140(b)(2); black sea bass quarterly quota closures at § 648.141; scup trimester quota closures at § 648.121(a); and *Loligo* squid possession limit, and quarterly closures at § 648.22(a) and (c).

Any landings that would occur from research or compensation fishing would be reported in the Vessel Trip Report, as required, because the participating vessels possess a commercial scup, *Loligo* squid, summer flounder, or black sea bass moratorium permit. All fish would be landed in compliance with applicable state landing laws.

Based on the results of the EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 03–4680 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 022003B]

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100–percent retention and utilization of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The purpose of Amendment 75 is to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Comments on Amendment 75 must be received by April 29, 2003.

ADDRESSES: Comments on Amendment 75 may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to the NMFS, Alaska Region, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 75 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, (907) 586–7228 or *kent.lind@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP, immediately publish notification in the **Federal Register** that the FMP or amendment is available for public review and comment.

Purpose and Need for Amendment 75

In 1997, the Council adopted a regulatory program to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendments 49 to the FMP for the Groundfish Fishery of the BSAI and Amendment 49 to the FMP for Groundfish of the Gulf of Alaska (GOA) (Amendments 49/49). The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. In January 1, 2003, the program expanded to include all rock sole and yellowfin sole in the BSAI, and all shallow water flatfish in the GOA.

In December 1995, the Council adopted its IR/IU problem statement. That statement reads as follows:

"In managing the fisheries under its jurisdiction, the North Pacific Fishery Management Council is committed to: (1) assuring the long-term health and productivity of fish stocks and other living marine resources of the North Pacific and Bering Sea ecosystem; and (2) reducing bycatch, minimizing waste, and improving utilization of fish resources in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, consumers, and the nation as a whole...

The Council's overriding concern is to maintain the health of the marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources. As a response to this concern, a program to promote improved utilization and effective control/reduction of bycatch and discards in the fisheries off Alaska should address the following problems:

1. By catch and discard loss of groundfish, crab, herring, salmon, and other non-target species.

2. Economic loss and waste associated with the discard mortality of target species

harvested but not retained for economic reasons.

3. Inability to provide for a long-term, stable fisheries-based economy due to loss of fishery resources through wasteful fishing practices.

4. The need to promote improved retention and utilization of fish resources by reducing waste of target groundfish species to achieve long-term sustainable economic benefits to the nation.''

Under Amendments 49/49, the Council chose to implement 100–percent retention requirements for pollock and Pacific cod effective January 1, 1998, and provided a 5–year delay for the implementation of 100–percent retention requirements for rock sole and yellowfin sole in the BSAI and the shallow water flatfish species complex in the GOA. These requirements were set out in the final rule to implement Amendment 49 for the BSAI (62 FR 63880, December 3, 1997), and the final rule to implement Amendment 49 for the GOA (62 FR 65379, December 12, 1997).

In the EA/RIR/IRFA prepared for BSAI Amendment 49, NMFS assessed the biological, economic and social impacts of improved retention and utilization. This analysis found that the proposed actions could result in significant economic impact on a substantial number of small entities, including a significant number of relatively small catcher/processor vessels that use trawl gear. Because of their size, these vessels are limited to freezing headed and gutted products.

To mitigate some of the effects that IR/IU regulations could have, the Council delayed implementation of the rules on the most negatively affected fisheries (i.e., those groundfish fisheries in which rock sole, yellowfin sole and shallow-water flatfish are caught and discarded) for a period of 5 years.

The Council recognized the need to conduct an assessment of the impacts of IR/IU regulations on small entities to determine whether a modification of the IR/IU regulations would minimize such impacts and continue to meet the Council's objectives. These objectives include ensuring healthy fisheries, reducing bycatch and waste, and improving utilization of fish resources with minimum negative effects of regulations on small entities.

To this end, the Council began an analysis in early 2002, to examine alternative approaches to current 100–percent retention requirements for rock sole and yellowfin sole that could achieve the Council's objectives of reducing bycatch but in a manner that would have less negative effect on industry. The analysis concluded that the potential impact of IR/IU regulations for rock sole and yellowfin sole on some sectors of the groundfish fisheries of the BSAI creates the possibility that some entities currently participating in these fisheries might discontinue their participation due to the economic burden the existing rules could place on their operation.

In June 2002, therefore, the Council revised its IR/IU problem statement to state that 100–percent retention of rock sole and yellowfin sole would result in severe economic losses to certain participants in the fishery, while less than 100–percent retention of only those species would not be enforceable. The Council also began an analysis of a variety of alternative regulatory approaches that would provide for reductions in groundfish discards in a less burdensome manner.

In October 2002, the Council concluded that while several alternative proposals under analysis showed merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted BSAI Amendment 75 to delay implementing the 100–percent retention requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004, to provide the Council and industry with additional time to develop alternative regulatory proposals. Also in October 2002, the Council considered whether to delay 100–percent retention requirements for shallow water flatfish in the GOA groundfish fisheries. The Council concluded, however, that full retention of shallow water flatfish in the GOA is practicable and would not result in the same economic burden as would the same requirement for rock sole and yellowfin sole in the BSAI groundfish fisheries. Therefore, the Council decided not to delay 100–percent retention requirements for shallow water flatfish in the GOA.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS's evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment, whether specifically directed to the amendment or the proposed rule. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision, comments must be received by the close of business on the last day of the comment period specified in this NOA; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 2802 *et seq.*

Dated: February 21, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4682 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–025–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before April 29, 2003.

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. 03–025–1, 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. 03–025–1. 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. 03–025–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Jerry DePoyster, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0036.

Type of Request: Extension of approval of an information collection.

Abstract: The regulations in 9 CFR parts 1 through 3 were promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) to ensure the humane handling, care, treatment, and transportation of regulated animals under the Act. The regulations in 9 CFR part 2 require documentation of specified information by dealers, research institutions, exhibitors, carriers, and intermediate handlers. The regulations in 9 CFR part 2 also require that facilities that use animals for regulated purposes obtain a license or register with the U.S. Department of Agriculture (USDA). Before being issued a USDA license, individuals are required to undergo prelicense inspections; once licensed, a licensee must periodically renew the license.

The Act and regulations are enforced by USDA's Animal and Plant Health Inspection Service (APHIS), which performs unannounced inspections of regulated facilities. A significant component of the inspection process is review of records that must be established and maintained by regulated facilities. The information contained in these records is used by APHIS inspectors to ensure that dealers, research facilities, exhibitors, intermediate handlers, and carriers comply with the Act and regulations.

Facilities must make and maintain records that contain official identification for all dogs and cats and certification of those animals received from pounds, shelters, and private individuals. These records are used to ensure that stolen pets are not used for regulated activities. Dealers, exhibitors, and research facilities that acquire animals from nonlicensed persons are required to have the owners of the animals sign a certification statement verifying the owner's exemption from licensing under the Act. Records must also be maintained for animals other than dogs and cats when the animals are used for purposes regulated under the Act.

Research facilities must also make and maintain additional records for animals covered under the Act that are used for teaching, testing, and experimentation. This information is used by APHIS personnel to review the research facility's animal care and use program.

APHIS needs the reporting and recordkeeping requirements contained in 9 CFR part 2 to enforce the Act and regulations. APHIS also uses the collected information to provide a mandatory annual Animal Welfare Enforcement report to Congress.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed information 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 our 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, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.480327 hours per response.

Respondents: Research facilities, ''A'' and ''B'' dealers, exhibitors, carriers, and intermediate handlers.

Estimated annual number of respondents: 7,288.

Estimated annual number of responses per respondent: 9.13007.

Estimated annual number of responses: 66,540.

Estimated total annual burden on respondents: 98,501 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4743 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–098–2]

Giant Salvinia; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a proposed field release of the nonindigenous salvinia weevil for the biological control of the aquatic weed giant salvinia. The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of the salvinia weevil. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection 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.

FOR FURTHER INFORMATION CONTACT: Dr. Robert V. Flanders, Branch Chief, Pest Permit Evaluation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5930.

SUPPLEMENTARY INFORMATION:

Background

Giant salvinia (*Salvinia molesta*) is a free-floating aquatic fern, native to South America, with a tremendous growth rate and the potential to significantly affect water-reliant agricultural industries and recreation and the ecology of freshwater habitats throughout much of the United States.

Giant salvinia reproduces vegetatively through fragmenting and from dormant buds breaking away. The colonizing or immature stage of giant salvinia is characterized by small leaves that lie flat upon the water. As plant growth accelerates, the leaves become larger, crowding occurs, and the plants are pushed upright. Mats may grow to a meter thick and can cover large areas.

The Animal and Plant Health Inspection Service (APHIS) listed giant salvinia as a Federal noxious weed in 1983. Under APHIS'' regulations, no person may move giant salvinia into or through the United States, or interstate, unless he or she obtains a permit for the movement from APHIS.

Because giant salvinia is a free-floating plant, it disperses by passive means (water currents and wind) and by ''hitchhiking.'' Animals may carry the plants over short distances, but humans can spread it widely on fishing gear and boating equipment. Intercontinental dispersal and dispersal within the United States have probably occurred when giant salvinia was sold in the nursery trade, either intentionally as a plant for aquaria or for ponds, or unintentionally when it ''hitchhiked'' with other aquatic plants collected for academic study or for use in aquaria or ponds. Although native to southeastern Brazil, giant salvinia is now found in North America, South America, Africa, Asia, Australia, New Guinea, and Oceania.

In the past several years, giant salvinia has been detected in the United States, mostly in association with the nursery trade in aquatic plants. Generally, detections have been in small, confined sites and are currently contained or have been eradicated. Such detections have occurred in Alabama, Arizona, Florida, Hawaii, Indiana, Louisiana, Maryland, Missouri, North Carolina, South Carolina, Texas, and Virginia. Most recently, giant salvinia was found in the Toledo Bend Reservoir and the surrounding areas in Louisiana and eastern Texas. As a result of that infestation, APHIS prepared an environmental assessment (EA) and issued permits for the environmental release of the nonindigenous salvinia weevil (*Cyrtobagous salviniae*) into the limited area of the Toledo Bend Reservoir. The salvinia weevil is native to Brazil, Bolivia, and Paraguay. Salvinia weevil larvae tunnel within the rhizomes of giant salvinia, causing them to disintegrate. The larvae also tunnel in the leaf buds, and adults eat leaves and leaf buds, suppressing growth and vegetative propagation of this sterile weed. This insect has successfully controlled giant salvinia in 12 countries over 3 continents.

Recently, APHIS received an application for a permit to release the salvinia weevil in areas of the continental United States beyond the area considered in the EA mentioned above. The applicant proposes to release the salvinia weevil to reduce the severity and extent of giant salvinia infestation in the United States. In response to the applicant's request, we published a notice in the **Federal Register** (67 FR 66381–66382, Docket No. 02–098–1) on October 31, 2002, in which we announced the availability, for public review and comment, of an EA titled ''Field Release of the Salvinia Weevil, *Cyrtobagous salviniae* Calder and Sands (Curculionidae: Coleoptera) for Control of Giant Salvinia, *Salvinia molesta* Mitchell (Hydropteridales: Salviniaceae)'' that examined the potential effects of additional releases of salvinia weevil into other areas of the continental United States.

We solicited comments on that EA for 30 days ending on December 2, 2002. We received one comment by that date, which requested that APHIS clarify the meaning of the term ''Oceania'' as used in our October 2002 notice. As mentioned above, giant salvinia is currently found in a number of regions in the world, including Oceania. The term ''Oceania'' is commonly used to

refer to the islands of the central and south Pacific, including Melanesia, the Federated States of Micronesia, and Polynesia.

Following the close of the comment period, our State cooperators in California advised us that the EA made available in our October 2002 notice failed to include the results of the host specificity tests that were conducted to examine the potential risks to wild rice (*Zizania aquatica*) and Sanford's arrowhead (*Sagittaria sanfordii*) that may result from the release of salvinia weevil into additional areas of the United States. In this document, we are notifying the public that we have updated the EA to include the host test results for those species.

In addition, we are also advising the public of APHIS' record of decision and finding of no significant impact (FONSI) regarding the proposed field release of the nonindigenous salvinia weevil into additional areas of the continental United States for the biological control of the aquatic weed giant salvinia. The decision, which is based on the analysis found in the EA, reflects our determination that release of the organism will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Internet at *http://www.aphis.usda.gov/ppq* by following the link for ''Documents/Forms Retrieval System'' then clicking on the triangle beside ''6-Permits-Environmental Assessments,'' and selecting document number 0001. You may request paper copies of the EA and FONSI by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The EA and FONSI are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–4742 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–34–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 a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 30, 2003.

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 of the proposed actions. If the Committee approves the proposed addition, the entities of the Federal government identified in the notice for each service will be required to procure the service listed below from the nonprofit agency 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 service to the government.

2. If approved, the action will result in authorizing small entities to furnish the 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 service 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 service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: National Lead Information Center, Call Center, EPA, Supporting Office of Pesticide Programs—National Program, Chemical Division, Washington, DC.

NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.

Contract Activity: Environmental Protection Agency, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–4803 Filed 2–27–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Discussion of estimation of Benchmark Input-Output Accounts; 2. Discussion of integration of the industry accounts with the national accounts, issues and challenges; 3. Discussion of accelerating the annual industry accounts, estimation and methodologies; 4. Discussion of other current issues in national economic accounts.

DATES: On Friday, May 9, 2003, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis (BEA), 2nd floor, Conference Rooms A&B, 1441 L Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Verna Learnard of BEA at 202–606–9690 in advance. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Verna Learnard at 202–606–9690.

SUPPLEMENTARY INFORMATION: The Committee was established on September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts. This will be the Committee's sixth meeting.

Dated: February 20, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 03–4746 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Creatine Monohydrate From the People's Republic of China; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request from Suzhou Sanjian Fine Chemical Co., Ltd., the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on creatine monohydrate from the People's Republic of China (''PRC'') (*see Notice of Antidumping Duty Order: Creatine Monohydrate from the People's Republic of China,* 65 FR 5583 (February 4, 2000)) and issuing this notice of preliminary results. Suzhou Sanjian Nutrient and Health Products Co., Ltd. has requested that the Department of Commerce review the company's name change and determine that Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co., Ltd.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207 or (202) 482–4194 respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2003, the Department received notification from Suzhou Sanjian Fine Chemical Co., Ltd. (''Suzhou Chemical'') that on September 15, 2000, its corporate name changed to Suzhou Sanjian Nutrient and Health Products Co., Ltd. (''Suzhou Health Products''). On January 23, 2003, we notified Suzhou Health Products that, in order to determine whether entries naming Suzhou Health Products as exporter should receive the cash deposit rate currently applied to Suzhou Chemical, it is necessary to conduct a changed circumstance review in accordance with section 751(b)(1) of the Act and 19 CFR 351.216. At that time, we also requested certain additional information from Suzhou Health Products concerning the circumstances of the name change. On February 12, 2003, Suzhou Health Products responded to our request for information.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Suzhou Health Product's submissions.

Section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice, if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary to make a preliminary finding already on the record and no other interested party has commented on, or objected to, Suzhou Health Products' request for a changed circumstances review, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58, 58–59 (January 2, 2002). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See e.g., id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

In its February 12, 2003, submission Suzhou Health Products stated that the name change was effected solely for the purpose of clarifying the scope of the company's production to enhance its marketing efforts. Suzhou Health Products explained that it produces and sells creatine monohydrate and other health products, which are more accurately described as nutrient or health products, than as fine chemical products. Suzhou Health Products also stated that the name change was not due to a change in ownership, corporate strategy, management, corporate structure or customer base, all of which remain the same. Suzhou Health Products provided documentation in support of these claims including copies of the business licenses of the company

before and after the name change, the resolution of the Board of Directors authorizing the name change, the application for the name change filed with the Wuxian City Foreign Economic and Trade Commission and the Commission's approval of the application, and corporate organization charts before and after the name change. Suzhou Health Products also stated that since the name change, subject merchandise was produced at the same facilities that Suzhou Chemical used to produce subject merchandise during the original sales-at-less-than-fair-value investigation (*see Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999)).

Suzhou Health Products, in its February 12, 2003, submission, has provided evidence there were no changes in the company's corporate structure and management as a result of, or contemporaneously with, the change of name. With respect to supplier relationships, Suzhou Health Products states that no suppliers have discontinued their relationship with the company since the name change and, while certain suppliers have been added, the addition of these new suppliers is merely a consequence of normal market conditions and the availability of supply. Finally, Suzhou Health Products asserts that there have been no changes in its customer relationships or customer base due to the name change, sales of Suzhou Health Products entirely replace the sales of Suzhou Chemical, and there have been no changes in product names or product brands.

Based on the information submitted by Suzhou Health Products, we preliminarily find that Suzhou Health Products is the successor-in-interest to Suzhou Chemical. We find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Suzhou Health Products has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Suzhou Health Products operates as the same business entity as Suzhou Chemical. Thus, we preliminarily find that Suzhou Health Products should receive the same antidumping duty cash-deposit rate (*i.e.*, a 50.32 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as Suzhou Chemical, its predecessor company.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: February 24, 2003.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–4793 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), FMC Corporation, a U.S. producer of persulfates and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on persulfates from the People's Republic of China, as described below. In response to this request, the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on persulfates from the People's Republic of China.

EFFECTIVE DATE: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Robin Moore, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION: On July 7, 1997, the Department published in the **Federal Register** the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 36259 (July 7, 1997). In addition, on August 27, 2002, the Department initiated an administrative review of the antidumping duty order on persulfates covering one PRC exporter, Shanghai Ai Jian Import and Export Corporation (Ai Jian), and its wholly-owned subsidiary, Shanghai Ai Jian Reagent Factory (AJ Works). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (Aug. 27, 2002). As part of this review, the Department is considering whether it is appropriate to revoke the antidumping order with respect to Ai Jian and AJ Works.

On January 7, 2003, FMC Corporation (FMC), a U.S. producer of persulfates, notified the Department that Degussa AG (Degussa) had purchased seventy percent of AJ Works and that, as a result, the name of AJ Works changed to Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ). FMC requested that the Department initiate a changed circumstances review to determine whether Degussa-AJ is, in fact, the successor-in-interest to AJ Works, and hence, whether it should be considered the same entity with regards to the pending revocation request. In addition, FMC requested that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, in accordance with 19 CFR 351.221(c)(3)(ii).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff*

Schedule of the United States (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by FMC shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c).

Concerning FMC's request that the Department issue the preliminary results of the changed circumstances review in conjunction with the notice of initiation, FMC has not provided sufficient evidence to support a preliminary finding. FMC requested this changed circumstances review for the purpose of determining whether Degussa-AJ is the successor-in-interest to AJ Works. In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See*, *e.g.*, *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily be dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See*, *e.g.*, *id.* and *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (Feb. 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company does not operate as the same business entity as its predecessor, the Department will not treat the new company as the successor-in-interest to the predecessor. In this instance, while FMC has stated for the record that the AJ Works' owners, management structure, supplier relationships and customer base have changed, it has not provided evidence supporting these statements.

We note that the circumstances here involve a change in ownership of a producer in a nonmarket economy country. Consequently, the analysis applied and the relevant facts may differ from successor-in-interest determinations in other situations. Nonetheless, we find that a changed circumstances review is warranted, and we will examine such questions in the course of this review.

Therefore, in accordance with section 751(b)(1) of the Act and sections 19 CFR 351.216(b) and 351.221(b)(1), we are initiating a changed circumstances administrative review.

Interested parties may submit comments for consideration in the Department's preliminary results not later than May 1, 2003. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is under way, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or the ongoing 2001–2002 administrative review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: February 21, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–4792 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2003 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2003 duty exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2003 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2003 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2002 the Virgin Islands watch assembly firms shipped 460,504 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2002 plus the creditable wages paid by the industry during calendar year 2002 to residents of the territory was $3,052,648.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2003 Virgin Islands annual allocations, based on the data

verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc.	500,000
Hampden Watch Co., Inc.	200,000
Unitime Industries, Inc.	100,000
Tropex, Inc.	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

Faryar Shirzad,

Assistant Secretary for Import Administration, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 03–4794 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 000724218–3028–05]

Native American Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Native American Business Development Center (NABDC) program to operate the New Mexico Statewide NABDC.

SUPPLEMENTARY INFORMATION: Due to budget constraints and other agency priorities, the Minority Business Development Agency is canceling the announcement to solicit competitive applications under its Native American Business Development Center (NABDC) program to operate the New Mexico Statewide NABDC. The solicitation was originally published in the **Federal Register** notice of Wednesday, October 30, 2002, Vol. 67, No. 210, Pages 66115–66125. All applications will be returned to the applicants by MBDA.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

(Catalog of Federal Domestic Assistance (CFDA) 11.801 Native American Business Development Center)

Dated: February 24, 2003.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 03–4697 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, March 11, from 9 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an International Panel on Funding R&D Projects, a Competition Update and Program Evaluation Methods (Tool Kit). Discussions scheduled to begin at 9 a.m. and to end at 10 a.m. and to begin at 2:40 p.m. and to end at 3:45 p.m. on March 11, 2003, on ATP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Thursday, March 6, 2003, and she will provide you with instructions for admittance. Ms. Peters's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene March 11, 2003, at 9 a.m. and will adjourn at 3:45 p.m. on March 11, 2003.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 19, 2003, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: February 20, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–4745 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board (Formerly the Computer System Security and Privacy Advisory Board)

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) (formerly known as the Computer System Security and Privacy Advisory Board (CSSPAB)) will meet Tuesday, March 11, 2003, from 8:30 a.m. until 5 p.m., Wednesday, March 12, 2003, from 8:30 a.m. until 5 p.m. and on Thursday, March 13, from 8:30 a.m. until 2 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities

are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on March 11, 2003, from 8:30 a.m. until 5 p.m., March 12, 2003, from 8:30 a.m. until 5 p.m., and March 13, 2003, from 8:30 a.m. until 2 p.m.

ADDRESSES: The meeting will take place at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue (One Bethesda Metro Center), Bethesda, MD 20814.

Agenda

—Welcome and Overview
—ISPAB Work Plan Updates
—Development of E-Authentication Panel Agenda
—NIST Information Technology Laboratory Briefings
—Update by OMB on Privacy and Security Issues
—Briefing on Agency GPEA Implementation
—Update on USPS Business Impact Assessment Project
—Agenda Development for June 2003 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than March 7, 2003. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: February 20, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–4744 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022003C]

International Whaling Commission; Call for Nominations

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2003 International Whaling Commission (IWC) annual meeting.

DATES: All nominations for the U.S. Delegation to the IWC annual meeting must be received by April 2, 2003.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Rolland Schmitten, U.S. Commissioner to the IWC, and sent via post to: Chris Yates, 13727, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Prospective Congressional advisors to the delegation should contact the Department of State directly.

FOR FURTHER INFORMATION CONTACT: Chris Yates, 301–713–2322, Extension 114.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations.

The IWC is hosting its 55th annual meeting from June 16–19, 2003, in Berlin, Germany.

Dated: February 20, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4685 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022403A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (LEAP).

DATES: The meeting will be held on Tuesday, March 18, 2003, from 1 to 5 p.m.

ADDRESSES: This meeting will be held at the Marriott's Grand Hotel, One Grand Boulevard, Point Clear, AL; telephone: 251–928–9201.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review an Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) that includes alternatives to improve the bycatch reporting methodology and to further reduce bycatch from shrimp trawling. The LEAP will also review an Options Paper for Amendment 18 to the Reef Fish FMP that includes a variety of options including: changes to the allowable gear, gear and fishery endorsements, vessel monitoring systems, permit reductions, closed areas, closed seasons, and rebuilding plans for some overfished species. An Options Paper for Amendment 21 to the Reef Fish FMP that includes alternatives for maintaining, eliminating, or modifying the current marine reserves known as the Madison-Swanson and Steamboat Lumps sites off the west coast of Florida will also be reviewed by the LEAP. The LEAP will discuss a preliminary Scoping Paper for Amendment 15 to the Coastal Migratory Pelagics FMP that will look at possibly adding additional species to the FMP or its management unit, prohibition of recreational sales, bag and size limits for cobia, and a standardized bycatch reporting methodology. Other items to be considered by the LEAP include penalties for Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) violations and the current status of regulatory actions that have previously been submitted for approval by NMFS.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as NMFS, the U.S. Coast Guard, and NOAA's General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 11, 2003.

Dated: February 24, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4683 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022403B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee and Advisory Panel in March 2003, to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on March 19, 2003, and March 25, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates, times, locations and agendas.

ADDRESSES: The meetings will be held in Portland, ME, and Danvers, MA.

Council address: 50 Water Street, Mill 2, Newburyport, MA, 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, 978–465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, Locations and Agendas

On Wednesday, March 19, 2003, the Herring Advisory Panel Meeting will meet at 10 a.m. at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: 207–775–2311. The Panel will review results of the Transboundary Resource Assessment Committee (TRAC) assessment of the herring resource. They will identify issues for inclusion in the scoping document for Amendment 2 to the Herring Fishery Management Plan (FMP). (Amendment 1 will address Essential Fish Habitat (EFH) issues separately.) They will also review a timeline for preparation of annual specifications and Amendment 2 development.

On Tuesday, March 25, 2003, the Herring Oversight Committee Meeting will meet at 9:30 a.m. at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA, 01923; telephone: 978–777–2500. The oversight committee will review results of the TRAC assessment of the herring resource. They will finalize a list of issues to be included in the scoping document for Amendment 2 to the Herring FMP (Amendment 1 will address EFH issues separately). They will also discuss the timeline and location of the Amendment 2 scoping meetings. They will review timeline for preparation of annual specifications and Amendment 2 development.

Although non-emergency issues not contained in this notice may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations, sign language interpretation, or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 24, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–4684 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021403D]

Marine Mammals; File No. 559–1442

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mr. Salvatore Cerchio, Department of Biology and Museum of Zoology, 1109 Geddes Ave. University of Michigan, Ann Arbor, Michigan 48109–1079, has been issued an amendment to scientific research Permit No. 559–144200 to extend the expiration date through June 30, 2003.

ADDRESSES: The amendment and related documents are available for re–view upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of 50 CFR 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), the provisions of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4686 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021303B]

Marine Mammals; File No. 782–1694–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115–0070, [Principal Investigator: Dr. Sue Moore, Director], has been issued a permit to collect, import/export species from marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 10, 2002, notice was published in the **Federal Register** (67 FR 63079) that a request for a scientific research permit to take to take an unlimited number of specimens from species of the Orders Cetacea and Pinnipedia had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to collect, acquire, analyze, archive, import/export, re-import, and re-export (worldwide), unlimited numbers and kinds of specimens from dead marine mammal and endangered or threatened species of the Orders Cetacea and Pinnipedia for research purposes.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Assistant Regional Administrator for Protected Resources, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, PO Box 21668, Juneau, AK 99802–1668; phone (907) 586–7235; fax (907) 586–7012;

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4020; fax (562) 980–4027;

Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508) 281–9346; fax (508) 281–9371; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813) 570–5301; fax (813) 570–5517.

Dated: February 21, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–4687 Filed 2–27–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the Presidential Freedom Scholarship Application. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by April 29, 2003.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Amiko Matsumoto, Program Coordinator, Learn and Serve America, 1201 New York Avenue, NW., Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Amiko Matsumoto, (202) 606–5000, ext. 556, or at *amatsumoto@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Presidential Freedom Scholarship program recognizes high school juniors and seniors for outstanding leadership in service. Each high school in the United States may award up to two recipients with a $1,000 scholarship for college: Five hundred dollars ($500) is funded from the Corporation's National Service Trust, and the remaining $500 is secured locally from civic groups, local business, and other community based organizations.

While the selection of the recipients is made by the high school, the principal must complete an application in order for the Corporation to release the funds in the form of a check made out to the student and the college that he/she is planning to attend. The application may be completed either in paper or online form.

II. Current Action

The Corporation is seeking public comment for approval of the Presidential Freedom Scholarship Application which will be used by high school principals to nominate high school juniors and seniors for this scholarship.

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: Presidential Freedom Scholarship Application.

OMB Number: None.

Agency Number: None.

Affected Public: High School Principals and/or guidance counselors.

Total Respondents: 7,000.

Frequency: Annually.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 3,500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 24, 2003.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. 03–4659 Filed 2–27–03; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Cohen, at (202) 606–5000, extension 484, (*ACohen@cns.gov*); (TTY/TDD) at (202) 606–5256 between the hours of 9 a.m. and 4 p.m. Eastern Standard Time, Monday through Friday.

ADDRESSES: Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, Washington, DC 20503, within 30 days from the date of publication in this **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways 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 technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Description

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of the application instructions entitled:

a. *Learn and Serve America:* Higher Education Application Instructions; and

b. *Learn and Serve America:* School and Community-Based Program Application Instructions.

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation has recently developed an electronic grants management system that meets the requirements of Public Law 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design.

Part I

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Higher Education Application Instructions.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400 respondents.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Type of Review: Revised collection.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America School and Community-Based Program Application Instructions.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225 respondents.

Frequency: Annually.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 2,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: February 25, 2003.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. 03–4795 Filed 2–27–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Experimentation will meet in closed session on March 7, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will examine joint experimentation programs and activities and will recommend ways to enhance the contributions of joint experimentation to transformation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review the Joint Forces Command's program of joint experimentation and recommend steps to enhance its value by examining the goals, process and substance of the experimentation program, to include: Creating an environment that fosters innovation and learning; collecting, analyzing, interpreting, vetting and disseminating data; engaging the Services, other Commands, key U.S. government agencies and allies; and developing and using models, simulations and other tools. In addition, the Task Force will review the recently completed Millennium Challenge 02 to identify insights and opportunities that may not have been focused on by those closer to the activity.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 14, 2003.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–4790 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Unmanned Aerial Vehicles (UAV) and Uninhabited Combat Aerial Vehicles (UCAV) will meet in closed session on February 27–28, 2003, and March 27–28, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review UAV/UCAV systems with special emphasis on affordability and increasing costs, interoperability disconnects, communications architectures to include bandwidth and redundancy, accident rates, operational control in both FAA airspace and military restricted airspace, survivability, military utility analysis, and management approaches.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will identify principal impediments to full and rapid exploitation of the joint warfighting potential of UAV and UCAV systems and, further, recommend how these constraints might be mitigated or removed.

In accordance with section 19(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements and scheduling conflicts, there is insufficient time to provide timely notice required by section 19(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to a Task Force meeting.

Dated: February 14, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–4791 Filed 2–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Educational Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army War College (USAWC) Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 3 & 4, 2003.

Place: Command Conference Room, Root Hall, USAWC, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5 p.m.

Proposed Agenda: Review minutes of previous annual meeting and open old business for discussion; updated briefings and new business; discussions with Commandant and selected faculty; examine academic and facility issues in conjunction with transformation; re-assess resident and distance programs, highlight and discuss plans for the Process for Accreditation of Joint Education (PAGE) 2004; Subcommittee reports on charter and membership issues and educational policy, advancement, and fundraising issues; propose new strategies and recommendations that will guarantee compliance with regional accreditation standards, insure a successful PAGE, and continue the momentum of federal accreditation and institutional progress.

FOR FURTHER INFORMATION CONTACT: Colonel Kevin T. Connelly, Director of Joint Education, Department of Academic Affairs, U.S. Army War College, Carlisle Barracks, Pennsylvania 17013, or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee after receiving advance approval to do so. To request approval to attend, participate, or submit, you must contact Colonel Kevin T. Connelly not later than March 17, 2003, at the above address or phone number.

Kevin T. Connelly,

Colonel, U.S. Army, Designated Federal Official.

[FR Doc. 03–4403 Filed 2–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Headquarters, U.S. Army Materiel Command are:

1. Major General William H. Russ, Commanding General, Communications-Electronics Command.

2. Mr. Michael Parker, Deputy to the Commander, U.S. Army Soldier and Biological Chemical Command.

3. Ms. Marlene Cruze, Executive Director, Acquisition Center, U.S. Army Aviation and Missile Command.

4. Dr. N. Radhakrishnan, Director, Computational and Information Sciences Directorate, U.S. Army Research Laboratory.

5. Major General Larry J. Dodgen, Commanding General, U.S. Army Aviation and Missile Command.

6. Mr. Victor Ferlise, Deputy to the Commander, U.S. Army Communications-Electronics Command.

7. Dr. Robin Keesee, Director Human Research and Engineering Directorate, U.S. Army Research Laboratory.

8. Mr. Vemula Rao, Vice President for Customer Engineering, Tank-Automotive Research, Development and Engineering Center.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–4787 Filed 2–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Supplemental Environmental Impact Statement to the Central and Southern Florida Project Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the Central and Southern Florida Project (C&SF) Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas (WPA) Feasibility Study, as published in the **Federal Register,** July 11, 2000 (64 FR 42681).

The cancellation is necessitated in order to resolve outstanding issues relating to the: (1) Plan Formulation Process—Programmatic Regulations; (2) Quantification of Plan Benefits; (3) Project Sequencing; (4) Water Supply/Savings Clause; and (5) Water Reservations and Allocations. Subsequently, the fourteen components comprising the WPA Feasibility Study and Special Project Implementation Report (SPIR) will be condensed into nine separate, stand-alone Project Implementation Reports (PIR), that will more effectively consider sequencing, project benefits, Water Resources Development Act 2000, and authorization.

Environmental documentation will be prepared and coordinated in conjunction with each of the proposed PIR actions. The public will be notified of forthcoming public hearing dates, location, time, and comment period expiration dates.

FOR FURTHER INFORMATION CONTACT: Questions can be forwarded to Mr. Brad Tarr, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, Phone: 904–232–3582.

SUPPLEMENTARY INFORMATION: None.

Dated: February 13, 2003.

James C. Duck,

Chief, Planning Division.

[FR Doc. 03–4786 Filed 2–27–03; 8:45 am]

BILLING CODE 3410–AJ–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 March 31, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 internet address *Lauren.Wittenberg@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 Leader, Regulatory 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: February 25, 2003.

John D. Tressler, Leader,

Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Migrant Education Program (MEP) Proposed Regulations, Sections 200.83, 200.84, and 200.88 (KA).

Frequency: Biennially, Other: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 43.

Burden Hours: 19925.

Abstract: §200.83 of the regulations for Title I, Part C establish the minimum requirements an SEA must meet for development of a comprehensive needs assessment and plan for service delivery as required under Section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). §200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under Section 1304(c)(2) of ESEA. §200.88 of the regulations clarify that, for the purposes of the MEP, only ''supplemental'' State or local funds that are used for programs specifically designed to meet the unique needs of migratory children can be excluded in terms of determining compliance with the ''comparability'' and ''supplement, not supplant'' provisions of the statute.

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 directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 Joseph Schubart at his e-mail address *Joe.Schubart@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.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Federal Perkins/NDSL Loan Assignment Form (JS).

Frequency: On Occasion.

Affected Public: Not-for-profit institutions (primary); Businesses or other for-profit (primary); Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 21262;

Burden Hours: 8505.

Abstract: This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

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 directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 Joseph Schubart at his e-mail address *Joe.Schubart@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.

Office of Postsecondary Education

Type of Review: Revision.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IIPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and the Technology Innovation and Cooperation for Foreign Information Access (TICFIA) programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,595;

Burden Hours: 30,770.

Abstract: LRC, IRS, FRA, DDRA, SA, GPA, and TICFIA are being added for clearance to the system that already contains seven other programs. Information collection assist International Education and Graduate Programs Services (IEGPS) in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

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 *vivian_reese@ed.gov.* Requests may also be 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 Joseph Schubart at his e-mail address *Joe.Schubart@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. 03–4748 Filed 2–27–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: As required by section 9524 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB), the Secretary of Education on February 7, 2003, issued guidance on constitutionally protected prayer in public elementary and secondary schools. The purpose of this guidance is to provide State educational agencies (SEAs), local educational agencies (LEAs), and the public with information on this important topic. The guidance also sets forth and explains the responsibilities of SEAs and LEAs with respect to this aspect of the NCLB. This guidance is set forth in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: Jeanette Lim, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2241. Telephone: (202) 401–0113. Information on this guidance is available on the Internet through the Department of Education's Web site at: *http://www.ed.gov/inits/religionandschools/*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: As a condition of receiving funds under the Elementary and Secondary Education Act, an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The guidance clarifies the rights of students to pray in public schools. As stated in the guidance, ''* * * the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals'' such as students. Therefore, ''[a]mong other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other noninstructional time to the same extent that they may engage in nonreligious activities.'' Public schools should not be hostile to the religious rights of their students and their families.

At the same time, school officials may not ''compel students to participate in prayer or other religious activities.'' Nor may teachers, school administrators, and other school employees, when acting in their official capacities as representatives of the State, encourage or discourage prayer or actively participate in those activities with students.

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*.

(Authority: 20 U.S.C. 7904).

Dated: February 24, 2003.

Rod Paige,

Secretary of Education.

Appendix—Guidance on Constitutionally Protected Prayer In Public Elementary and Secondary Schools—February 7, 2003

Introduction

Section 9524 of the Elementary and Secondary Education Act (''ESEA'') of 1965, as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency (''LEA'') must certify in writing to its State educational agency (''SEA'') that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance.

The purpose of this guidance is to provide SEAs, LEAs, and the public with information on the current state of the law concerning constitutionally protected prayer in the public schools, and thus to clarify the extent to which prayer in public schools is legally protected. This guidance also sets forth the responsibilities of SEAs and LEAs with respect to Section 9524 of the ESEA. As required by the Act, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law. It will be made available on the Internet through the Department of Education's Web site (*www.ed.gov*). The guidance will be updated on a biennial basis, beginning in September 2004, and provided to SEAs, LEAs, and the public.

The Section 9524 Certification Process

In order to receive funds under the ESEA, an LEA must certify in writing to its SEA that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance. An LEA must provide this certification to the SEA by October 1, 2002, and by October 1 of each subsequent year during which the LEA participates in an ESEA program. However, as a transitional matter, given the timing of this guidance, the initial certification must be provided by an LEA to the SEA by March 15, 2003.

The SEA should establish a process by which LEAs may provide the necessary certification. There is no specific Federal form that an LEA must use in providing this certification to its SEA. The certification may be provided as part of the application process for ESEA programs, or separately, and in whatever form the SEA finds most appropriate, as long as the certification is in writing and clearly states that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

By November 1 of each year, starting in 2002, the SEA must send to the Secretary a list of those LEAs that have not filed the required certification or against which complaints have been made to the SEA that the LEA is not in compliance with this guidance. However, as a transitional matter, given the timing of this guidance, the list otherwise due November 1, 2002, must be sent to the Secretary by April 15, 2003. This list should be sent to:

Office of Elementary and Secondary Education, *Attention:* Jeanette Lim, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

The SEA's submission should describe what investigation or enforcement action the SEA has initiated with respect to each listed LEA and the status of the investigation or action. The SEA should not send the LEA certifications to the Secretary, but should maintain these records in accordance with its usual records retention policy.

Enforcement of Section 9524

LEAs are required to file the certification as a condition of receiving funds under the ESEA. If an LEA fails to file the required certification, or files it in bad faith, the SEA should ensure compliance in accordance with its regular enforcement procedures. The Secretary considers an LEA to have filed a certification in bad faith if the LEA files the certification even though it has a policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in this guidance.

The General Education Provisions Act (''GEPA'') authorizes the Secretary to bring enforcement actions against recipients of Federal education funds that are not in compliance with the law. Such measures may include withholding funds until the recipient comes into compliance. Section 9524 provides the Secretary with specific authority to issue and enforce orders with respect to an LEA that fails to provide the required certification to its SEA or files the certification in bad faith.

Overview of Governing Constitutional Principles

The relationship between religion and government in the United States is governed by the First Amendment to the Constitution, which both prevents the government from establishing religion and protects privately initiated religious expression and activities from government interference and discrimination.[1] The First Amendment thus establishes certain limits on the conduct of public school officials as it relates to religious activity, including prayer.

The legal rules that govern the issue of constitutionally protected prayer in the public schools are similar to those that govern religious expression generally. Thus, in discussing the operation of Section 9524 of the ESEA, this guidance sometimes speaks in terms of ''religious expression.'' There are a variety of issues relating to religion in the public schools, however, that this guidance is not intended to address.

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer.[2] Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment's scope. As the Court has explained in several cases, ''there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.''[3]

The Supreme Court's decisions over the past forty years set forth principles that distinguish impermissible governmental religious speech from the constitutionally protected private religious speech of students. For example, teachers and other public school officials may not lead their classes in prayer, devotional readings from the Bible, or other religious activities.[4] Nor may school officials attempt to persuade or compel students to participate in prayer or other religious activities.[5] Such conduct is ''attributable to the State'' and thus violates the Establishment Clause.[6]

Similarly, public school officials may not themselves decide that prayer should be included in school-sponsored events. In *Lee* v. *Weisman*,[7] for example, the Supreme Court held that public school officials violated the Constitution in inviting a member of the clergy to deliver a prayer at a graduation ceremony. Nor may school officials grant

religious speakers preferential access to public audiences, or otherwise select public speakers on a basis that favors religious speech. In *Santa Fe Independent School District* v. *Doe,*[8] for example, the Court invalidated a school's football game speaker policy on the ground that it was designed by school officials to result in pregame prayer, thus favoring religious expression over secular expression.

Although the Constitution forbids public school officials from directing or favoring prayer, students do not ''shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,''[9] and the Supreme Court has made clear that ''private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.''[10] Moreover, not all religious speech that takes place in the public schools or at school-sponsored events is governmental speech.[11] For example, ''nothing in the Constitution * * * prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday,''[12] and students may pray with fellow students during the school day on the same terms and conditions that they may engage in other conversation or speech. Likewise, local school authorities possess substantial discretion to impose rules of order and pedagogical restrictions on student activities,[13] but they may not structure or administer such rules to discriminate against student prayer or religious speech. For instance, where schools permit student expression on the basis of genuinely neutral criteria and students retain primary control over the content of their expression, the speech of students who choose to express themselves through religious means such as prayer is not attributable to the state and therefore may not be restricted because of its religious content.[14] Student remarks are not attributable to the state simply because they are delivered in a public setting or to a public audience.[15] As the Supreme Court has explained: ''The proposition that schools do not endorse everything they fail to censor is not complicated,''[16] and the Constitution mandates neutrality rather than hostility toward privately initiated religious expression.[17]

Applying the Governing Principles in Particular Contexts

Prayer During Noninstructional Time

Students may pray when not engaged in school activities or instruction, subject to the same rules designed to prevent material disruption of the educational program that are applied to other privately initiated expressive activities. Among other things, students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other non-instructional time to the same extent that they may engage in nonreligious activities. While school authorities may impose rules of order and pedagogical restrictions on student activities, they may not discriminate against student prayer or religious speech in applying such rules and restrictions.

Organized Prayer Groups and Activities

Students may organize prayer groups, religious clubs, and ''see you at the pole'' gatherings before school to the same extent that students are permitted to organize other non-curricular student activities groups. Such groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression. School authorities possess substantial discretion concerning whether to permit the use of school media for student advertising or announcements regarding non-curricular activities. However, where student groups that meet for nonreligious activities are permitted to advertise or announce their meetings—for example, by advertising in a student newspaper, making announcements on a student activities bulletin board or public address system, or handing out leaflets—school authorities may not discriminate against groups who meet to pray. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Teachers, Administrators, and other School Employees

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

Moments of Silence

If a school has a ''minute of silence'' or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on Federal or State constitutional law or pursuant to State statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. School officials are therefore encouraged to consult with their attorneys regarding such obligations.

Religious Expression and Prayer in Class Assignments

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.

Student Assemblies and Extracurricular Events

Student speakers at student assemblies and extracurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious speech. Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. By contrast, where school officials determine or substantially control the content of what is expressed, such speech is attributable to the school and may not include prayer or other specifically religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Prayer at Graduation

School officials may not mandate or organize prayer at graduation or select speakers for such events in a manner that favors religious speech such as prayer. Where students or other private graduation speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, however, that expression is not attributable to the school and therefore may not be restricted because of its religious (or anti-religious) content. To avoid any mistaken perception that a school endorses student or other private speech that is not in fact attributable to the school, school officials

may make appropriate, neutral disclaimers to clarify that such speech (whether religious or nonreligious) is the speaker's and not the school's.

Baccalaureate Ceremonies

School officials may not mandate or organize religious ceremonies. However, if a school makes its facilities and related services available to other private groups, it must make its facilities and services available on the same terms to organizers of privately sponsored religious baccalaureate ceremonies. In addition, a school may disclaim official endorsement of events sponsored by private groups, provided it does so in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

Footnotes

[1] The relevant portions of the First Amendment provide: ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech * * *'' U.S. Const. amend. I. The Supreme Court has held that the Fourteenth Amendment makes these provisions applicable to all levels of government—federal, state, and local—and to all types of governmental policies and activities. See *Everson* v. *Board of Educ.,* 330 U.S. 1 (1947); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940).

[2] *See, e.g., Everson,* 330 U.S. at 18 (the First Amendment ''requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them''); *Good News Club* v. *Milford Cent. Sch.,* 533 U.S. 98 (2001).

[3] *Santa Fe Indep. Sch. Dist.* v. *Doe,* 530 U.S. 290, 302 (2000) (quoting *Board of Educ.* v. *Mergens,* 496 U.S. 226, 250 (1990) (plurality opinion)); *accord Rosenberger* v. *Rector of Univ. of Virginia,* 515 U.S. 819, 841 (1995).

[4] *Engel* v. *Vitale,* 370 U.S. 421 (1962) (invalidating state laws directing the use of prayer in public schools); *School Dist. of Abington Twp.* v. *Schempp,* 374 U.S. 203 (1963) (invalidating state laws and policies requiring public schools to begin the school day with Bible readings and prayer); *Mergens,* 496 U.S. at 252 (plurality opinion) (explaining that ''a school may not itself lead or direct a religious club''). The Supreme Court has also held, however, that the study of the Bible or of religion, when presented objectively as part of a secular program of education (*e.g.,* in history or literature classes), is consistent with the First Amendment. *See Schempp,* 374 U.S. at 225.

[5] *See Lee* v. *Weisman,* 505 U.S. 577, 599 (1992); *see* also *Wallace* v. *Jaffree,* 472 U.S. 38 (1985).

[6] *See Weisman,* 505 U.S. at 587.

[7] 505 U.S. 577 (1992).

[8] 530 U.S. 290 (2000).

[9] *Tinker* v. *Des Moines Indep. Community Sch. Dist.,* 393 U.S. 503, 506 (1969).

[10] *Capitol Square Review & Advisory Bd.* v. *Pinette,* 515 U.S. 753, 760 (1995).

[11] *Santa Fe,* 530 U.S. at 302 (explaining that ''not every message'' that is ''authorized by a government policy and take[s] place on government property at government-sponsored school-related events'' is ''the government's own'').

[12] *Santa Fe,* 530 U.S. at 313.

[13] For example, the First Amendment permits public school officials to review student speeches for vulgarity, lewdness, or sexually explicit language. *Bethel Sch. Dist.* v. *Fraser,* 478 U.S. 675, 683–86 (1986). Without more, however, such review does not make student speech attributable to the state.

[14] *Rosenberger* v. *Rector of Univ. of Virginia,* 515 U.S. 819 (1995); *Board of Educ.* v. *Mergens,* 496 U.S. 226 (1990); *Good News Club* v. *Milford Cent. Sch.,* 533 U.S. 98 (2001); *Lamb's Chapel* v. *Center Moriches Union Free Sch. Dist.,* 508 U.S. 384 (1993); *Widmar* v. *Vincent,* 454 U.S. 263 (1981); *Santa Fe,* 530 U.S. at 304 n.15. In addition, in circumstances where students are entitled to pray, public schools may not restrict or censor their prayers on the ground that they might be deemed ''too religious'' to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they ''nonsectarian'' and ''nonproselytizing'' or the opposite—over others. *See Engel* v. *Vitale,* 370 U.S. 421, 429–30 (1962) (explaining that ''one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services,'' that ''neither the power nor the prestige'' of state officials may ''be used to control, support or influence the kinds of prayer the American people can say,'' and that the state is ''without power to prescribe by law any particular form of prayer''); *Weisman,* 505 U.S. at 594.

[15] *Santa Fe,* 530 U.S. at 302; *Mergens,* 496 U.S. at 248–50.

[16] *Mergens,* 496 U.S. at 250 (plurality opinion); *id.* at 260–61 (Kennedy, J., concurring in part and in judgment).

[17] *Rosenberger,* 515 U.S. at 845–46; *Mergens,* 496 U.S. at 248 (plurality opinion); id. at 260–61 (Kennedy, J., concurring in part and in judgment).

[FR Doc. 03–4693 Filed 2–27–03; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0015; FRL–7454–9]

Agency Information Collection Activities: Submission of EPA ICR No. 1052.07, OMB No. 2060–0026, to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generating Units. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before March 31, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; E-mail address *chadwick.dan@epagov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 *FR* 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0015, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to EPA Docket Center, Environmental

Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS Subpart D, Standards of Performance for Fossil-Fuel-Fired Steam Generating Units, OMB Control Number 2060–0026, EPA ICR Number 1052.07. This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of steam generating units subject to Subpart D must make one-time-only notifications of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit reports on initial performance test results, monitoring system performance, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, and periods when the continuous monitoring system is inoperative.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports (which are semiannual) are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. The information collected from record keeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 *FR* 36902, September 1, 1976; amended by 43 *FR* 40000, September 8, 1978; 43 *FR* 42251, September 20, 1978; 44 *FR* 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of fossil-fuel-fired steam generating units subject to Subpart D.

Estimated Number of Respondents: 660.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 61,545 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Cost: $9,900,000, which includes $0 annualized capital/startup costs and $9,900,000 annual O & M costs.

Changes in Estimates: There is a decrease of hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens. This decrease is due to a correction in the frequency of reporting from quarterly to semiannual.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4772 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0042; FRL–7454–8]

Agency Information Collection Activities; Proposed Collection; Comment Request (OMB Control No. 2040–0027, EPA ICR No. 0827.06)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Construction Grants Program. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 31, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, Office of Wastewater Management, Mail Code 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0634, fax number: (202) 501–2396, e-mail: *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 12, 2002, EPA sought comments on this renewal ICR (67 *FR* 52480) pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0042, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Construction Grants Program (OMB Control No. 2040–0027, EPA ICR Number 0827.06). This is a request to renew an existing approved collection that is scheduled to expire on 3/31/2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The purpose of this ICR is to revise and extend the current clearance for the collection of information under the EPA Construction Grants Program, 40 CFR part 35, subpart I, and Title II of the Clean Water Act (CWA). The program includes reporting requirements for municipalities, Indian Tribes, and States. In this ICR, the reporting requirements for the Construction Grants Program are divided into three categories:

1. Requirements associated with new grant awards;
2. Requirements associated with project completions; and
3. Requirements imposed on States.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and municipalities.

Estimated Number of Respondents: 30.

Frequency of Response: On occasion and annually, average about 5 per year/respondent.

Estimated Total Annual Hour Burden: 26,588 hours.

Estimated Total Annual Cost: $887,819, includes $0 annual capital and O&M costs.

Changes in the Estimates: There is a decrease of 50,164 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is because EPA is phasing out the Title II Construction Grants Program due to establishment of State Revolving Loan Fund program.

Dated: February 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–4773 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6637–9]

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 February 17, 2003 Through February 21, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030065, DRAFT SUPPLEMENT, FHW, RI, Jamestown Bridge Replacement Project, New Information Regarding the Demolition of the Old Jamestown Bridge (Bridge No. 400), Federal Aid Project Numbers (BRF–0138(002)), U.S. Coast Guard, NPDES, U.S. Army COE Section 404 Permits, North Towns of North Kingstown and Jamestown, Washington and Newport Counties, RI, Comment Period Ends: April 25, 2003, Contact: Ralph Rizzo (401) 528–4548.

EIS No. 030066, DRAFT EIS, FHW, WA, WA–167 Freeway Project, Construct from WA–161 (Meridian Street North) in the City of Puyallup to the WA–509 freeway in the City of Tacoma, Funding, U.S. Coast Guard, NPDES, U.S. Army COE Section 10 and 404 Permits, Cities of Puyallup, Fife, Edgewood, Milton, and Tacoma, Pierce County, WA, Comment Period Ends: April 14, 2003, Contact: Steve Saxton (360) 753–9411.

This document is available on the Internet at: *http://www.wy.blm.com.*

EIS No. 030067, FINAL EIS, AFS, NC, Croatan National Forest Revised Land and Resource Management Plan (1986), Implementation, Carteret,

Craven and Jones Counties, NC, Wait Period Ends: March 31, 2003, Contact: Lawrence Hayden (828) 257–4864.

EIS No. 030068, FINAL EIS, FHW, AL, Memphis to Atlanta Corridor, To Construct from I–65 in North Central Alabama Eastward to the Georgia State Line, COE Section 404, U.S. Coast Guard and NPDES Permits, Limestone, Morgan, Madison, Jackson, Marshall, DeKalb and Cherokee Counties, AL, Wait Period Ends: March 31, 2003, Contact: Joe. D. Wilkerson (334) 223–7370.

EIS No. 030069, FINAL EIS, FHW, MS, East Harrison County Connector Construction, I–10 to U.S. 90, Funding, U.S. Army COE and U.S. Coast Guard Permits, Issuance and Possible Transfer of Federal Lands, Harrison County, MS, Wait Period Ends: March 31, 2003, Contact: Cecil W. Vick, Jr. (601) 965–4217.

EIS No. 030070, DRAFT EIS, DOE, SC, Savannah River Site. Construction and Operation of a Mixed Oxide (MOX) Fuel Fabrication Facility, NUREG–1767, Aiken, Barnwell and Allendale Counties, SC, Comment Period Ends: April 14, 2003, Contact: Tim Harris (301) 415–6613.

EIS No. 030071, FINAL EIS, AFS, AZ, Kachina Village Forest Health Project, Forest Health Improvements and Potential Wildfire Reductions on National Forest System Land, Implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ, Wait Period Ends: March 31, 2003, Contact: Tammy Randall-Parker (928) 526–0866.

This document is available on the Internet at: *http://www.fs.fed.us/r3/coconinio/nepa.*

EIS No. 230072, DRAFT EIS, COE, IL, Programmatic EIS—East St. Louis and Vicinity, Illinois Ecosystem Restoration and Flood Damage Reduction Project, Implementation, Madison and St. Clair Counties, IL, Comment Period Ends: May 7, 2003, Contact: Deborah Roush (314) 331–8033.

This document is available on the Internet at: *http://www.mvs.usace.army.mil/pm/pmmain.htm.*

EIS No. 030073, FINAL SUPPLEMENT, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Updated and New Information concerning Cumulative Effects and Introduction of Alternative F, Clancy-Unionville Implementation Area, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Wait Period Ends: March 31, 2003, Contact: Dan Mainwaring (406) 449–5490.

EIS No. 030074, DRAFT EIS, AFS, CA, Interface Recreation Trails Project, To Design a Recreation Route System, Implementation, Stanislaus National Forest, Calaveras Ranger District, Calaveras County, CA, Comment Period Ends: May 5, 2003, Contact: Robert W. Griffith (209) 795–1381.

This document is available on the Internet at: *http://www.r5.fs.fed.us/stanslaus/calaveras.*

EIS No. 030075, DRAFT EIS, AFS, OR, Steamboat Mountain Mining Operations, Proposal to Conduct Surface Quarry or ''Open Pit'' Mineral Extraction, Plan-of-Operation, Appelgate Adaptive Management Area, Rogue River National Forest, Applegate Ranger District, Jackson County, OR, Comment Period Ends: April 14, 2003, Contact: Bengf Hamner (541) 899–3800.

Dated: February 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–4779 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–1]

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 **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65373–MT Rating EC2, Canyon Lake Dam and Wyant Lake Dam Project, Proposal to Authorize Access to their Facilities with Prescribe Terms and Conditions, Canyon Creek Irrigation District (CCID), Bitterroot National Forest, Selway Bitterroot Wilderness, Ravalli County, MT.

Summary: EPA expressed environmental concerns and recommended integrating 404 permitting requirements into the EIS process and decision making for selecting among Canyon Lake dam rehabilitation options. EPA recommended preparing a preliminary 404(b)(1) evaluation for proposed placement of dredged or fill materials in U.S. waters, and wetlands for the dam rehabilitation. EPA believes additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–L65412–OR Rating EC2, Metolius Basin Forest Management Project, Fuel Reduction and Forest Health Management Activities, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR.

Summary: EPA expressed environmental concerns due to impacts to aquatic resources, endangered and threatened species, silvicultural practices, dispersed recreation, tribal consultation, and indirect and cumulative effects.

ERP No. LD–AFS–L65411–WA Rating NS, I–90 Wilderness Study, Review of Land Comprising of 15,000 Acres for Suitability for Preservation as Wilderness, Cle Elum and Leavenworth Ranger Districts, Olanogan and Wenatchee National Forests, Kittitas and Chelan Counties, WA.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based on this screen EPA does not foresee having any environmental objections to the proposed action. Therefore, EPA will not be conducting a detailed review.

ERP No. D–MMS–L02030–AK Rating EC2, Cook Inlet Planning Area Oil and Gas Lease Sales 191 and 199, Outer Continental Shelf, Offshore Marine Environment, Cook Inlet, AK.

Summary: EPA expressed environmental concerns that an alternative that deferred both the Lower Kenai Peninsula and Barren Islands areas was not included. EPA recommended that the Environmental Justice Analysis explain the methods and criteria used to determine minority and low income significance, and identify if the low income and/or people of color communities will be disproportionately impacted. EPA also requested that mitigating measures to protect endangered and threatened species and their critical habitat be adopted as standard lease stipulations.

ERP No. D–USN–K11108–CA Rating EC2, China Lake Naval Air Weapons Station, Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use and Integrated Natural Resources Management Plans, Located on the

North and South Ranges, Inyo, Kern and San Bernardino Counties, CA.

Summary: EPA raised environmental concerns about potential impacts associated with past use of munitions containing depleted uranium (DU), potential impacts associated with continued or renewed use of DU munitions under any of the fully-evaluated alternatives, and the Navy's environmental restoration efforts to date for DU contamination. EPA also raised concerns about potential air quality impacts associated with the project's implementation, including emissions of air toxics, which can be potentially reduced with mitigation.

Final EISs

ERP No. F–FSA–A65172–00, Programmatic EIS—Conservation Reserve Program Implementation and Expansion, Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), in the United States.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–K91011–00, 2003 Pacific Coast Groundfish Fishery, Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Implementation, WA, OR and CA.

Summary: EPA expressed continuing environmental concerns regarding impacts on overfished bocaccio stocks, and the effectiveness of enforcement measures for the 2003 harvest.

ERP No. F–NPS–K61156–00, Lake Mead National Recreation Area, Long-Term Management of Lake Mead and Mohave and Associated Shoreline and Development Area, Lake Management Plan, Clark County, NV and Mohave County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F1–FAA–D51026–00, Potomac Consolidated Teminal (PCT) Radar Approach Control Facility (TRACON) Airspace Redesign in the Baltimore-Washington Metropolitan Area. Newly Consolidated TRACON, Aircraft Performance Improvements and Emerging PCT Technologies, PA, MD, DE, VA, WV and DC.

Summary: EPA has no objection to the proposed action since our previous issues have been addressed in the final EIS.

Dated: February 25, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–4780 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7456–2]

Notice of Extension of Due Date for Proposals for the National Environmental Information Exchange Network (Network) Grant Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of due date for proposals.

SUMMARY: The due date for proposals for the Network Grant Program has been extended to March 18, 2003. Proposals must be submitted by mail or courier to U.S. EPA Headquarters, Office of Information Collection, ATTN: Lyn Burger, EPA West, Mail Code 2821T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and electronically by email: *neenprg@epamail.epa.gov* on or before March 18, 2003.

Funding Vehicle Preference: The grant proposal should indicate whether the applicant prefers receiving grant funds as part of an existing Performance Partnership Grant (PPG), or as a separate grant. If the grant recipient chooses to add funds to an existing PPG, the Network grant work plan commitments must also be included in the PPG work plan negotiated with EPA HQ and Regions.

FOR FURTHER INFORMATION CONTACT: Lyn Burger, U.S. EPA, Office of Information Collection, Mail Code 2821T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Phone (202) 566–1024; E-mail at *neengprg@epamail.epa.gov.* For additional information, please visit the Network Grant website at *www.epa.gov/neengprg.*

Dated: February 21, 2003.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 03–4771 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0072; FRL–7296–1]

Availability of Atrazine Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Interim Reregistration Eligibility Decision (IRED) document for the triazine pesticide atrazine. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments, identified by docket ID number OPP–2003–0072, must be received on or before April 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8059; fax number: (703) 308–8041; e-mail address: nesci.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for atrazine, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may 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 Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0072. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp–docket@epa.gov, Attention: Docket ID Number OPP–2003–0072. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP– 2003–0072.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0072. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as

CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

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 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 your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks of atrazine and reached an Interim Reregistration Eligibility Decision (IRED) for this triazine pesticide. Provided that risk mitigation measures are adopted, atrazine fits into its own risk cup--its individual, aggregate risks are within acceptable levels. A chemical used mainly to control weeds on corn, sorghum, and sugarcane, atrazine residues in food do not pose risk concerns. The Agency's drinking water, occupational, residential and ecological risk assessments for atrazine indicate risks of concern. Intermediate-term (seasonal) dietary risk from drinking water exceeds the Agency's level of concern (> 100% cPAD (chronic population adjusted dose)) at the 99.9th exposure percentile for infants, children 1–6 years of age, and adults in 34 community water systems primarily in the Midwest.

Further, there are some concerns for workers who mix, load, and apply atrazine to agricultural and turf sites and for homeowners who apply atrazine products to home lawns. In addition, there are risks of concern for adults and children exposed to atrazine-treated lawns after applications.

For ecological effects, the Agency has conducted a screening level assessment for terrestrial impacts and a refined exposure assessment for aquatic impacts of atrazine use. These assessments indicate that atrazine is likely to result in community- and population-level risk at 10 to 20 parts per billion. The ecological assessment does not address the potential for effects on amphibians endocrinology and reproductive and developmental responses. The Agency will consider amphibian risk after the Agency obtains further data and will address any risks identified in a revision to the IRED to be published by October 31, 2003.

To mitigate risks of concern posed by the uses of atrazine, the Agency considered the mitigation proposal submitted by the technical registrants, as well as comments and mitigation ideas from other interested parties, and has decided on a number of label amendments to address the dietary (drinking water), worker, and residential concerns. In addition, to further address drinking water concerns and to address ecological concerns, the Agency and the technical registrants have agreed to a performance standard for atrazine that must be met in community water systems, prohibition of use in watersheds if the standard is not met, and monitoring data requirements as described in a Memorandum of Agreement between the primary technical registrants of atrazine and the Agency. Results of the risk assessments, the necessary label amendments to mitigate those risks, and information on the Agreement between the Agency and the technical registrants are presented in the IRED.

The interim risk management decision document for atrazine was made through the pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in this interim risk management decision document, which conclude the pilot public participation process for atrazine. As part of the pilot public participation process, numerous opportunities for public comment were offered as this interim risk management decision document was being developed.

The risk assessments for atrazine were released to the public through notices published in the **Federal Register** on February 14, 2001 (66 FR 10287) (FRL–6765–3), and May 6, 2002 (67 FR 30379) (FRL–6836–1).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the triazine pesticides, which share a common mechanism of toxicity. This interim risk management decision document on atrazine cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the triazine pesticides has been completed, EPA will issue its final tolerance reassessment decision for atrazine and further risk mitigation measures may be needed.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this IRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering

products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: February 21, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4778 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0028; FRL–7290–3]

EPTC; Receipt of Request For Amendments to Delete Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by Syngenta Crop Protection Inc. (formerly Zeneca Ag Products) to delete uses in certain registrations for products containing *S*-Ethyl di propyl thiocarbamate or EPTC. In addition, Drexel Chemical Company has asked EPA to cancel or amend their registrations for end-use products containing EPTC. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary cancellation were submitted to EPA in March 2000 and February 2002. EPA also plans to issue a cancellation order for the deleted uses at the close of the comment period for this announcement. EPA will decide whether to approve the requests after consideration of public comment.

DATES: Comments on the requested amendments to delete uses must be submitted to the address provided below by March 31, 2003. Withdrawal of request for deletion of use must be submitted in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8062; e-mail address:fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use EPTC products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a

brief description written by the docket staff.

II. Request to Amend Registrations

A. Background Information

The Reregistration Eligibility Decision (RED) for EPTC was completed in December 1999. At that time, EPA requested that Syngenta (formerly Zeneca Ag Products) submit field trial data for citrus. On March 21, 2000, Syngenta submitted a written request to EPA seeking to amend the registrations for EPTC, specifically requesting that EPA amend registrations to terminate the use of EPTC on citrus. On August 27, 2000, the registrant further submitted labeling amendments deleting citrus from each label on which it appears. In addition, on February 15, 2002, Drexel Chemical Company requested a voluntary cancellation of citrus for its End-Use products containing EPTC.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. The registrations that will be affected by the deletion of citrus are listed in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION AMENDMENT REQUEST

Company	Reg. No	Product Use
Syngenta Crop Protection, Inc.	100–1023	EPTAM Technical.
Syngenta Crop Protection, Inc.	100–1025	EPTAM 7–E Selective Herbicide.
Drexel Chemical Company.	19713–101	Drexel EPTC–7EC.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA section 6(f)(1) further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, make reasonable efforts to inform persons who rely on the pesticide for minor agricultural uses, and provide a 30–day period in which the public may comment. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for deletion of use must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 31, 2003. This written withdrawal of the request for deletion of use will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the use(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The registrants have submitted amendments to amend registrations to delete uses of EPTC identified in Table 1. Pursuant to section 6(f) of FIFRA, EPA expects to grant these requests for amendment upon the close of the comment period. The effective date of this amendment will be the date of the cancellation order. The orders effecting this requested amendment will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the amendment request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

VI. Future Tolerance Revocations

EPA anticipates drafting a future **Federal Register** notice proposing revocation of this tolerance on commodities which no longer have registered uses of EPTC. In this notice, EPA seeks comment as to whether any individuals or groups want to support continuation of these tolerances.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 6, 2003.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4774 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0040; FRL–7292–1]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notice of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA issued a Notice of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA and that the Notice of Intent to Suspend has since become an effective suspension order. The Notice of Intent to Suspend was issued following issuance of the 1991 Thiram Data Call-In Notice (DCI). The DCI required registrants of products containing thiram used as an active ingredient to

develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. Prochimie International, Inc. holds the registration of a technical thiram product (EPA Registration Number 8236–2) and is therefore subject to the requirements of the 1991 DCI. Prochimie's technical thiram product is currently registered only for nonresidential turf use. This Notice includes the text of the Notice of Intent to Suspend which was issued to Prochimie on November 27, 2002. The text identifies the registrant involved, the active ingredient involved, the EPA Registration Number, the name of the affected product, and the basis upon which the Notice of Intent to Suspend was issued. As required by section 6(f)(2), the Notice of Intent to Suspend was sent by certified mail, return receipt requested to Prochimie, Inc. at its address of record. The Notice of Intent to Suspend was received on December 4, 2002, by the registrant and became an effective suspension order on January 4, 2003.

DATES: The Notice of Intent to Suspend became an effective suspension order January 4, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Day, Agriculture Division, 2225A, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–4133; fax number: 202–564–0029; e–mail address: day.harold@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you hold EPA registrations for products that contain thiram. Potentially affected entities may include, but are not limited to pesticide registrants. Other types of entities not listed in this unit could also be affected. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the 1991 Thiram Data Call–In and FIFRA regulations, specifically section 3(c)(2)(B). 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 Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0040. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA issued a Notice of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA to Prochimie International, Inc. The Notice of Intent to Suspend was issued on November 27, 2002, and was received on December 4, 2002, by the registrant, Prochimie International, Inc., as evidenced by the U.S. Postal Service return receipt. No request for a hearing was received within the required statutory time frame and the Notice of Intent to Suspend became an effective suspension order on January 4, 2003, which was 30 days following the date of receipt of the Notice of Intent to Suspend by the registrant.

III. Text of the Notice to Suspend

The text of the Notice of Intent to Suspend issued to Prochimie International, Inc. follows:

United States Environmental Protection Agency
Office of Prevention, Pesticides and Toxic Substances
Washington, DC 20460

November 27, 2002

Certified Mail
Return Receipt Requested

Ms. Mary Ann Roston
Prochimie International, Inc.
5 Waterside Crossing
Windsor, CT 06095

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing Thiram for Failure to Comply with the Thiram Data Call-In Notice Dated September 16, 1991.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call–In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report – Product List

Attachment II Suspension Report – Requirement List

Attachment III Suspension Report – Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's Procedural Regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal

argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must: (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

An additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: the Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any ex parte communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call–In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance (2225A)
Agriculture Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) for your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call–In Notice or Section 4 Data Requirements Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 3(c)(2)(B) Data Call–In Notice, please contact Frances Liem at (202) 564–2365.

Sincerely yours,

Director, Agriculture Division, Office of Compliance.

Attachment I Suspension Report – Product List
Attachment II Suspension Report – Requirement List
Attachment III Suspension Report – Explanatory Appendix

IV. Registrant Receiving and Affected by Notice of Intent to Suspend

Prochimie International, Inc. was sent a letter of notification for the following product.

TABLE A.—PRODUCT LIST

EPA Registration Number	Product Name
8236–2	Thiram Technical

V. Basis for Issuance of Notice of Intent; Requirement List

Prochimie International, Inc. failed to submit the following required data or information.

TABLE B.—REQUIREMENT LIST

Guideline Reference Number	Requirement Name	Due Date
71–4(b)	Avian reproduction–duck	9/16/93
72–3(a)	Estuarine/marine toxicity–fish	9/16/92
72–3(b)	Estuarine/marine toxicity–mollusk	9/16/92
72–3(c)	Estuarine/marine toxicity–shrimp	9/16/92
82–2	21–Day dermal toxicity rabbit/rat	9/16/93
83–4	2–Generation reproduction–rat	9/16/95
85–1	General metabolism	9/16/93
122–2	Aquatic plant growth	9/16/92
161–1	Hydrolysis	12/16/91
161–2	Photodegradation–water	12/16/91
162–1	Aerobic soil metabolism	9/16/93
163–1	Leaching/adsorption/desorption	9/16/92
164–1	Terrestrial field dissipation	9/16/93
165–4	Bioaccumulation in fish	9/16/92

VI. Attachment III Suspension Report–Explanatory Appendix

This Explanatory Appendix provides a discussion of the basis for the Notice of Intent to Suspend issued herewith.

On September 16, 1991, EPA issued a Data Call–In (''1991 DCI'') to all registrants of products containing thiram under the authority of FIFRA section 3(c)(2)(B). The 1991 DCI required registrants of products containing thiram used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a DCI is a basis for suspension under section 3(c)(2)(B) of FIFRA. Prochimie holds the registration of a technical thiram product (EPA Registration Number 8236–2) and is therefore subject to the requirements of the 1991 DCI. Prochimie's technical thiram product is currently registered only for nonresidential turf use. The following describes Prochimie's noncompliance with the 1991 DCI and FIFRA section 3(c)(2)(B) for failing to meet certain data requirements in the 1991 DCI applicable to products registered for nonresidential turf use. These data requirements are identified in Appendix II to this Notice.

In its required 90–day response to the 1991 DCI, Prochimie indicated that it elected Option 2 provided in the 1991 DCI as the method for complying with the DCI. In a letter dated June 6, 2001, Prochimie emphasized that it selected only Option 2 for complying with the 1991 DCI and did not select Option 3 (i.e., an offer to pay). Selection of Option 2 indicates that the registrant has entered into a cost share agreement with one or more registrants to jointly develop data required under the 1991 DCI. To qualify for Option 2, the 1991 DCI requires that the registrant provide the name of the party who would be submitting the data. In addition, the registrant must provide documentary evidence that a cost share agreement has been formed. Such evidence can be a letter offering to cost share and a letter accepting such offer, or a written statement by the parties that an agreement exists. Prochimie's 90–day response indicated that it was a member of Thiram Task Force I and that Task Force I would be submitting the data required by the 1991 DCI.

In a letter dated April 20, 1992, EPA notified Prochimie that its 90–day response was insufficient, because there were data requirements in the 1991 DCI that Task Force I had not committed to satisfy. In response, Prochimie provided EPA with a letter dated April 28, 1992, in which Prochimie informed Mr. Jerome C. Rockwell, the chairman of both Thiram Task Force I and Thiram Task Force II, that Prochimie ''will participate and cost share in *the Thiram Task Force* [emphasis added] submitting information for the EPA Thiram Data Call–In requirements regarding turf use of Thiram only.'' In subsequent correspondence with the Agency, Prochimie stated that, although not a member of Task Force II, Prochimie had agreed to participate in all Task Force II studies necessary to support nonresidential turf use of thiram.

However, Prochimie has not provided any evidence, nor does the Agency have any other indication, that Thiram Task Forces I and II, either individually or jointly, have generated or committed to generate all studies necessary to satisfy the 1991 DCI requirements for nonresidential turf use. Task Force I was formed in 1985, by a consortium of registrants of products containing thiram, including Prochimie, for the purpose of acquiring or developing data required by a previous DCI issued in 1984 (''1984 DCI''). Although the 1991 DCI restated some of the data requirements contained in the 1984 DCI that were still outstanding, it required additional data that were not included in the 1984 DCI. Prior to its dissolution on July 31, 1992, Task Force I did not commit to satisfying any of the new data requirements in the 1991 DCI that were not imposed earlier by the 1984 DCI. Similarly, Thiram Task Force II was established in May 1989 for the development of data necessary to support primarily food use of thiram, which does not include nonresidential turf use. To date, there are data requirements applicable to nonresidential turf use under the 1991 DCI which neither Task Force I nor Task Force II have satisfied or committed to satisfy. Prochimie has not independently submitted studies or provided evidence that it has agreed to cost share with any other party for developing data to satisfy these data requirements or selected any other option to address such data requirements. Accordingly, Prochimie is in noncompliance with these requirements. These data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 72–3(a), 72–3(b), and 72–3(c), 82–2, and 165–4.

Furthermore, Prochimie failed to submit evidence required by the 1991 DCI that a cost share agreement had been reached between Task Force II and Prochimie. As mentioned above, Prochimie's April 28, 1992 letter to Mr. Rockwell stated that Prochimie ''will participate and cost share in *the Thiram Task Force* [emphasis added] submitting information for the EPA Thiram Data Call–In requirements regarding turf use of Thiram only.'' Because Mr. Rockwell was the chairman of both Task Force I and Task Force II, it is not clear whether Prochimie's letter

intended to restate its commitment to cost share with Task Force I or to make an offer to cost share with Task Force II. In any case, Prochimie's letter at most shows that Prochimie made an offer to cost share, which was an option it emphasized that it had not selected. Prochimie did not provide any evidence that it had selected the option of offer to pay or that any such offer had been accepted. In order to support the option Prochimie selected to address the data requirements, it must provide evidence that any such offer had been accepted. Prochimie did not do that. Although Prochimie paid Task Force II for the use of several specific studies which are not involved in this Notice, those payments do not provide any evidence that a cost share agreement has been reached with respect to any other studies required by the 1991 DCI for nonresidential turf use that Task Force II submitted or has committed to submit. In fact, Mr. Rockwell, the chairman of Task Force II, stated in an affidavit dated May 2, 2000, that ''No written offer-to-pay or any offer to jointly develop any data as required by and identified in the 1991 DCI has ever been received by Thiram Task Force II. . .from Prochimie.'' Since Task Force II does not believe that it has ever received an offer to cost share from Prochimie, it is unlikely that a cost share agreement has been reached between Prochimie and Task Force II. Without adequate proof of such an agreement, Prochimie may not claim an ownership interest in Task Force II's data for which Prochimie has not paid and hence may not claim that such data satisfies Prochimie's obligations. Consequently, the Agency considers that Prochimie is in noncompliance with certain data requirements for nonresidential turf use imposed by the 1991 DCI irrespective of Task Force II's actions to address those data requirements. Those data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 71–4(b), 83–4, 85–1, and 122–2.

Moreover, prior to its dissolution, Task Force I failed to satisfy certain 1984 DCI data requirements for nonresidential turf use that were also imposed by the 1991 DCI. Because Prochimie was a member of Task Force I and has not independently submitted data or otherwise addressed these requirements, Prochimie is in noncompliance with these requirements. These data requirements are identified in Appendix II to this Notice and are as follows: EPA Guideline Nos. 161–1, 161–2, 162–1, 163–1, and 164–1.

In a letter dated December 21, 1998, EPA informed Prochimie that the data required under the 1991 DCI were long overdue and that Prochimie had satisfied only those data requirements that had been satisfied by Task Force I prior to its dissolution. In a letter dated January 12, 1999, Prochimie informed EPA that ''Prochimie cost shared/co-owned several studies submitted by Task Force II.'' However, Prochimie did not provide the evidence required by the 1991 DCI that Prochimie and Task Force II have agreed to cost share in the development of any other data required by the 1991 DCI for nonresidential turf use. Prochimie's letter also restated Prochimie's commitment to satisfy certain data requirements that neither Task Forces committed to fulfill. However, Prochimie did not submit any studies or proof required by the 1991 DCI of a cost share agreement with any party obligated to satisfy these data requirements.

In a letter dated June 29, 1999, Prochimie requested data waivers (or determination of nonapplicability or no need for additional data) for, among others, the following data requirements: Guideline Nos. 82–2, 83–4, 122–2, 161–1, 161–2, 163–1, and 164–1, and 165–4. After careful consideration of Prochimie's requests, EPA denied the request for waiver of the above mentioned data requirements in letters dated May 21, 2001 and August 31, 2001.

In a letter dated August 31, 2001, EPA informed Prochimie of its failure to demonstrate that it had taken appropriate steps to secure data required by the 1991 DCI. In an attachment to the letter, EPA identified all of the data requirements for nonresidential turf use under the 1991 DCI and the names of the parties who submitted studies for those requirements. As shown in that attachment, UCB Chemicals Corporation, Inc. (''UCB''), not Task Force I or II, satisfied a number of data requirements under the 1991 DCI for nonresidential turf use. The letter notified Prochimie of the Agency's intent to issue a Notice of Intent to Suspend Prochimie's technical thiram registration unless, within 30 calendar days of its receipt of the letter, EPA received from Prochimie certain required data or proof of an agreement or offer to cost share with UCB. In its October 4, 2001 response, Prochimie did not provide any of the data/information that the Agency required, but instead requested a re–evaluation of the Agency's determination not to waive certain environmental fate studies, clarification of applicable existing data, and a determination of data requirements applicable to the nonresidential turf use.

To date, Prochimie has failed to take appropriate steps to secure certain data required by the 1991 DCI applicable to nonresidential turf use and remains in noncompliance with those data requirements, which are set forth in Appendix II to this Notice. Accordingly, the Agency is issuing this Notice of Intent to Suspend.

V. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection.

Dated: February 4, 2003.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–4776 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0006; FRL–7288–9]

Cymoxanil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0006, must be received on or before March 31, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: waller.mary@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 entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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 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 this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0006. 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 Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001, Attention: Docket ID number OPP–2003–0006.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0006. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

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. Make sure to submit your comments by the deadline in this notice.
7. 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time, or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E. I. du Pont de Nemours and Company and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

E. I. du Pont de Nemours and Company

PP 0F6072

EPA has received a pesticide petition (0F6072) from E. I. du Pont de Nemours and Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.503 by establishing tolerances for residues of the fungicide, cymoxanil; 2-cyano-N-(ethylamino)carbonyl l-2-(methoxyimino)acetamide in or on the raw agricultural commodities cucurbit vegetables at 0.05 parts per million (ppm), fruiting vegetables at 0.2 ppm, and head lettuce at 4.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of cymoxanil is adequately understood in three diverse crops: potatoes, tomatoes, and lettuce. The results of these plant metabolism studies indicate that cymoxanil degrades extensively to primarily the amino acid glycine, with subsequent re-incorporation into other naturally-occurring products, such as glucose.

2. *Analytical method.* An analytical enforcement method is available for determining these plant residues by high performance level chromotography (HPLC) with ultraviolet (UV) detection. The limit of quantitation allows monitoring of crops with cymoxanil residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues—i. Cucurbit vegetables.* The magnitude and decline of residues of cymoxanil was determined on cucumber, cantaloupe and summer squash, the representative commodities for the cucurbit vegetable crop group as follows:

- *Cucumber.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to six test sites in Florida, Georgia, Minnesota, Ohio, Virginia, and Texas. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target pre-harvest interval (PHI) was 3 days. Residues of cymoxanil were less than 0.05 ppm.
- *Cantaloupe.* DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to six test sites in Florida, Georgia, Minnesota, Ohio, Virginia, and Texas. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil were less than 0.05 ppm.
- *Summer squash.* DPX-KP481 50DF, containing 25% cymoxanil and

25% famoxadone, was applied as a water dispersible granule to five test sites in Florida, Pennsylvania, Minnesota, North Carolina and California. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil were less than 0.05 ppm.

ii. *Fruiting vegetables*. The magnitude and decline of residues of cymoxanil was determined on tomato and pepper, the representative commodities for the fruiting vegetable crop group as follows:

• *Pepper*. Bell and non-bell DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to nine test sites in Georgia, Florida, Ohio, Texas, Arizona, California, and New Mexico. DPX-KP481 50DF was applied as nine broadcast applications at a maximum seasonal use rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil at the target PHI of 3 days ranged from less than 0.05–0.12 ppm in peppers (bell and non-bell).

• *Tomato*. DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone was applied as a water dispersible granule to 12 test sites in Florida, Maryland, Pennsylvania, California and Indiana. DPX-KP481 50DF was applied as nine broadcast applications at a maximum seasonal use rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil at the target PHI of 3 days were less than 0.05 ppm in tomatoes.

• *Tomato, process fractions*. DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to one site in California to determine the magnitude of residue in tomato and the extent to which the residue concentrated in tomato processed fractions. DPX-KP481 50DF was applied in nine broadcast applications at 1X and 5X the proposed maximum rate of 1.12 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. When applied at 5X the maximum use rate residues did not concentrate in tomato washed, unwashed, paste or puree.

iii. *Head lettuce*. DPX-KP481 50DF, containing 25% cymoxanil and 25% famoxadone, was applied as a water dispersible granule to eight test sites in Arizona, California, Florida, New York, and New Mexico. DPX-KP481 50DF was applied as seven broadcast applications at the maximum rate of 0.1875 lb cymoxanil/acre for a maximum seasonal use rate of 1.31 lb cymoxanil/acre. Applications were made approximately 5 days apart. The target PHI was 3 days. Residues of cymoxanil in head lettuce ranged from less than 0.05–2.8 ppm (wrapper leaves attached) and less than 0.05–1.1 ppm (wrapper leaves removed).

B. Toxicological Profile

1. *Acute toxicity*. A battery of acute toxicity tests on technical cymoxanil places it in the following Toxicity Categories:

TABLE 1.—ACUTE TOXICITY RESULTS ON TECHNICAL CYMOXANIL

Oral LD_{50}	Rat	960 mg/kg	Category III
Dermal LD_{50}	Rabbit	>2,000 mg/kg	Category III
Inhalation LC_{50}	Rat	> 5.06 mg/L	Category IV
Eye irritation	Rabbit	Slight irritant	Category IV
Dermal irritation	Rabbit	Not an irritant	Category IV
Dermal sensitization	Guinea pig	Not a sensitizer	

An acute neurotoxicity study was not required with cymoxanil and no acute neurotoxicity has been observed in short-term or subchronic studies.

2. *Genotoxicty*. Cymoxanil was tested in a battery of assays to evaluate genotoxicity and chromosome aberrations with the following results. Based on the weight-of-evidence, cymoxanil is not considered to be genotoxic or clastogenic.

TABLE 2.—GENOTOXICITY AND CHROMOSOME ABERRATIONS ASSAY RESULTS

Bacterial gene mutation	*Salmonella typhimurium*	Negative
Mammalian gene mutation *in vitro*	CHO/HGPRT	Negative
Mammalian chromosome aberrations *in vitro*	CHO	Positive
Mammalian chromosome aberrations *in vitro*	Mouse micronucleus	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes	Negative
Unscheduled DNA synthesis *in vitro*	Primary rat hepatocytes and Spermatocytes	Negative

3. *Reproductive and developmental toxicity*. The results of a series of studies indicated that there were no reproductive, developmental, or teratogenic hazards associated with cymoxanil.

In a 2-generation cymoxanil rat reproduction study, the no observed effect level (NOEL) for both parents and offspring was approximately 7 milligrams/kilogram/day (mg/kg/day), based on decreased body weight, weight gain and food consumption in adults and decreased pup weight in offspring at 32 mg/kg/day. There were no reproductive or fertility effects. Since offspring effects occurred only in the presence of maternal toxicity, it is considered a secondary effect to the health effects on the dam.

With cymoxanil, developmental studies conducted in rats demonstrated a NOEL of 10 mg/kg/day and a lowest observed effect level (LOEL) of 25 mg/kg/day for both adult and developmental effects. Maternal effects in rats included decreased weight, weight gain, and food consumption. Developmental effects were increases in fetal variations, which were the result of generalized delays in ossification, and overall malformations, although malformations detected were not dose-related. In rabbits, several developmental toxicity studies were conducted with cymoxanil. Based on the weight-of-evidence of all three studies, EPA considered there was no unique sensitivity of perinatal animals to the effects of cymoxanil, nor any anomalies of the fetal nervous system at maternally toxic doses up to and including 32 mg/kg/day (Cymoxanil Agency Risk Assessment, February 18, 1998).

4. *Subchronic toxicity.* Subchronic (90–day) feeding studies were conducted with rats, mice, and dogs. In addition, the following subchronic feeding studies were conducted: A 90–day in rats to evaluate neurotoxicity and 28–day feeding studies in rats and mice to evaluate immunotoxicity. A 28–day dermal study was conducted in rats.

In a subchronic toxicity/neurotoxicity study in rats with cymoxanil, the NOEL of 47.6 mg/kg/day in males was based on decreased body weights and minimal to mild testicular and epididymal effects at higher concentrations. In females, the NOEL of 59.9 mg/kg/day was based on effects on body weight, weight gain, and food efficiency at higher levels.

The subchronic NOEL for male mice administered cymoxanil was 8.25 mg/kg/day based on body weight and weight gain effects at 82.4 mg/kg/day and above. The NOEL for females was 121 mg/kg/day based on increases in spleen and liver weights at 433 mg/kg/day and above.

For cymoxanil, dogs were the most sensitive species in subchronic studies. Reduced body weight gain and/or food consumption was observed at 3 mg/kg/day or greater in females and 5 mg/kg/day and above in males. Both sexes had red blood cells (RBC) changes decreased RBC counts, hemaglobin (Hb), and/or hematocrit (Hct) and increased incidence of ketonuria at the intermediate and high concentration, and changes in serum chemistry (decreases in various electrolytes and proteins) at the high dose. Males had testicular and epididymal effects at the highest concentration, 11 mg/kg/day (raised from 5 mg/kg/day at week 3); this was considered to be retardation of development due to markedly reduced body weight in this group. The NOEL for males was 3 mg/kg/day. There was no NOEL in female dogs in the 90–day study. Although, a NOEL was not established in the dog subchronic study, 3 mg/kg/day was found to be a NOEL in a subsequent chronic study in dogs.

Subchronic 28–day studies were conducted in rats and mice to evaluate the immunotoxicity potential of cymoxanil. Cymoxanil was not immunotoxic up to and including the highest dose tested which was 1,600 ppm in rats (108 and 117 mg/kg/day in males and females, respectively), 1,200 ppm (218 mg/kg/day) in male mice, and 2,400 ppm (552 mg/kg/day) in female mice.

Cymoxanil was applied to the skin of rats 6–hours/day for 28 days at doses of 0, 50, 500, and 1,000 mg/kg/day. There were no effects at any dose tested. The 28–day dermal NOEL was 1,000 mg/kg/day, the highest dose tested.

5. *Chronic toxicity*. Chronic studies with cymoxanil were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90–day studies were seen in the chronic studies. Cymoxanil was not oncogenic.

The chronic NOEL for cymoxanil in male rats was 4.08 mg/kg/day based on decreased body weight, weight gain, food efficiency, and non-neoplastic lesions in several organs including lung inflammation, spermatid degeneration, and retinal atrophy at 30.3 mg/kg/day or higher. In addition, male rats in the two highest groups displayed increased aggressiveness and hyperreactivity consistent with the compromised general health status (i.e. systemic toxicity) of those groups. In females, the NOEL of 5.36 mg/kg/day was based on decreased body weight, weight gain, food efficiency, and non-neoplastic lesions in several organs including lungs, liver, intestines, mesenteric lymph nodes, sciatic nerve, and retina at 38.4 mg/kg/day or higher. Retinal atrophy and sciatic lesions are common spontaneous lesions associated with aging. These effects observed in cymoxanil test animals were considered aging-related effects. Spermatid degeneration occurs spontaneously in rats. While the incidence was increased in cymoxanil-treated rats, most were mild or minimal and none were more than moderate. Thus, the effects are considered a mild exacerbation of a spontaneously occurring lesion.

In mice, the chronic NOELs for cymoxanil were 4.19 and 5.83 mg/kg/day for males and females, respectively, based on changes in organ weights, gastrointestinal effects in females and liver, testes and epididymal effects in males at the LOEL. Similar to the rat, the testicular effects were considered an exacerbation of a spontaneous lesion, that occurred in one-quarter of the control mice. The LOELs were 42.0 and 58.1 mg/kg/day for males and females, respectively.

The chronic cymoxanil NOEL for male dogs was 3.0 mg/kg/day based on a temporary decrease in body weight and food consumption, and lower RBC count, hemoglobin, and hematocrit at 5.7 mg/kg/day. In female dogs the only finding was a transient effect on body weight, food consumption, and food efficiency at the highest dose tested, 3.1 mg/kg/day, only during the first week of the study. EPA considered the NOEL in females to be 3.1 mg/kg (Cymoxanil Agency Risk Assessment, February 18, 1998).

6. *Animal metabolism*. When administered by gavage to rats, cymoxanil was readily absorbed and eliminated. Absorption reached maximum concentrations in whole blood within 4 hours post-dosing. A rapid and almost complete elimination was observed in the urine and feces. The majority of radioactivity was recovered within 96 hours, mainly in urine but also in feces. Radioactivity in the tissues and carcass was less than 1%. In the urine and feces, the majority of the radioactivity was free and/or conjugated glycine. 2-Cyano-2-methoxyimino-acetic acid was also found in low levels in the urine and trace levels in the feces. Intact cymoxanil was less than 1% in feces and not detected in the urine. The metabolite profile in urine and feces was similar between sexes, among dose groups, and between dosing regimens (single vs. multiple).

7. *Metabolite toxicology*. There are no metabolites of toxicological significance to mammals.

8. *Endocrine disruption*. Chronic, lifespan, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine-related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of cymoxanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure.* Cymoxanil is a fungicide currently registered in the United States for use on potatoes. In addition, tolerances have been for cymoxanil on imported tomatoes and grapes. This tolerance petition proposes the following new uses in the United States: Cucurbit vegetables, fruiting vegetables and head lettuce. There are no residential uses.

i. *Food—a. Chronic dietary exposure assessment.* The chronic RfD of 0.041 mg/kg/day is based on a NOEL of 4.08 mg/kg/day from the 1 year rat feeding study and an uncertainty factor of 100. The acute NOEL of 4.0 mg/kg/day is based upon maternal clinical signs and weight effects at higher levels in a rat developmental study.

Chronic dietary cymoxanil exposure risks resulting from the proposed use of DPX-KP481 50DF on cucurbits, fruiting vegetables, head lettuce, potatoes and imported grapes were estimated using the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1999 Version 6.74). The analysis conservatively assumed that 30% of the crops on the proposed label would be treated with DPX-KP481 50DF and used field trial residue data. The chronic dietary risk estimate for cymoxanil shows that an adequate margin of safety exists for all population subgroups and that no effects would result from dietary exposure to cymoxanil.

The following table presents the analysis which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to cymoxanil in DPX-KP481 50DF. No sensitive subpopulations were identified. For the general populations and all subpopulations 0.2% or less of the chronic RfD used.

TABLE 3.—RESULTS OF CHRONIC DIETARY ANALYSIS WITH CYMOXANIL

Population Group	Maximum Dietary Exposure (mg/kg/day)	% RfD
U.S. population	0.000063	0.2
Non-nursing infants (<1 yr.)	0.000016	<0.1
Children (1–6 yr.)	0.000074	0.2
Children (7–12 yr.)	0.000068	0.2
Females (13+)	0.000074	0.2

b. *Acute dietary exposure*. Results of the Tier 3 acute dietary exposure analysis show that an adequate margin of safety exists for all population subgroups and that no acute effects would result from dietary exposure to cymoxanil. The analysis conservatively assumed that 30% of the crops on the proposed label would be treated with DPX-KP481 50DF and used field trial residue data.

The results of the acute dietary exposure analysis for cymoxanil are given in the table below. The percentages of acute reference dose (aRFD) for cymoxanil were calculated based on an acute NOEL of 4 mg/kg/day from the rabbit developmental study based on maternal clinical signs and weight effects at the higher levels and an uncertainty factor of 100. The results of the acute dietary exposure analysis for cymoxanil indicate that the predicted exposures, expressed as a percentage of the aRFD are well below 100%, showing cymoxanil clearly meets the Food Quality Protection Act (FQPA) standard of reasonable certainty of no harm and presents much lower acute dietary risk than many of its competitors. At the 99.9th percentile, the percentage of the aRFD was 4.47% for the general population and 5.72% for the most sensitive subpopulation, nursing females.

TABLE 4.—RESULTS OF ACUTE DIETARY ANALYSIS WITH CYMOXANIL

Population Group	99th Percentile of Exposure		99th Percentile of Exposure	
	Exposure (mg/kg/day)	%aRfD	Exposure (mg/kg/day)	%aRfD
U.S. population	0.000475	1.19	0.001789	4.47
Non-nursing infants (<1 yr.)	0.000184	0.46	0.000599	1.50
Children (1–6 yr.)	0.000576	1.44	0.002096	5.24
Children (7–12 yr.)	0.000485	1.21	0.001936	4.84
Females (13+ nursing)	0.000635	1.59	0.002287	5.72

ii. *Drinking water*. Surface water exposure was estimated using the Generic Expected Environmental Concentration (GENEEC) model. Ground water exposure was estimated using SCI-GROW. These are screening level

models used for determining upper bound concentrations of pesticides in surface water and ground water.

The acute drinking water levels of concern (DWLOCs) are 1.3 parts per million (ppm) for the U.S. population, and 0.38 ppm for the most exposed population subgroup, children (1–6 years). The estimated maximum concentration of cymoxanil in surface water (8.15 ppb) derived from GENEEC is much lower than the acute DWLOC. Therefore, one can conclude with reasonable certainty that residues of cymoxanil in drinking water will not contribute significantly to the aggregate acute human health risk.

The chronic DWLOCs are 1.4 ppm for the U.S. population and 0.4 ppm for the most sensitive subgroup, children (1–6 years). The DWLOCs are substantially higher than the GENEEC 56–day estimated environmental concentration of 0.37 ppb for cymoxanil in surface water. Therefore, one can conclude with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure.* Cymoxanil products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for cymoxanil has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of cymoxanil should be cumulative with those of any other chemical compounds or with each other. Cymoxanil is a unique cyanoacetamide and is chemically unrelated to any other commercial plant disease control agent. Its biochemical mode of action on fungi appears to be unique; it is theorized to act through inhibition of multiple cellular processes, but a definitive mechanism has not been completely elucidated. Similarly, the mechanism of action underlying observed toxicological effects in mammals is not fully characterized and there is no reliable information to suggest that cymoxanil has a mechanism of toxicity in common with any other compound.

Given the distinct chemical and toxicological profile of cymoxanil, its low acute toxicity, absence of genotoxic, oncogenic, developmental, or reproductive effects, and low exposure potential, the expression of cumulative human health effects with any other natural or synthetic pesticide is not anticipated.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population for cymoxanil, and ample margins of safety have been demonstrated for both.

For cymoxanil, assuming 30% crop treated and residues estimated based on field trial results, the chronic dietary exposure for the overall U.S. population is estimated to be 0.000063 mg/kg/day, using 0.2 percent of the RfD. For acute dietary exposure, the estimated exposure is 0.000475 and 0.001789 at the 99th and 99.9th percentiles, which will utilize 1.19 and 4.47%, respectively, of the RfD for the overall U.S. population. The ground application margin of exposure (MOE) was 7,814 for mixers/loaders and 1,430 for applicators. The aerial application MOE was 3,907 for mixers/loaders and 38,763 for applicators. The MOE for flaggers was 10,916. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is reasonable certainty that no harm will result from the aggregate exposure of residues of cymoxanil including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of cymoxanil for the most highly exposed children's subpopulations are: 0.000074 mg/kg/day for children 1–6 years and 0.000068 mg/kg/day for children 7–12 years, representing 0.2% of the chronic reference dose (cRfD) for each subpopulation. Exposure for all infant subpopulations was negligible. For acute dietary exposure of cymoxanil, the %RfD for children 1–6 years is 1.44 at the 99th percentile and 5.24 at the 99.9th percentile. For non-nursing infants (>1 yr.), the %RfD is 0.46 at the 99th percentile and 1.50 at the 99.9th percentile. There are no residential uses of cymoxanil; it is extremely unlikely that drinking water will be contaminated. Based on the completeness and reliability of the toxicity data base, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to cymoxanil, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of cymoxanil, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for cymoxanil.

[FR Doc. 03–4257 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1445–DR]

Alaska; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1445-DR), dated December 4, 2002, and related determinations.

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 4, 2002:

Kodiak Island Borough for Public Assistance (already designated for Individual Assistance).

Alaska Railroad right-of-way between Milepost 79 and Milepost 102 along the Turnagain Arm and state highway Milepost 4 Power Creek Road highway in the Cordova area for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4723 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1452–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1452–DR), dated February 4, 2003, and related determinations.

EFFECTIVE DATE: February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 4, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from a severe ice storm on December 3–4, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James N. Russo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Beckham, Blaine, Caddo, Canadian, Custer, Kingfisher, Kiowa, Logan, Noble, Osage, Pawnee, Payne, Roger Mills and Washita Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4724 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1451–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina, (FEMA–1451–DR), dated January 8, 2003, and related determinations.

EFFECTIVE DATE: February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 8, 2003:

Cherokee, Greenville, Laurens, Spartanburg, Union, and York Counties for Category E (buildings and equipment) under the Public Assistance program (already designated for Categories A, B, and F).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4725 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3171–EM]

Space Shuttle Columbia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Space Shuttle Columbia (FEMA–3171–EM), dated February 1, 2003, as amended, and related determinations.

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a memorandum for the Director of the Federal Emergency Management Agency dated February 6, 2003, the President amended and restated his February 1, 2003, declaration of an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the United States in connection with the events relating to the loss of the Space Shuttle Columbia on February 1, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–

5206 (the ''Stafford Act''). The basis for my decision to make this declaration pursuant to section 501(b) of the Stafford Act includes the fact that the space shuttle and the space program are Federal property and Federal programs. I, therefore, declare that such an emergency exists for this event.

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under Title V of the Stafford Act at 100 percent Federal funding in the State of Texas.

Pursuant to this emergency declaration, you are also authorized to provide only Federal Operations Support for debris removal under Title V of the Stafford Act, at 100 percent Federal funding, in any other State where you determine the need exists. FEMA will consult with the Governor of any affected State before providing assistance.

This declaration does not affect the February 1, 2003, declaration under the Stafford Act for Louisiana as a result of the loss of the Space Shuttle Columbia.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alexander S. Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Anderson, Angelina, Bell, Cherokee, Collin, Comanche, Dallas, Eastland, Ellis, Franklin, Freestone, Grayson, Gregg, Harrison, Henderson, Hunt, Jefferson, Johnson, Kaufman, Leon, McLennan, Milam, Montgomery, Nacogdoches, Navarro, Orange, Panola, Parker, Rusk, Sabine, San Augustine, Shelby, Smith, Tarrant, Upshur, Walker, Williamson, and Wood Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program at 100 percent Federal funding.

Further, Federal Operations Support for debris removal (Category A) may be provided in any other State where I determine, at a later date, that the need exists.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4726 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3171–EM]

Space Shuttle Columbia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the Space Shuttle Columbia, (FEMA–3171–EM), dated February 1, 2003, as amended, and related determinations.

EFFECTIVE DATE: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of the emergency declaration for the Space Shuttle Columbia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 1, 2003, as amended:

Andrews, Bowie, Cameron, Camp, Chambers, Denton, El Paso, Hardin, Hood, Houston, Jackson, Limestone, Polk, Rockwall, Somervell, and Trinity Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4727 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3172–EM]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana: Space Shuttle Columbia (FEMA–3172–EM), dated February 1, 2003, and related determinations.

EFFECTIVE DATE: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a memorandum dated February 1, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana in connection with the events relating to the loss of the Space Shuttle Columbia on February 1, 2003, are of sufficient severity and magnitude to warrant an emergency declaration under section to make this declaration pursuant to section 501(b) of the Stafford Act includes the fact that the space shuttle and the space program are Federal property and Federal programs. I, therefore, declare that such an emergency exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under title V of the Stafford Act at 100 percent Federal funding.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alexander S. Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared emergency:

Bossier, Caddo, Natchitoches, Ouachita, Rapides, Sabine, and Vernon Parishes for debris removal (Category A), and emergency protective measures (Category B), at 100 percent Federal funding under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4728 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3172–EM]

Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of the Presidential declaration of an emergency for the State of Louisiana: Space Shuttle Columbia (FEMA–3172–EM), dated February 1, 2003, and related determinations.

EFFECTIVE DATE: February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Louisiana: Space Shuttle Columbia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 1, 2003:

Acadia, Allen, Ascension, Avoyelles, Beauregard, Calcasieu, De Soto, East Baton Rouge, East Feliciana, Evangeline, Grant, Jefferson, Lafayette, Lafourche, Lincoln, Livingston, Morehouse, Orleans, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Webster, West Baton Rouge, West Feliciana, and Winn Parishes for debris removal (Category A), and emergency protective measures (Category B), under the Public Assistance program at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 03–4729 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: March 6, 2003.

Place: Building S, Room 113, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, March 4, 2003, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass that must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''10.'' If you plan to call in, you should just enter the number ''10''—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on June 5, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the June 5, 2003 FICEMS Committee Meeting.

Dated: February 19, 2003.

R. David Paulison,

U.S. Fire Administrator, United States Fire Administration.

[FR Doc. 03–4720 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Radiological Emergency Preparedness: Planning Guidance

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the availability of draft REP Program Planning Guidance for comment. The Planning Guidance document is available at *http://www.fema.gov/rrr/rep/*.

DATES: FEMA must receive comments on or before April 29, 2003.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, or send them by e-mail to *rules@fema.gov*. Please reference ''REP Planning Guidance'' in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; telephone: (202) 646–3664, or e-mail: *vanessa.quinn@fema.gov*, or Nancy H. Goldstein, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, telephone: (202) 646–4285, or (e-mail) *nancy.goldstein@fema.gov*.

SUPPLEMENTARY INFORMATION: In December 2002, the Federal Emergency Management Agency (FEMA) posted a draft Planning Guidance document on its Web site for a 30-day comment period, ending on January 24, 2003. In response to commenters' requests for additional time and for notification through the **Federal Register**, FEMA has extended the conclusion of the comment period to 60 days from the date of this notice. The document may be accessed at *http://www.fema.gov/rrr/rep/*. Comments that were submitted to FEMA during the initial 30-day period do not need to be resubmitted.

Dated: February 11, 2003.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness.

[FR Doc. 03–4721 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–47]

Proposed Data Collections Submitted for Public Comment and Recommendations

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, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Assessing the Linkages between Dating Violence, Other Peer Violence, and Suicide—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Violence is an important public health problem, particularly among our youth. In the United States, homicide and suicide are the second and third leading causes of death, respectively, for youth aged 15–19 years. Accordingly, there has been a tremendous growth in research on the prevalence, incidence, causes and effects of dating violence, peer violence, and suicide among youth. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, considerable gaps remain in our understanding of the extent to which youth who engage in one type of violent behavior are more likely to engage in other types of violent behavior. Existing research on the linkages across different forms of violent behavior among youth are limited. Research with adults suggests that dating violence and other peer violence are strongly linked, however the strength of this association among adolescents and the degree to which it changes by developmental stage remain unclear. Similarly, regarding the linkages with suicidal behavior, gaps remain in our understanding of the extent to which suicidal behavior varies for those who engage in dating violence versus other peer violence or both types of violence, and how this association varies by age. Also, the extent to which risk for participation in single versus multiple types of violence varies for adolescent males and females is generally not well understood.

Gaps in our understanding of how different types of violent behavior are linked and whether they share common risk factors have limited the ability to design violence prevention and intervention efforts that could address multiple types of violence. Additional information on the linkages among dating violence, other peer violence, and suicidal behavior and how these linkages differ by gender and age is needed to guide the selection, timing, and focus of prevention strategies. This study will increase the knowledge and understanding of the linkages among different types of violence. As a result, CDC will work with a contractor to identify a school district in a high-risk community, identify a sample of students to participate in the study, and develop a questionnaire that will be administered to male and female students at different developmental stages (*i.e.*, 6th, 9th and 12th grade).

The goals of the study are to examine the extent (a) youth engage in multiple types of violence (*i.e.*, dating violence, other peer violence, and suicidal behavior); (b) risk and protective factors for different types of violence are unique or shared; (c) linkages across types of violence vary by gender and developmental stage; and (d) other socio-environmental factors which buffer or exacerbate risk for violence. The questionnaires include information about aggressive and violent behaviors (*e.g.*, verbal, coercive, physical, and sexual) that youth use against dating partners and other peers and suicidal thoughts, plans, and attempts. Additionally, the questionnaires will include information about psycho-social and behavioral factors that may buffer or exacerbate risk for violent behavior. The

scales used in the questionnaire are original or modified versions of established scales that were developed for use with adolescents.

A better understanding of the linkages among dating violence, other peer violence, and suicidal behavior, and how these linkages differ by gender and age is needed to guide the selection, timing, and focus of prevention strategies. Ultimately, this information will guide CDC in designing programs that reduce multiple forms of violence among adolescents and young adults. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
6th Grade Students (Male/Female)	1,000	1	45/60	750
9th Grade Students (Male/Female)	1,000	1	45/60	750
12th Grade Students (Male/Female)	1,000	1	45/60	750
Total				2250

Dated: February 24, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–4737 Filed 2–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–143]

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: Analysis of Malpractice Premium Data;

Form No.: CMS–R–143 (OMB #0938–0080);

Use: Survey of medical liability insurers for use in computing the malpractice component of the geographic practice cost index and the malpractice relation value units;

Frequency: Every 3 years;

Affected Public: State, Local, or Tribal Gov't., Business or other for-profit, and not-for-profit insitutions;

Number of Respondents: 50;

Total Annual Responses: 50;

Total Annual Hours: 150.

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://cms.hhs.gov/regulations/pra/default.asp,* 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: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 20, 2003.

John P. Burke III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–4694 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1245–N]

Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classifications Groups

AGENCY: Centers for Medicare & Medicaid Services, Department of Health & Human Services.

ACTION: Notice.

SUMMARY: This notice invites nominations of members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). There will be six vacancies on the Panel as of March 31, 2003. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of these groups and weights, which are major elements of the hospital outpatient prospective payment system. The Panel was recently rechartered for a 2-year period through November 21, 2004.

Nominations: Nominations will be considered if received at the appropriate address, which is provided below, no later than 5 p.m. e.s.t. March 31, 2003. Mail or deliver nominations to the following address: CMS, Center for Medicare Management, Hospital & Ambulatory Policy Group, Division of Outpatient Care, Attention: Paul Rudolf, M.D., J.D., Chairman, Advisory Panel on APC Groups, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850.

Web Site: Please refer to the Internet at *http://www.cms.gov/faca* for additional information and updates on the Panel's activities.

Advisory Committees' Information Lines: Information Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

FOR FURTHER INFORMATION CONTACT: Shirl Ackerman-Ross, at *SAckermanross@cms.hhs.gov* or call her on (410) 786–4474. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h)(1)(B) and redesignated by section 202 (a)(2) of the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), to consult with an advisory panel on APC groups (the Panel). The Panel will meet up to three times annually to review the APC groups and provide technical advice to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) concerning the clinical integrity of the groups and their associated weights. The groups and their weights are major elements of the hospital outpatient prospective payment system (OPPS). The technical advice provided by the Panel will be considered as we prepare the annual Notice of Proposed Rulemaking that will propose changes to the OPPS for the next calendar year.

The current members of the Panel are: Michelle Burke, R.N.; Leslie Jane Collins, R.N.; Geneva Craig, R.N.; Lora A. DeWald, M.ED; Gretchen M. Evans, R.N.; Robert E. Henkin, M.D.; Lee H. Hilborne, M.D.; Stephen T. House, M.D.; Kathleen P. Kinslow, CRNA, Ed.D; Mike Metro, R.N.; Gerald V. Naccarelli, M.D; Beverly K. Philip, M.D.; Karen L. Rutledge, B.S.; William A. Van Decker, M.D., J.D., and Paul E. Wallner, D.O. The Panel Chairperson is Paul M. Rudolf, M.D, J.D., a CMS Medical officer.

The charter allows for up to 15 members plus a Chair, and we will have 6 openings as of March 31, 2003. Therefore, we are requesting nominations for members to serve on the Panel. Panel members serve without compensation, pursuant to advance written agreement; however, travel, meals, lodging, and related expenses will be reimbursed in accordance with standard government travel regulations. We have a special interest for ensuring that women, minorities, and the physically challenged are adequately represented on the Panel, and we encourage nominations of qualified candidates from those groups.

The Secretary, or his designee, will appoint new members to the Panel from among those candidates determined to have the required expertise; new appointments will be done in a manner that will ensure an appropriate balance of membership.

II. Criteria for Nominees

Qualified nominees will meet those requirements necessary to be a Panel member. Panel members must be representatives of Medicare providers (including Community Mental Health Centers) subject to the OPPS, with technical and/or clinical expertise in any of the following areas:

- Hospital payment systems.
- Hospital medical care delivery systems.
- Outpatient payment requirements.
- Ambulatory payment classification groups.
- Use of, and payment for, drugs and medical devices in an outpatient setting.
- Provision of, and payment for, partial hospitalization services.
- Any other relevant expertise.

It is not necessary that any nominee possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently be employed full-time in his or her area of expertise. Members of the Panel serve overlapping 4-year terms, contingent upon the rechartering of the Panel.

Any interested person may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include a letter of nomination, a curriculum vita of the nominee, and a statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

You may obtain a copy of the charter for the Panel by submitting a request to Shirl Ackermann-Ross, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244, (410) 786–4474, or e-mail the request to *SAckermanross@cms.hhs.gov.* A copy of the charter is also available on the Internet at *http://www.cms.hhs.gov/faca.*

Authority: Section 1833(t)(9)(A) of the Social Security Act (42 U.S.C. 13951(t)(9)(A)) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2).

Dated: February 25, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4804 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2165–N]

Medicaid Program; Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding, through grants, for eligible States under section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWIIA). The grant program is designed to assist States in developing infrastructures to support the competitive employment of people with disabilities by extending necessary Medicaid coverage to these individuals. This notice also contains pertinent information where States may apply for the grant program.

A total of $35 million has been appropriated by the legislation for the infrastructure grant program for fiscal year 2004. In addition, amounts that were appropriated under section 203 of TWWIIA for previous fiscal years but which were not awarded to States are available for these awards in 2004.

We expect to award approximately 50 grants. This includes new as well as continuation grants. Award amounts will be between $500,000 and $1.5 million. There is no State match or cost sharing associated with this grant solicitation. Criteria for evaluating these applications will be listed in the grant solicitation (Web site address listed below).

Who May Apply: State Agencies.

DATES: *Deadline for Letter of Intent to Apply:* States are encouraged to submit a notice of intent to apply for a grant no later than May 2, 2003. Submission of your letter of intent is optional and will not affect the approval of your application.

Date of Applicant's Teleconference: States interested in participating in a teleconference regarding this grant solicitation should check the Ticket to Work Web site listed below for the date and time.

Deadline for Grant Submission: Grant applications must be submitted by July 15, 2003 to be considered under the 2004 annual funding cycle. Applications for these grants are not subject to review under Executive Order 12372—Intergovernmental Review by Federal Agencies (45 CFR part 100).

ADDRESSES: *Application Materials:* Standard application forms and related instructions are available from the Web site, *www.cms.hhs.gov/researchers/priorities/grants.asp* or from Judith Norris, Centers for Medicare & Medicaid Services, Office of Internal Customer Support, Acquisition and Grants Group, C2–21–15 Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–5130, e-mail: *Jnorris1@cms.hhs.gov*. Application materials must be formally submitted to Judith Norris.

Please note: State agencies are only required to submit an original application and two copies.

Web site: You may access up-to-date information about the Medicaid Infrastructure Grants and obtain information from the full grant solicitation grant at: *http://www.cms.hhs.gov/twwiia*.

FOR FURTHER INFORMATION CONTACT: Questions about the grants may be directed to: Joe Razes, TWWIIA Program Manager, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6126, e-mail: *Jrazes@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: This notice is the fourth such notice announcing the availability of funds for Medicaid infrastructure grants authorized by the Ticket to Work and Work Incentives Improvement Act. A total of 38 States currently have been awarded Medicaid infrastructure grants under the Ticket to Work legislation that provides Federal grant funding for 11 years through 2011. This notice is consistent with the three previous notices in soliciting States to apply for grants that will expand services and supports for workers with disabling conditions. States that wish to apply for these grants and desire further detailed information, such as application requirements, review procedures, an explanation of a timely submission, necessary forms, and other relevant information, should refer to the above listed Web sites.

Approval for Collection of Information: The collection of information requested in the application for grants funding has been approved by the Office of Management and Budget under the approval number 0938–0811. The current approval expires on November 30, 2003.

Authority: Section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170. (Catalog of Federal Domestic Assistance Program No. 93.768, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations)

Dated: December 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4733 Filed 2–27–03; 8:45am]

BILLING CODE: 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5002–N]

RIN 0938–ZA39

Medicare Program; Demonstration: Capitated Disease Management for Beneficiaries With Chronic Illnesses

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice informs interested parties of an opportunity to apply for a cooperative agreement to participate in a Capitated Disease Management Demonstration. This demonstration uses disease management interventions and payment for services based on full capitation (with risk sharing options) to (1) improve the quality of services furnished to specific eligible beneficiaries, including dual eligibles and the frail elderly, and (2) manage expenditures under Parts A and B of the Medicare program. We are interested in testing models aimed at beneficiaries who have one or more chronic conditions that are related to high costs to the Medicare program, such as stroke, congestive heart failure, or diabetes. We intend to use a competitive application process to select organizations to participate in this demonstration.

DATES: Applications will be considered timely if we receive them on or before May 29, 2003.

ADDRESSES: Mail applications to: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Research Development and Information, Demonstration Program staff, Attn: Raymond Wedgeworth, Mail Stop: C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244. Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time for panel review, will be considered late applications.

FOR FURTHER INFORMATION CONTACT: For information concerning this demonstration, contact Raymond Wedgeworth, CMS Project Officer, at (410) 786–6676, or *rwedgeworth@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Eligible Organizations

Potentially qualified applicants are provider sponsored organizations, academic medical centers, Medicare+Choice organizations, or disease management companies, who can demonstrate ability to effectively supply disease management services applicable to the Medicare population, which may include dual eligibles and frail elderly, specific to select chronic conditions.

Administrator Initiative

The clearest statement of the Administration's priorities for Medicare is found in the White House document, ''21st Century Medicare,'' issued on July 12, 2001. In that document, the Administration made a series of proposals for modernizing Medicare benefits so that they would better meet the needs of its beneficiaries. One of the important proposals in the document is to improve the current limits of the program on innovative treatment. The report notes that ''Medicare's traditional approach to paying only for discrete visits and services has denied many seniors the opportunity to take advantage of the advances that have been pioneered by integrated health delivery in coordinating care for complex conditions and chronic diseases. These programs can lead to better health outcomes and reduce total medical costs by avoiding complications.''

In line with the above goals, the Administration is undertaking a series of disease management demonstration projects to explore a variety of ways to improve beneficiary care in the traditional Medicare plan. These demonstrations provide beneficiaries with greater choices, enhance the quality of their care, and offer better

value for the dollars spent on health care.

The purpose of this demonstration is to test capitated payment arrangements with qualified organizations for the case management of specific diseases. The targeted populations include Medicare beneficiaries with chronic illnesses and special populations, such as dual eligibles and frail elderly. The payment models employed are intended to reduce costs and improve the coordination and quality of care for Medicare beneficiaries with select chronic diseases. In addition, the models may be applied to organizations that target dual eligibles or the frail elderly. Specifically, we will pay predetermined rates for each month for which an individual chooses to receive disease management services under this demonstration, according to a disease-specific risk adjustment approach currently being developed. (Disease specific risk adjusters are being developed as part of the model for M+C Risk adjustment. The legislative mandate for implementation of the risk adjustment model is January 1, 2004 for all plans. This risk adjuster, which will factor a greater number of comorbidities into the payment, is to be announced March 2003.)

There will also be a risk sharing option available (that is, a symmetrical risk sharing on profit and losses around a Medical-Loss-Ratio).

In exchange for the capitation amount, the applicant would be required to cover all Medicare-covered services for an individual participating in the demonstration, in addition to the disease management services. The applicant would be required to make such services available to beneficiaries participating in the demonstration, either directly or through arrangements with other Medicare-certified providers. Medicare beneficiaries participating in this demonstration would be informed that it is a condition of such participation that they receive services through the provider of disease management that has received a payment on behalf of the participant. For non-M+C organizations, only traditional Medicare fee-for-service (FFS) beneficiaries are eligible to participate in the demonstration. The intent of the demonstration is to attract traditional Medicare FFS beneficiaries, however, we will consider, on a case-by-case basis, allowing M+C organizations to market the demonstration to their current M+C beneficiaries and permit participation in the demonstration by one M+C beneficiary for every 2 traditional Medicare FFS beneficiaries they get to participate. Current M+C beneficiaries would have to disenroll from their current M+C plan in order to participate in the demonstration. Organizations allowed to sign up current M+C beneficiary who disenrolled from an M+C plan to participate in the demonstration would have to agree to the monitoring of their Medical-Loss-Ratio (MLR).

The capitated payment method will require the collection and submission of simplified encounter data. The demonstration will use the Group Health Plan Payment System to pay the sites.

Under this demonstration, selected organizations would provide the clinical management of patients with high cost diagnoses such as stroke, congestive heart failure, and diabetes. (Applicants may propose a project that seeks to intervene with disease management services for Medicare eligible beneficiaries who have the potential for renal failure but who are not yet in dialysis. Randomization may be required for a proposal with this model.) The demonstration would be especially appropriate for provider sponsored organizations (PSOs), but is also open to other types of organizations such as disease management organizations, academic medical centers (AMCs) or M+C organizations. By targeting or encouraging the formation of integrated delivery systems and paying a single risk payment rather than reimbursing services on a fee-for-service basis, we hope to improve communication and coordination of services between patient, physician, disease management organizations, and other providers.

I. Background

A. Legislative Background

Section 402(a)(1)(A) of the Social Security Amendments of 1967 (Pub. L. 90–248), 42 U.S.C. 1395b–1(a)(1)(A), authorizes the Secretary to develop and engage in demonstrations ''to determine whether, and if so which, changes in methods of payment or reimbursement * * * for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services. * * *''

Under section 402(b) of the Social Security Act Amendments of 1967, the Secretary is authorized to waive requirements in title XVIII that relate to reimbursement and payment in order to carry out demonstrations authorized under section 402(a) of the Social Security Act Amendments of 1967.

Under this demonstration, we would use the authority in section 402(b) to waive the ''fee-for-service'' (FFS) payment rules that would ordinarily apply to a beneficiary who has elected the ''Original Medicare plan'', and would substitute the methodology discussed in this notice, and agreed to in the demonstration contract.

B. Problem

Historically, a small proportion of Medicare beneficiaries has accounted for a major proportion of Medicare expenditures. For example, in 1996, 12.1 percent of all Medicare enrollees accounted for 75.5 percent ($126.1 billion) of all Medicare FFS program payments. Many of these high-cost beneficiaries are chronically ill with certain common diagnoses, and most of the Medicare expenditures for their care are for repeated hospitalizations. During the next 30 years, as the population ages, the number of individuals and estimated cost of care for these individuals are expected to grow dramatically.

In addition, dual eligibles and special populations account for a large proportion of Medicaid and Medicare expenditures. The 1998 Medicare Chart Book reported that in 1995, the 6 million dually eligible beneficiaries accounted for 30 percent Medicare spending, though they only represented 16 percent of the Medicare population. Moreover, the dually eligible accounted for 35 percent of Medicaid spending, though they only made up 17 percent of the Medicaid population.

When services furnished to individuals with chronic illness are reimbursed on a FFS basis, health care has often been fragmented and poorly coordinated across multiple health care providers and multiple sites of care. Evidence-based practice guidelines have not always been followed, nor have patients always been taught how best to care for themselves. These shortcomings are particularly true for patients served under reimbursement systems in which providers lack incentives for controlling the frequency, mix, and intensity of services, and where they have limited accountability for the outcomes of care.

Many M+C organizations and private insurers have realized the importance of effectively coordinating the care of services for persons with select chronic conditions. The quality of care, as well as the cost of care, can be improved through better integration of the delivery system. In order to create incentives to maintain costs, encourage the coordination of services, and

improve the quality of care, M+C and private insurers have developed alternative payment systems that put the provider of disease management organizations at full or partial risk for the cost of care.

Concerning dual eligibles, integration across the continuum of primary, acute, and long-term care services for vulnerable populations has gained attention in recent years as an approach that could produce both cost efficiencies and more appropriate decisions on the settings in which care is delivered.

C. Disease Management

The level of interest in and knowledge about disease management is growing dramatically. The Institute of Medicine's report, entitled ''Crossing the Quality Chasm,'' highlights the challenge of managing chronic conditions within a system that was designed to treat acute illness. Major national organizations such as the Disease Management Association of America (DMAA) have been formed to advance the practice of disease management, and the National Committee for Quality Assurance (NCQA) has established standards for disease management programs.

Early efforts at disease management occurred mainly in managed care settings, as the plan and the providers had clear incentives to manage care and the patients were enrolled and ''locked into'' a delivery system. More recently, a variety of health care organizations including physician group practices, private insurers, commercial firms, and academic medical centers, have developed programs designed to address the challenges inherent in managing chronic illnesses within the context of a FFS system oriented around episodic care. The most obvious of these systems are called PSOs.

The NDMA, NCQA, and other organizations such as the National Pharmaceutical Council have put forward definitions of disease management that contain certain common elements. These definitions view disease management as an approach to delivering health care to persons with chronic illnesses that aims to improve patient outcomes while containing health care costs. These programs tend to target persons whose primary health problem is a specific disease, although certain comorbid conditions are usually addressed as well. Patients with a similar level of severity of a disease tend to face similar problems and therefore receive similar treatment plans. These disease management interventions tend to be highly structured and emphasize the use of standard protocols and clinical guidelines.

Certain common features are found in all of these definitions:

- Identification of patients and matching the intervention with need.
- Use of evidence-based practice guidelines.
- Supporting adherence to the plan of care.
- Supporting adherence to evidence-based medical practice guidelines by providing medical treatment guidelines to physicians and other providers, reporting on the patient's progress in compliance with protocols, and providing support services to assist the physician in monitoring the patient.
- Services designed to enhance patient self-management and adherence to their treatment plan. Examples of these services are patient education, monitoring and reminders, and behavior modification programs aimed at encouraging lifestyle changes.
- Routine reporting/feedback loop (may include communication with patient, physician, health plan and ancillary providers, and practice profiling).
- Communication and collaboration among providers and between the patient and providers. Related services include team conferences, collaborative practice patterns, and routine reporting and feedback loops. In addition, care managers are often used to relay communication and to coordinate care across providers and between face-to-face encounters with chronically ill patients. Programs that address comorbid conditions extend their communication efforts to include all of the patient's providers and the entire spectrum of care.
- Collection and analysis of process and outcomes measures.

In addition to these standard features, programs may include use of information technology such as specialized software, data registries, automated decision support tools, and callback systems. Although disease management services usually do not include actual treatment of the patient's condition, many disease management programs augment the services provided in the traditional FFS system by adding such services as comprehensive geriatric assessment, social services, preventive services, transportation, including prevention services and necessary prescription drugs and outpatient medications. The interventions provided go beyond those services generally covered under the Medicare FFS program.

In our recent study aimed at investigating and benchmarking case management and disease management efforts, the suggestion was made that case and disease management organizations provide services aimed at addressing one or more of the following goals: improving patient self-care, improving physician prescribing and treatment practices, improving communication and coordination, and arranging and providing for services. Programs vary in their relative focus on these areas. Some disease management programs may emphasize improving physician use of recommended clinical guidelines, others may focus on providing case managers to support and educate the patient and enhance communication, and others may emphasize access to additional services.

D. CMS Demonstrations of Management of Chronic Diseases

We have made three awards pursuant to section 121 of the Medicare, Medicaid, and Benefits Improvement and Protection Act (BIPA)(Pub. L. 106–554, enacted on December 21, 2000) that directs us to conduct a demonstration project for the Medicare FFS population to determine the impact on costs and health outcomes of applying disease management services. Demonstration sites plan to start enrollment in the spring of 2003. Under this BIPA demonstration, services will be supplemented with coverage for prescription drugs provided to beneficiaries with advanced-stage congestive heart failure, diabetes, or coronary heart disease. A key feature of the demonstration is that the selected organizations must guarantee either through reinsurance or some other means, net savings to the Medicare program.

In the past, we have conducted several demonstrations of case management for chronic illnesses, including the national channeling demonstration and the Alzheimer's Disease demonstration. The evaluations of these demonstrations found that none of them showed sufficient savings to cover the additional costs of case management.

There are several possible reasons for the lack of positive results. First, the most appropriate individuals were not always targeted and enrolled into the demonstration. In many cases, the sites enrolled patients with less severe, and therefore less costly conditions, making it more difficult to achieve cost savings by avoiding normal utilization patterns of acute or long-term medical care. The disease management demonstration Web site *www.cms.hhs.gov/healthplans/research/DMDemo.asp* contains

additional information about these demonstrations.

We are currently conducting other demonstrations that test either case or disease management. In one demonstration, Lovelace Health Systems in Albuquerque, New Mexico was chosen to operate demonstrations of intensive case management services for high-risk patients with congestive heart failure and diabetes to improve the clinical outcomes, quality of life, and satisfaction with services. The other is a larger scale demonstration involving 15 sites authorized by the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33, enacted on August 5, 1997) to evaluate methods such as case management and disease management that improve the quality of care for beneficiaries with a chronic illness. The coordinated care demonstration was designed based on the findings of a review of best practices for coordinating care in the private sector. More information about the Coordinated Care Demonstration can be found on our Web site *www.cms.hhs.gov/healthplans/research/coorcare.asp.*

E. The Capitated Disease Management Demonstration

This demonstration will provide clinical management of—

(1) Patients with high cost diagnoses such as stroke, congestive heart failure, and diabetes, (2) people who receive both Medicare and Medicaid, or (3) frail elderly patients that would benefit from a greater coordination of services. The project will allow us to build on the experiences of existing clinical disease management organizations. The delivery system will be targeted to PSOs but is open to other types of organizations such as disease management organizations, AMCs, or M+C organizations. Participation by qualified beneficiaries currently in the traditional fee-for-service Medicare program is the intended objective, however, we will consider allowing M+C organizations, on a case-by-case basis, to accept one M+C beneficiary for participation in the demonstration for every 2 traditional Medicare FFS beneficiaries that participate. Organizations allowed to accept a current M+C beneficiary (who must actively disenroll in the plan first) must allow the monitoring of their Medical-Loss-Ratio (MLR).

In developing this demonstration, we reviewed the work and recommendations of organizations such as the NDMA and NCQA, and examined our prior and current experience with similar demonstrations.

This demonstration differs from its predecessors in that the focus is on paying a risk adjusted capitated rate with negotiated risk sharing arrangements to qualified organizations in order to create incentives to improve the quality and coordination of care. Moreover, we will be using the recently developed risk-adjustment payment methodology that will apply to all M+C organizations beginning in 2004. It is a selected significant disease model, which includes many chronic illnesses that are relevant to predicting future expenditures.

For the purpose of this demonstration, disease management is defined as a systematic approach to managing health care that aims to improve patient care, physician treatment practices, communication and coordination, and access to needed services, and incorporates the following features:

Eligible Population

Beneficiary participation in this demonstration is strictly voluntary. Each beneficiary must be fully informed about the demonstration and must sign an informed consent form in order to participate. In addition to indicating informed consent, Medicare beneficiaries must satisfy the following conditions in order to be able to participate in the demonstration project:

Eligibility Criteria

- Must be a Medicare beneficiary enrolled in Part A and Part B.
- Medicare must be primary payer.
- Must have a chronic disease, such as stroke, congestive heart failure, or diabetes (except for dual eligible or frail elderly).

Medicare beneficiaries will be excluded from eligibility if they:

- Are currently enrolled in a M+C plan; however, we will consider allowing M+C organizations to allow participation in the demonstration by one M+C beneficiary for every 2 traditional Medicare FFS beneficiaries.
- Are receiving hospice or end stage renal disease benefits.
- Are currently participating in another CMS demonstration.
- Are unable to participate in self-care activities due to severe dementia or other serious mental illness.

Payment

A contracting provider or provider organization will be paid for the services it provides to demonstration participants (without regard to the frequency and intensity of the services received by a given individual) on a monthly capitation basis. In exchange for this payment, the contractor would be responsible for furnishing or arranging for all covered Medicare Part A and Part B services. A listing of the beneficiaries who have elected to receive disease management services through the demonstration will be furnished to us on a monthly basis, which will be submitted to the Group Health Payment System to process payments for the services furnished to these beneficiaries.

The capitated payment rate will be based on the higher of the rate paid under the M+C program or 99 percent of a county-level fee-for-service base rate that will be calculated using a method developed by our Office of the Actuary. The payment rate will be fully risk adjusted using the new risk-adjustment methodology.

In compliance with the legislative mandate in BIPA, we have announced a draft risk adjustment model that includes inpatient and ambulatory diagnosis data, which will be implemented in January 1, 2004. The specific payment methodology will be announced in March 2003. We have chosen a selected significant disease model with approximately 61 condition groups. This model incorporates multiple chronic diseases into the payment system. Although the new risk adjustment payment methodology will not be implemented for the M+C program until January 2004, demonstration payment amounts will be calculated using the new risk-adjustment payment methodology, and will be fully risk adjusted, rather than being phased-in as is the case in the M+C program. (M+C organization payments are subject to the congressionally mandated phase-in of risk adjustment whereby only a portion of the payment is risk adjusted and the other portion of the payment is calculated using demographic factors. Under this demonstration, the payment amount will be fully risk adjusted.)

The following example is for applicants to estimate risk scores based on the current model of the selected significant condition model. This example is for illustrative purposes only.

Our example is a female, age 76, and she is Medicaid eligible. She has the following conditions:

- Chronic obstructive pulmonary disease (COPD).
- Congestive heart failure (CHF).

Go to illustrative table found at *www.cms.hhs.gov/healthplans/encounter/RAmodels.pdf* for determining estimated payments. Use the draft coefficient under the ''61-condition'' model column to find estimates.

Payment estimate = Female, age 76 ($2,500) + Medicaid ($1,000) + COPD

($2,000) + CHF ($2,300) + CHF*COPD Interaction ($1,400) = $9,200.

In determining the risk score, notice that all the coefficients are added together (demographic characteristics and risk factors). Also, there is additional payment in the model for the interaction between COPD and CHF.

The total predicted expenditures equal $9,200, which is divided by $5,300 to arrive at a 1.74 risk factor estimate. The $5,300 amount is average cost for a Medicare beneficiary in fee-for-service.

An actual payment estimate requires a ratebook that is not available until May 2003. If that rate book were available, you would multiply the risk factor by the rescaled county capitation amounts for the enrollee (Part A and Part B amounts). For more information on this model go to *www.cms.hhs.gov/healthplans/riskadj/*.

If the applicant is proposing risk sharing, the arrangement must be described in detail. The applicant should include examples that illustrate the risk sharing arrangement. The shared risk of gain and loss between us and the participating organization must be symmetrical, and the organization must always remain at significant financial risk.

Because we intend to implement any approved demonstrations as soon as possible, we do not intend to make any significant changes to the payment system used under the M+C program, which would be used to make payments under this demonstration. Thus, we will use the same risk-adjustment method developed for M+C plans to be used beginning in January 2004, except the payment amount will be fully risk-adjusted. The reporting systems used under the M+C data will also apply. If the applicant believes it is necessary to modify any aspects of the payment process, the application should request the modification and provide a detailed justification for the request.

Network

Since the key to a successful disease management product is the composition of the provider network employed by the applicant, and the effectiveness of the network providers' care management, the applicant should describe the structure of the proposed network it would use, and the structure of its existing networks, to the extent applicable. If possible, the applicant should illustrate with a diagram the layering of networks (PSO, HMO, etc.) and describe the important differences in contracting provisions in each network. For the proposed capitated disease management demonstration, the applicant should describe which networks would be used, how existing networks would be modified for Medicare users, and if necessary, how existing networks will be expanded.

As noted above, beneficiaries electing to receive case management through this demonstration would agree, as a condition for doing so, to receive services through the case management provider.

Claims Processing

The application should contain a discussion of the methods for processing and paying claims in the demonstration, including in-network and out-of-network services. The applicant should indicate whether existing claims processing systems used in commercial business will be used or whether new systems must be developed for the Medicare demonstration.

If there are any interface requirements for Medicare intermediaries and carriers, this should be noted and discussed. Estimates of effort required to establish payment protocols should also be included.

Budget Neutrality

This demonstration must be budget neutral. This means that the expected costs that we incur under the demonstration can be no more than the expected costs were the demonstration not to occur. The applicant must submit a budget neutrality calculation in the application. Using the proposed payment methodology (including any risk sharing arrangements), the applicant should estimate our payments with and without the demonstration for each year of the demonstration. Applicants must use both FFS and M+C expenses calculated on a county basis for the without-demonstration baseline for comparison to the with-demonstration costs. The calculation should indicate how the estimates were derived. If risk sharing is proposed, there should be three calculations of budget neutrality—optimistic or best-case assumptions, expected or normal assumptions, and pessimistic or worst-case assumptions. The risk-sharing proposal must include a 2 percent full-risk corridor above and below a targeted Medical-Loss-Ratio. In addition, prior to awards, CMS will work with applicants to determine whether the proposed Medical-Loss-Ratio is set at a level where the risk-sharing arrangement is projected to be budget neutral.

The applicant should include a revenue and expense statement showing calendar year 2003 estimated per member per month Medicare revenue and member premium; benefit expenses (hospital inpatient, hospital outpatient, professional, other Medicare services, and non-Medicare services); and administrative expense. The statement should show any copay credits for the various services.

If risk sharing is proposed, we will share risk only on medical benefit expenses. Administrative expense must be reasonable and consistent with prior practices. The applicant should describe a reconciliation process to be used to determine savings or losses. The administrative cost will not be guaranteed and should be recovered from savings. A reconciliation based on the participating organizations' accumulated medical claims expenses must include an independent audit, funded by the organization, verifying the calculations.

Medigap Issues

Many Medicare beneficiaries have health insurance that supplement Medicare, such as a Medicare supplement (Medigap) policy or coverage through an employer-sponsored group plan. Thus, to be enrolled in the demonstration, beneficiaries must be informed about supplemental health insurance, including Medigap policies and protections. With respect to Medigap policies, a beneficiary who enrolls in the demonstration would generally have the following protections:

- Under section 1882(s)(3)(B)(iii) of the Social Security Act, if an individual is enrolled in an organization operating under demonstration project authority and enrollment ceases under the same circumstances that would permit an individual to disenroll from a Medicare+Choice plan as set forth in 1851(e)(4), (for example, contract termination, moving out of the service area), the individual has a right to purchase certain Medigap policies (generally Plan A, B, C, or F) on a guaranteed issue basis.
- Under section 1882(s)(3)(B)(v) of the Social Security Act, if an individual has a Medigap policy and drops the Medigap policy to enroll, for the first time, in a M+C plan or *any similar organization operating under demonstration project authority* (emphasis added) and the beneficiary disenrolls during the first 12 months of such enrollment, the individual has the right to buy his or her former Medigap policy, if it is still available from the same insurance company. If the former policy is not still available, the individual has the right to buy Plan A, B, C, or F.

While a beneficiary is free to keep his or her Medigap policy, there may be little benefit in doing so, as these policies are designed to complement payments under Original FFS Medicare payment rules.

State Insurance Commission Licensure

Depending on the design of the demonstration, programs under this demonstration may be considered to fall within State laws regulating insurance, and State licensure thus may be required before an applicant can participate. The applicant should discuss State-licensing issues for the proposed demonstration site, and indicate any potential problems in obtaining the appropriate license to participate in the capitated disease management demonstration. If potential problems exist, there should be a discussion of methods for their resolution. The applicant should also discuss any other requirements from local jurisdictions that could impact on the implementation of the capitated disease management demonstration. We will work closely with organizations and their respective States to ensure that all of the State requirements are met before the demonstration is implemented.

Other Features

Applicants will also be expected to follow additional features that include—(1) Identification and assessment of patients, and documentation of their decision to elect to receive disease management through the demonstration, following the rules that apply under the M+C program; (2) Implementation of an appropriate treatment plan based on clinical guidelines; (3) Monitoring, feedback, and communication concerning the patient's condition; and (4) Arranging for and/or providing needed services, including preventive services.

I. Provisions of This Notice

This notice solicits applications for demonstration projects that use disease management to improve the quality of services furnished to specific beneficiaries and manage expenditures under Parts A and B of the Medicare program. Demonstration awardees will receive a capitated payment for all Medicare-covered services for beneficiaries with select diseases electing to receive disease management through the demonstration. The demonstration anticipates savings from more efficient provision and utilization of Medicare-covered services and the prevention of avoidable, costly medical complications. Applicants may propose to manage chronic conditions in which they have demonstrated expertise and ability.

Through this solicitation, project awards will be made to qualified organizations. PSOs, M+C organizations, AMCs, or disease management companies, may propose one or multiple sites for any of their targeted diseases or for multiple diseases. The demonstration projects will operate for 3 years from implementation during which time a formal independent evaluation will be conducted. Each awardee is expected to fully cooperate in all phases of the evaluation. A project officer will be assigned to each selected project that will serve as the point of contact with the demonstration project staff. Our project officer will provide technical consultation regarding cooperative agreement procedures, monitor demonstration site activities, and forward feedback to the demonstration project's staff.

II. Requirements for Submissions

We are seeking innovative proposals from qualified organizations that can test whether capitated models for disease management using a newly developed disease-specific risk-adjustment model will improve clinical outcomes and appropriate use of Medicare-covered services for targeted Medicare beneficiaries, while managing Medicare expenditures under Parts A and B to achieve reduced aggregate Medicare expenditures.

Models that are targeted specifically at the traditional FFS Medicare population and that take into account the beneficiaries' relative health and functional status, age, mental functioning, and other relevant factors, are of particular interest. Preference will be given to proposals that focus on beneficiaries most likely to benefit from disease management interventions and that take patient comorbidities into account in the services provided.

Applicants must submit their applications in the standard format outlined in CMS's Medicare Waiver Demonstration Application in order to be considered for review by the technical review panel. Applications not received in this format will not be considered for review.

The Medicare Waiver Demonstration Application may be accessed at the following Internet address: *http://www.cms.hhs.gov/healthplans/research*. The application outlines all application requirements including the format and content requirements.

III. Evaluation Process and Criteria

A panel of experts will conduct a review of responsive proposals. This technical review panel will convene in the months following the due date for submission of proposals. The panelists' recommendations will contain numerical ratings based on the evaluation criteria, the ranking of all responsive proposals, and a written assessment of each applicant. In addition, we will conduct a financial analysis of the recommended proposals and evaluate the proposed projects to ensure that aggregate Medicare program expenditures are reduced.

A. Evaluation Criteria and Weights

1. Statement of the Problem (5 Points)

The proposal describes—

- The population;
- Patterns of health care;
- Incidence of disease in the geographic area to be served by the disease management program;
- Enhancements planned in the disease management program; and
- Obstacles to providing disease management services.

2. Targeting the Appropriate Population (15 Points)

- The proposal provides details on how the applicant plans to identify, recruit, and obtain participation by eligible Medicare beneficiaries into the demonstration.
- The strategy and plan for recruiting the required number of patients in the control and experimental groups appear reasonable and achievable.
- The applicant describes the process by which it will ensure that participation in the demonstration is voluntary, and the beneficiary is fully informed of all aspects of the demonstration. A draft consent form is included in the proposal and is sufficient. If applicable, the form should include, but not be limited to, information about the randomization process, and use of the patient's medical records (for example, for monitoring quality of care and for evaluating the demonstration project).
- Applicant explicitly states how its referral sources will use common or readily available information, tests, or instruments to properly identify appropriate candidates before soliciting participation in the demonstration in order to reduce the incidence of beneficiary rejection due to ineligibility.
- The applicant provides sufficient information on how many beneficiaries it expects to treat each year at each site.

3. Description of Disease Management Intervention Services (20 Points)

• The proposal provides clear and convincing evidence and supporting materials that proposed disease management services are appropriate for the targeted population, likely to improve the quality of care for these individuals, and likely to result in savings from efficiencies in the use of medical services/products.

• There are adequate mechanisms for ensuring the medical necessity and reasonableness of the disease management services furnished under the demonstration.

• There are adequate mechanisms for ensuring that beneficiaries' physicians are integrated with the project.

• The proposal provides sufficient detail on exactly how each service will be provided, the type and level of staff that will be providing the service, the proposed level of effort required, and a discussion of any special equipment, such as monitoring or electronic input devices.

• The data to be collected, data sources, and data analyses planned are specified in detail and are sufficient to ensure optimal medical management and efficient use of health care services.

4. Organizational Capabilities (20 Points)

• The proposal provides evidence of the availability and adequacy of the following components, which are necessary to ensure adequate service delivery and the provision of high quality of care:

+ Facilities.
+ Equipment.
+ Trained staff.
+ Clinical protocols to guide care delivery and management.
+ Linkages to providers and services necessary to deliver care.
+ Appropriate information systems including the ability to collect and submit data for risk adjustment.
+ Appropriate financial systems.

• The proposal includes a detailed implementation plan describing tasks, time lines, and costs associated with implementing the demonstration program.

• If any modifications to the applicant's current structure are proposed, they have been sufficiently described and justified. Modifications may involve protocols, services, outreach, education initiatives, timelines, etc.

• The organizational and reporting structure of personnel are provided.

• The application should contain a discussion of the methods for processing and paying claims in the demonstration, including in-network and out-of-network services.

• The application provides a detailed plan of all tasks necessary to implement the disease management project, a schedule with timelines for all essential tasks, a listing of key personnel for the project, including an overall point of contact for the demonstration, and a break out of the responsibilities for persons working on the project.

• The applicant expresses willingness to cooperate in an independent formal evaluation of the demonstration, including submission of cost and other program data and site visits, conducted by us and/or our contractor.

• The proposal does not include targeting or treatment protocols that are proprietary in nature, or, if proprietary protocols are included, the proposal clearly indicates the applicant's agreement to the following statement:

''At any phase in the project, including at the project's conclusion, the awardee if so requested by the project officer, must deliver to CMS materials, systems, or other items applied, developed, refined or enhanced in the course of or under the award to be used to further the purpose of this demonstration project. These materials, systems, or other items shall not be subject to use for any other purpose.''

5. Effectiveness of Intervention(s) (20 Points)

• For existing disease management programs, the applicant demonstrates prior experience in operating successful disease management programs.

• For existing disease management programs, the applicant shows evidence of positive outcomes from prior and current efforts. Claims of prior success must include definitions of the outcomes measures used, as well as explanations of the length of time over which they were measured and how the measures were calculated. Results from similar projects are cited.

• The applicant expresses a willingness to work with us, the evaluation contractor, and the consortium of awardee sites to determine the specific data to be collected across sites for each disease category, as well as to develop consistent measurement strategies between sites.

• The proposal provides convincing evidence that the intervention will likely increase the appropriate utilization of evidence-based and guideline-recommended therapies, as well as improve patient outcomes.

• Existing information systems and/or proposed new data collection are adequate to meet the quality of care reporting requirements. Applicants should list data to be collected in demonstration.

• The proposal reports strong, credible likelihood of savings and improved patient outcomes calculated from data collected during implementation of similar disease management interventions by the applicant.

6. Payment for Disease Management Services and Reduction of Medicare Expenditures (20 Points)

• The proposal provides justification and explanation for the proposed payment methodology.

• The proposal provides clear, convincing evidence that, over the three years of the demonstration, the aggregate Medicare expenditures under Parts A and B (including incentives and start-up funding, if made) will be less than expected Medicare expenditures in the absence of the demonstration.

B. Final Selection

From among the most highly qualified applicants, the final selection of projects for the demonstration will be made by our Administrator and will take into consideration a number of factors, including operational feasibility, geographic location, and program priorities (such as testing a variety of approaches for delivering services, targeting beneficiaries, and payment). CMS reserves the right to determine the scope of the project, which includes limiting the number of awards and beneficiaries covered under the demonstration. In evaluating applications, we rely on our past experience with successful and unsuccessful demonstrations. We expect to make the awards in 2003.

IV. Collection of Information Requirements

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are 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. However, the collection requirements associated with this notice have been approved by OMB, under control number 0938–0880, with a current expiration date of 3/31/2003.

Authority: Section 402 of the Social Security Act Amendments of 1967 (42 U.S.C. 1395b–1)

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: September 9, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–3879 Filed 2–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3099–N]

Medicaid Program; Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 p.m. E.S.T. on April 18, 2003.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Betty Shaw, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100.

SUPPLEMENTARY INFORMATION: On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for IOLs furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** titled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198), which added subpart F to 42 CFR part 416. That rule set forth the process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for intraocular lenses (IOLs) that we determine are NTIOLs. This payment adjustment is good for a 5-year period that begins when we recognize a payment adjustment for the first intraocular lens in a new subset of an existing class of intraocular lens or a new class of technology, as explained below. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. After July 16, 2002, we may change the $50 adjustment amount through a notice with comment period. There will be no adjustment change for calendar year 2003.

Review Process for Establishing Classes of New Technology Intraocular Lenses

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a notice in the **Federal Register** announcing the deadline and requirements for submitting a request for us to review payment for an IOL.

(2) Receiving requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive and identify the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(4) Publishing a notice in the **Federal Register** listing the requests, and giving the public 30 days to comment on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the request to review, and requesting confirmation from the Food and Drug Administration (FDA) about labeling applications that have been approved on the model lens under review. We also request a recommendation from the FDA about whether or not the lens model represents a new class of technology that sets it apart from other IOLs.

Using a baseline of the date of the last determination of new classes of intraocular lenses, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses that are classified by a predominant characteristic as reducing the risk of intraoperative or postoperative complications or trauma, or demonstrating accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 120 days after we publish the notice identified in paragraph (4) of this section) announcing the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for the following payment adjustment:

(a) Determinations made before July 16, 2002—$50.

(b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ambulatory surgical center services.

(9) Adjusting payments effective 30 days after the publication of the notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review

Any party who is able to furnish the information required in § 416.195 (A request to review) may request that we review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for an IOL that meets the definition of a new technology IOL in § 416.180 (Definitions).

Requests To Review

A request to review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.

• A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
• A copy of the IOL's original FDA approval notification.
• Reports of modifications made after the original FDA approval.
• Other information that supports the requestor's claim (that is, clinical trials, case studies, journal articles, *etc.*).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, for trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential. Under the Freedom of Information Act, we may not withhold publication of information based on the type of information contained, but rather on an identifiable harm that release of that information would present.

Application of the Payment Adjustment

We recognize the IOL(s) that define a new technology subset for purposes of subpart F of part 416 as belonging to the class of NTIOLs for a period of 5 years effective from the date that we recognize the first new technology IOL within the subset for a payment adjustment. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset.

II. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for intraocular lenses furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the DATES section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine a lens as an NTIOL, the lens will be eligible for a payment adjustment of $50 or a different amount implemented through proposed and final rules.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it is merely soliciting interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens furnished by an ambulatory surgical center.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $26 to $29 million or less in any 1 year. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No.93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4734 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1225–GNC]

RIN 0938–ZA22

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries, carriers, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) regional carriers in the administration of the Medicare program beginning on the first day of the first month following publication of this notice in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

EFFECTIVE DATE: The criteria and standards are effective the March 3, 2003.

Comment Period: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on March 31, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1225–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. Mail written comments (one original and two copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1225–GNC, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201 or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION: In several instances, we identify a Medicare manual as a source of more detailed requirements. Medicare fee-for-service contractors have copies of the various Medicare manuals referenced in this notice. Members of the public also have access to our manual instructions.

Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1,400 designated public libraries throughout the United States. To locate the nearest FDL, individuals should contact any public library.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Information may also be obtained from the following Web site: *http://www.hcfa.gov/pubforms/progman.htm.* Some manuals may be obtained from the following Web site: *http://www.cms.gov/pubforms/p2192toc.htm.*

Finally, all of our Regional Offices (ROs) maintain all Medicare manuals for public inspection. To find the location of our nearest available RO, you may call the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

Response to Public Comments: Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the *Comment Period* section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

Inspection of Public Comments: Comments received timely are available for public inspection beginning approximately 2 weeks after the close of the comment period, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m.

To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), community mental health centers, etc.) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816 of the Act, to perform claim processing functions with respect to freestanding Home Health Agency (HHA) claims. We refer to such organizations as Regional Home Health Intermediaries (RHHIs). *See* 42 CFR 421.117 and the final rule published in the **Federal Register** on May 19, 1988 at 53 FR 17936 for more details about the RHHIs.

Evaluations of Medicare fee-for-service contractor performance need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term. We may evaluate performance using a time frame that does not mirror the FY or other fixed term. The evaluation of intermediary performance is part of our contract management process.

B. Part B Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a

carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. We may evaluate performance using a timeframe that does not mirror the FY. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, § 421.120 and § 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries before implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for carriers before implementation. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the **Federal Register** on December 28, 2001 at 66 FR 67257.

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2001 Criteria and Standards

In response to the December 28, 2001 **Federal Register** general notice with comment, we received comments from five entities. We reviewed all comments, but none necessitated our reissuance of the FY 2002 criteria and standards. Not all comments submitted pertained specifically to the FY 2002 criteria and standards. We advised Medicare program components of the concerns as appropriate. When warranted, we have incorporated revisions in this **Federal Register** notice. We are responding to the following performance evaluation comments:

Comment: A commenter advised that we have established an ''acceptable reversal rate'' of intermediary reconsideration determinations by Administrative Law Judges (ALJs), but that we have not developed an acceptable reversal rate for DMEPOS regional carriers.

Response: Section 1816(f)(2) of the Act requires that we develop a standard to evaluate the extent to which intermediary determinations are reversed on appeal. This section of the Act applies only to intermediaries. The statute does not include a similar requirement for carriers and DMEPOS regional carriers, who by law employ a different process in reviewing Part B claims, including an additional level of contractor appeal known as the fair hearing. While there is no similar mandate under the Part B program for carriers or DMEPOS regional carriers, our reviewers routinely evaluate the accuracy of appeals decisions when they conduct a CPE review of a contractor's appeals operation. This review includes an evaluation of reversals both at the fair hearing and the ALJ level. We believe that this process adequately identifies problems with the accuracy of carrier and DMERC appeals decisions.

Comment: A commenter advised that intermediaries must be given specific customer service performance objectives, and providers must be allowed to influence those objectives and to participate directly in the evaluations of contractor performance. The commenter considers provider input more critical if the Administration continues to support contractor reform.

Response: Both intermediaries and carriers are required to have Provider Communications Advisory Groups which are comprised of representatives from the various Medicare provider types, such as hospitals, home health agencies, skilled nursing facilities, and physicians. These groups are to have meetings on a quarterly basis during which the provider representatives give contractors feedback about education and customer service needs and how well these needs are being met. The contractors report the minutes of these meetings to CMS's headquarters in quarterly update reports. We factor in this feedback when setting customer service standards for the contractor. We notify contractors of specific customer service performance standards by means of administrative directives. However, because such standards are not mandated by law or court decision, we do not specify them in this notice.

Currently we evaluate contractor customer service by verifying implementation and execution of administrative directives, reviewing responses to correspondence, monitoring telephone responses, and reviewing educational materials distributed to providers. As we prepare

for the anticipated passage of contracting reform we will be doing even more to seek provider input into customer service performance objectives.

Comment: A commenter requested that we publish the annual evaluations of all of the contractors so that the affected public will know whether contractors meet performance requirements. The commenter advised that currently, the evaluations are available only through a Freedom of Information Act (FOIA) request. Many providers, particularly smaller providers, are not aware of the procedures for making a FOIA request.

Response: The current evaluation reports for Medicare fee-for-service contractors are lengthy narratives, which are not conducive to publication. They are, however, available to the public upon written request. The policy that governs releasing these reports is explained at §§ 401.133(c), 401.135, 401.136, and 401.140. There is no requirement that reports be requested under the FOIA. Written requests for reports may be addressed to: Centers for Medicare & Medicaid Services, ATTN: Center for Medicare Management, Mailstop S2–21–28, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comment: A commenter remarked that the Contractor Performance Evaluation (CPE) Rebuttal Process introduced in FY 2001 which gives contractors an opportunity to submit a written rebuttal within 7 calendar days from the CPE exit conference, needs to be clarified as to how it applies to the review of provider audit workpapers under our Audit Quality Review Program (AQRP). The commenter believes we should have a consistent policy for responding to all CPE findings. The commenter further suggests that CMS needs to clarify its policies with respect to AQRP findings and how they relate to the summarized annual CPE for Provider audit.

Response: The AQRP has an established procedure allowing contractors 30 days to review and respond to draft findings prepared as a result of the AQRP review. We review the contractor's responses for each individual AQRP review, delete or modify the findings as appropriate, prepare a rebuttal for those findings that are not modified, and issue a Management Letter. We then prepare and send to the contractor an Executive Summary of the results of all the individual AQRP reviews. This Executive Summary is then used as a basis for the preparation of a CPE report. Because the contractor has already been given a formal review and rebuttal type process under AQRP that exceeds the 7 calendar day CPE rebuttal process, and because the CPE report adopts the final AQRP findings, we have determined the CPE rebuttal process is unnecessary for AQRP reviews.

III. Criteria and Standards—General

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by law, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2003 that outlines expectations of the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

Several times throughout this notice, we refer to the ''readability'' of letters, decisions, or correspondence that are going to Medicare beneficiaries from intermediaries or carriers. In those instances, ''readability'' is defined as being below the 8th grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In such cases, the readability level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon expectations for FY 2003, we may also conduct follow-up evaluations throughout FY 2003 of areas in which contractor performance was out of compliance with laws, regulations, and our performance expectations during prior review years and thus required the contractor to submit a Performance Improvement Plan (PIP).

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of CPE. We will continue the use of this process in FY 2003. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer will consider the contents of the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2003 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion is ''Claims Processing'' which measures contractual performance against claims processing accuracy and timeliness requirements as well as activities in handling appeals. Within the Claims Processing Criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Explanations of Medicare Benefits (EOMBs) and Medicare Summary Notices (MSNs), the appropriateness of determinations reversed by ALJs, the timeliness of intermediary reconsideration cases, the timeliness of carrier reviews and hearings, and the readability of carrier reviews. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion is ''Customer Service'' which assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the Customer Service Criterion is the need to provide beneficiaries with written replies that are responsive, that is, provide in detail the reasons for a determination when a beneficiary requests such information, have a customer-friendly tone and clarity, and are at the appropriate reading level. Further evaluation of services under this criterion may include, but is not limited to, the timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of replies provided by the contractor's customer service representatives (quality call monitoring); beneficiary and provider education, training, and outreach activities; and service by the contractor's customer service representatives to beneficiaries who come to the contractor's facility (walk-in inquiry service).

The third criterion is ''Payment Safeguards'' which evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Benefit Integrity (BI), Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition,

intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R). Mandated performance standards for intermediaries in the Payment Safeguards criterion are the accuracy of decisions on Skilled Nursing Facility (SNF) demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the Payment Safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion is ''Fiscal Responsibility'' which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion is ''Administrative Activities'' which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls which are essential in all aspects of a contractor's operation, and the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative Activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

Below, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers.

IV. Criteria and Standards for Intermediaries

A. Claims Processing Criterion

The Claims Processing criterion contains the following four mandated standards:

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. The percentage of reconsideration determinations reversed by ALJs is acceptable. We have defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent.

Standard 4. 75.0 percent of reconsiderations are processed within 60 days, and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 95.0 percent of Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. 90.0 percent of Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Establishment and maintenance of relationship with Common Working File (CWF) Host.
- Accuracy of processing reconsideration cases with determination letters that are clear and have appropriate customer-friendly tone.

Because intermediaries process many claims for benefits under the Part B Medical Insurance portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any Part B claims. This includes accuracy of reviews and hearings, as well as the appropriateness of the reading level of any review determination letters. (See Claims Process Criterion for carriers under section VI.)

B. Customer Service Criterion

Functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate replies to beneficiaries and providers that address the concerns raised and are written with appropriate customer-friendly tone and clarity and that those written to beneficiaries are at the appropriate reading level.
- Walk-in inquiry service.
- Conducting beneficiary and provider education, training and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt

by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A agreement. These functions and activities include, but are not limited to the following:

- Audit and Reimbursement
  + Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
  + Establishing accurate interim payments.
- Benefit Integrity
  + Identifying potential fraud cases that exist within the intermediary's service area and taking appropriate actions to resolve these cases.
  + Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources.
  + Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
  + Increasing the effectiveness of medical review activities.
  + Exercising accurate and defensible decision making on medical reviews.
  + Effectively educating and communicating with the provider community.
  + Collaborating with other internal components and external entities to ensure correct claims payment, and to address situations of fraud, waste, and abuse.
- Medicare Secondary Payer
  + Accurately reporting MSP savings.
  + Accurately following MSP claim development and edit procedures.
  + Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.
  + Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
  + Identifying, recovering, and referring mistaken Medicare payments in accordance with appropriate Medicare Intermediary Manual instructions and our other pertinent general instructions, in the specified order of priority.
- Overpayments
  + Collecting and referring Medicare debts timely.
  + Accurately reporting overpayments to us.
  + Adhering to our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
  + Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
  + Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the Administrative Activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, security, etc).
- Disaster recovery plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

The following three standards are mandated for the RHHI criterion:

Standard 1. 95.0 percent of clean electronically submitted non-Periodic Interim Payment HHA and hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper non-Periodic Interim Payment HHA and hospice claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 75.0 percent of HHA and hospice reconsiderations are processed within 60 days and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 4. 95.0 percent of HHA and Hospice Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of HHA and Hospice Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

We may use this criterion to review an RHHI's performance with respect to handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately; properly paying and settling HHA cost reports; and timely and accurately processing reconsiderations from beneficiaries, HHAs, and hospices.

VI. Criteria and Standards for Carriers

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st

day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of EOMBs and MSNs are properly generated. Our expectation is that EOMB and MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims Processing accuracy.
- Establishment and maintenance of relationship with the CWF Host.
- Accuracy of processing review determination cases.
- Accuracy of processing hearing cases with decision letters that are clear and have appropriate customer-friendly tone.

B. Customer Service Criterion

The Customer Service criterion contains the following mandated standard:

Standard. Replies to beneficiary correspondence address the beneficiary's concerns, are written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Walk-in inquiry service.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Benefit Integrity
  + Identifying potential fraud cases that exist within the carrier's service area and taking appropriate actions to resolve these cases.
  + Investigating allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources.
  + Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
  + Increasing the effectiveness of medical review activities.
  + Exercising accurate and defensible decision making on medical reviews.
  + Effectively educating and communicating with the provider community.
  + Collaborating with other internal components and external entities to ensure correct claims payment, and to address situations of fraud, waste, and abuse.
- Medicare Secondary Payer
  + Accurately reporting MSP savings.
  + Accurately following MSP claim development/edit procedures.
  + Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
  + Identifying, recovering, and referring mistaken Medicare payments in accordance with the appropriate Medicare Carriers Manual instructions, and our other pertinent general instructions.
- Overpayments
  + Collecting and referring Medicare debts timely.
  + Accurately reporting overpayments to us.
  + Compliance with our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
  + Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.
  + Complying with the operational standards relevant to the process for enrolling suppliers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), Automatic Data Processing (ADP) maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, security, etc.).
- Disaster recovery plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

For FY 2003 Contractor Performance Evaluation for DMEPOS regional

carriers has been structured into five criteria, which are the same criteria used for intermediaries and carriers: Claims Processing; Customer Service; Payment Safeguards; Fiscal Responsibility; and Administrative Activities. These criteria for DMEPOS regional carriers were referred to in prior **Federal Register** notices as Quality, Efficiency, Service, and Benefit Integrity.

In these five criteria there are a total of seven mandated standards against which all DMEPOS regional carriers must be evaluated. There also are examples of other activities for which the DMEPOS regional carriers may be evaluated. The mandated standards are in the Claims Processing and Customer Service Criteria. In addition to being described in these criteria, the mandated standards are also described in Attachment J–37 to the DMEPOS regional carrier statement of work (SOW).

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. Properly generated 98.0 percent of MSNs. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. CMS's expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated requests are written at an appropriate reading level and state in detail the reasons for the determination.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Review determinations and hearing decisions are written accurately and clearly.
- Telephone reviews are appropriately documented and adjudicated timely.
- Requests for ALJ hearings are processed timely.

B. Customer Service Criterion

The Customer Service Criterion contains the following mandated standard:

Standard 1. Replies to beneficiary correspondence address concerns raised, are written with appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier SOW, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and supplier telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate replies to beneficiaries, providers, and suppliers that address their concerns and are written with appropriate customer-friendly tone and clarity.
- Walk-in inquiry service.
- Conducting beneficiary and supplier education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing suppliers timely, accurate, and useful Medicare program information.
- Ensuring that communications are made to interested supplier organizations for the purpose of developing and maintaining collaborative supplier education and training activities and programs.

C. Payment Safeguards Criterion

DMEPOS regional carriers may be evaluated on any MIP activities if performed under their contracts. The DMEPOS regional carriers must undertake actions to promote an effective program administration with respect to DMEPOS regional carrier claims. These functions and activities include, but are not limited to the following:

- Benefit Integrity
  + Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.
  + Investigating allegations of potential fraud made by beneficiaries, suppliers, CMS, OIG, and other sources.
  + Putting in place effective detection and deterrence programs for potential fraud.
- Medical Review
  + Reducing the error rate by identifying patterns of in appropriate billing.
  + Educating suppliers concerning Medicare coverage and coding requirements.
- Medicare Secondary Payer
  + Accurately reporting MSP savings.
  + Accurately following MSP claim development/edit procedures.
  + Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
  + Identifying, recovering, and referring mistaken Medicare payments in accordance with the appropriate program instructions in the specified order of priority.
- Overpayments
  + Determining that the DMEPOS regional carrier completely, accurately, timely, and aggressively pursued all outstanding overpayments in adherence with the Medicare Carriers Manual and CMS Program Memoranda resulting from the Debt Collection Improvement Act (DCIA).
  + Verify that all overpayments were timely and accurately recorded.

D. Fiscal Responsibility Criterion

We may review the DMEPOS regional carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts. Additional matters that may be reviewed under this criterion include, but are not limited to the following:

- Compliance with financial reporting requirements.

• Adherence to approved program management and MIP budgets.
• Control of administrative cost and benefit payments.

E. Administrative Activities

We may measure a DMEPOS regional carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. Our evaluation of a DMEPOS regional carrier under this criterion may include, but is not limited to review of the following:
• Systems Security.
• Disaster recovery plan.
• Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VIII. Action Based on Performance Evaluations

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor will also be required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted with respect to the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms ''major nonconformance'' or ''minor nonconformance'' to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement a PIP for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs, and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

• Entering into, renewing, or terminating agreements or contracts with contractors, and
• Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:
• Relative overall performance compared to other contractors.
• Number of criteria in which nonconformance occurs.
• Extent of each nonconformance.
• Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.
• Efforts to improve program quality, service, and efficiency.
• Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million in any one year). Since this notice only describes criteria and standards for evaluating FIs (including RHHIs), carriers, and DMEPOS regional carriers and has no significant economic impact on the program, its beneficiaries, providers or suppliers, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses. This notice does not affect small businesses; individuals and States are not included in the definition of small business entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not affect small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. In accordance with Section 202, we have determined that the notice does not impose any unfunded mandates on State, local or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a notice that imposes substantial direct

requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

We have not prepared a Regulatory Impact Analysis for this notice, in accordance with Executive Order 12866, because it will not have a significant economic impact, nor does it impose any unfunded mandates on State, local, or tribal governments or the private sector. Furthermore, we certify that the notice will not have a significant impact on a substantial number of small entities or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 6, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–4087 Filed 2–27–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0020]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZOMETA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZOMETA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZOMETA (zoledronic acid). ZOMETA is indicated for the treatment of hypercalcemia of malignancy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZOMETA (U.S. Patent No. 4,939,130) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZOMETA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZOMETA is 2,810 days. Of this time, 2,201 days occurred during the testing phase of the regulatory review period, while 609 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: December 12, 1993. The applicant claims September 18, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 12, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 21, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for ZOMETA (NDA 21–223) was initially submitted on December 21, 1999.

3. *The date the application was approved*: August 20, 2001. FDA has verified the applicant's claim that NDA 21–223 was approved on August 20, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,752 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by April 29, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H.

Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–4691 Filed 2–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: March 26, 2003; 9 a.m.–5 p.m., March 27, 2003; 8:30 a.m.–3 p.m.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007, (202) 726–5000.

Status: The meeting will be open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

Agenda: Topics that will be discussed include the following: Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr. P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327.

Dated: February 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–4805 Filed 2–27–03; 8:45 am]

BILLING CODE 4165–15–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: April 9–10, 2003.

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 and HCV Infection.''

Place: National Institutes of Health, Building 31C, Conference Room 6C10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jack Whitescarver, Director, Office of AIDS Research, OD, National Institutes of Health, 9000 Rockville Pike, Building 2, Room 4E14, Bethesda, MD 20892, (301) 496–0357.

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 Institute of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4660 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 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 Cancer Institute Special Emphasis Panel, SBIR Topic 181: Clinical Trials Data Collection Using Hand-Held Technology.

Date: March 19–20, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, (301) 496–7421, *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4665 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging, 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 on Aging Special Emphasis Panel, HRS Diabetes Supplement.
Date: March 21, 2003.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814. (Telephone conference call).
Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892. 301–402–7700. *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Disability Prevention and Physical Exercise.
Date: March 24–25, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, EPI Genetic K Awards.
Date: April 2, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alfonso R. Latoni, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. 301/496–9666. *latonia@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Oxidative Damage.
Date: April 2, 2003.
Time: 2 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814. (Telephone conference call).
Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301–402–7703. *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Presenilin and Alzheimer's Disease.
Date: April 8–9, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4662 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Life Span and Biodemography.
Date: February 24–25, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott Sacramento Midtown, 4422 Y Street, Sacramento, CA 95817.
Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, The Bethesda Gatewary Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

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.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.
Date: March 3–4, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Louise L. Hsu, PhD., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *hsul@exmur.nia.nih.gov.*

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.

Name of Committee: National Institute on Aging Special Emphasis Panel, IGF and Sex.
Date: March 3–4, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Stanford Terrace Inn, 531 Standfod Avenue, Palo Alto, CA 94306.
Contact Person: Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7703, *markowsa@nia.nih.gov.*

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.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease and Estrogens.
Date: March 6–7, 2003.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

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.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.
Date: March 7–8, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Clarion Ventura Beach Hotel, Venture Beach Marriott, 2055 E. Harbor Blvd., Ventura, CA 93001.
Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The

Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666, *harwoodj@mail.nih.gov.*

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.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer Disease Patient Registry.

Date: March 11, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Dementia.

Date: March 12–13, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892.

This notices is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4663 Filed 2–27–03; 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, Reproductive Genetics.

Date: March 12, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health Development, 6100 Executive Blvd., 5B01, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 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 Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4664 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: March 12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4666 Filed 2–27–03; 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 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 National Children's Study of Environmental Effects on Health Advisory Committee.

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: National Children's Study of Environmental Effects on Health Advisory Committee.

Date: March 6–7, 2003.

Time: March 6, 2003, 8:30 a.m. to 5 p.m.

Agenda: Discussions will focus on the measures of racism, recruitment prior to conception, life-course time line and study architecture, thematic areas for study focus,

and prioritization of pilot studies, ethical and community outreach issues as they relate to specific thematic areas, and a review of activities since the December 2002 meeting.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Time: March 6, 2003, 8:30 a.m. to 5 p.m.

Agenda: Members of the public that plan to attend should contact Circle Solutions at (703) 902–1339 or via e-mail *ncs@circlesolutions.com.* For agenda updates, please visit the NCS Web site *nationalchildrensstudy.gov.*

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Peter M. Scheidt, MD, Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5C01, Bethesda, MD 20892, (301) 451–6421, *ncs@mail.nih.gov.*

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.

(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: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4667 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

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, Pharmacological Approaches To Enhance Neuromodulation in Rehabilitation.

Date: March 13–14, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(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: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4668 Filed 2–27–03; 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 Initial Review Group, Population Research Subcommittee, Demographic and Behavioral Sciences (DBS) Review Committee.

Date: March 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(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: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4669 Filed 2–27–03; 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 Initial Review Group Population Research Subcommittee, Reproductive Sciences.

Date: March 20–21, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892, (301) 435–6884.

(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: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4670 Filed 2–27–03; 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, Regulation of Selected Metabolizing Enzymes in Women.

Date: March 13, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 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 Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4671 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel, Centers of Complexity Special Emphasis Panel.

Date: March 18–19, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura K Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Boom 1AS–13H, Bethesda, MD 20892, (301) 594–3998, moeni@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4672 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: March 17–18, 2003.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shiva P Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13J, Bethesda, MD 20892.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4674 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (10) R21 Application Review.

Date: March 5, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIAAA, Willco Bldg., 6000 Executive Blvd., Rockville, MD 20892. (Telephone conference call.)
Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*

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.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, R21 Application Review—ZAA1 DD (12).
Date: March 2, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIAAA, Willco Bldg., 6000 Executive Blvd., Room 409, Rockville, MD 20892. (Telephone conference call.)
Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB–15: 1 K23 Review.
Date: March 13, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, Willco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Project Combine—ZAA1 BB (10) U10's to be reviewed.
Date: March 20, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB–13.
Date: March 27, 2003.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–433–9787. *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4675 Filed 2–27–03; 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: March 23–25, 2003.
Closed: March 23, 2003, 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: March 24, 2003, 8:30 a.m. to 5 p.m.
Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Carcinogenesis.
Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.
Closed: March 25, 2003, 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, Ph.D., Division of Intramural Research, Nat. Institute of Environmental 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.*

(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: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4677 Filed 2–27–03; 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, Comprehensive International Program of Research on AIDS (CIPRA).

Date: March 3, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Robert C. Goldman, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–8424. *rg159w@nih.gov.*

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4678 Filed 2–24–03; 8:45 am]

BILLING CODE 4140–01–M

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 Recombinant DNA Advisory Committee.

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: Recombinant DNA Advisory Committee.

Date: March 6–7, 2003.

Time: March 6, 2003, 1 p.m. to 5 p.m.

Agenda: Protocol review.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: March 7, 2003, 9 a.m. to 2 p.m.

Agenda: Protocol review.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

This notice is being published less than 15 days prior to the meeting because of a delay in planning the meeting agenda.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(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: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4661 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 section 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: Center for Scientific Review Special Emphasis Panel, Suicide in China.

Date: February 27, 2003.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Multi-site Application.

Date: February 27–28, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Boron Neutron Capture Therapy.

Date: March 3, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (11): Small Business Applications on Imaging Technologies.

Date: March 4, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Montgomery Room, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

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.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.

Date: March 4–5, 2003.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crown Plaza Hotel, 14 & K Streets, NW., Washington, DC 20005.

Contact Person: Denise Wiesch, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (50): Small Business Applications on Imaging Technologies.

Date: March 4, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Montgomery Room, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X13B Electromagnetics.

Date: March 4, 2003.

Time: 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosen@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nephrology/Urology Special Emphasis Panel.

Date: March 4, 2003.

Time: 12 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean D. Sipe, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1743, *sipej@csr.nih.gov.*

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.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 2, AIPS, AIDS, sImmunology and Pathogenesis Studies.

Date: March 5–6, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Abraham P. Bautista, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology.

Date: March 5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–1506, *hardyan@csr.nih.gov.*

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.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.

Date: March 5, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

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.

Name of Committee: Center For Scientific Review Special Emphasis Panel, Pathobiochemistry member.

Date: March 5, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD., Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301)–435–3565, *svedam@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hepatitis D Virus.

Date: March 5, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301)–435–1050, *freundr@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Modeling.

Date: March 5, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301–435–4522, *gibsonj@csr,nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS and AIDS Related Small Business proposals.

Date: March 6, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168

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.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.

Date: March 6–8, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gordon L. Johnson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *johnsong@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience SBIR SSS–S 11.

Date: March 6–7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Versailles II, Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F10 (29L): Minority/Disability F31S: Physiology and Pathology.

Date: March 6, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Peter J. Perrin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stigma and Global Health: Health, Mental Health, and Addictions.

Date: March 6–7, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mariela Shirley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental and Pediatric Brain Disorders and Clinical Neuroscience.

Date: March 6–7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Sherry L Stuesse, PhD., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Hematology.

Date: March 6, 2003.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 6–7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Karen Sirocco, PhD., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676, *siroccok@csr.nih.gov.*

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.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 4, Health Services Organization and Delivery.

Date: March 6–7, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Charles N. Rafferty, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–3562, *raffertc@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CCVS 01: Clinical CV Science.

Date: March 6–7, 2003.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Biobehavioral Mechanisms of Emotion, Stress, and Health.

Date: March 6, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Reviews in Psychopathology and Adult Disorders.

Date: March 6, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Cardiovascular and Pharmacology.

Date: March 6–7, 2003.

Time: 4 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Chhanda L. Ganguly, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REB: 01 Biochemical and Endocrinology Sciences IRG.

Date: March 6, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–5 50R:PAR–02–142: Tools for Genetic Studies in Zebrafish.

Date: March 7, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sherry L. Dupere, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *dupres@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF4(03)M: Studies Within the Nucleus.

Date: March 7, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexandra M. Ainsztein, PhD., Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2 (04) Ureacycle Disorder Enzymes: Structure/Function.

Date: March 7, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Study Section.

Date: March 8–10, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Inn on The Alameda, 303 East Alameda, Santa Fe, NM 87501.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4673 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, ZRG1 GMA–3 (03): Member Conflicts ALTX–1.

Date: March 5, 2003.

Time: 11:15 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Mushtaq A. Kahn, DVM, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neural Cell Death and Injury in Neurodegenerative Disease.

Date: March 5–7, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: David L. Simpson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. (301) 435–1278. *simpsod@mail.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 02: Biodefense Vaccines.

Date: March 6, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892. (301) 435–1165.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering.

Date: March 6, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Gopal C. Sharma, DVM, MS, Ph.D., Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892. (301) 435–1783. *sharmag@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GMA–3 (04): Member Conflicts ALTX–4.

Date: March 6, 2003.

Time: 1:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Mushtaq A. Khan, DVM, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11: Small Business: Biodefense Vaccines.

Date: March 7, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Biophysics and Chemistry.

Date: March 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Donald Schneider, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

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.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Respiratory Physiology Study Section.

Date: March 10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Everett E. Sinnett, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–H(40) Biodefense and Innate Immunity.

Date: March 10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: George W. Chacko, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery & Delivery.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience Fellowship.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, Ph.D., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Research Fellowship Review.

Date: March 10–11, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Syed M Quadri, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

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.

Name of Committee: Center for Scientific Reveiw Special Emphasis Panel, ZRG1 PTHB 04 M.

Date: March 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders & Clinical Neuroscience SSS S–12 SBIR.

Date: March 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246. *etcheber@csr.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–A (40) High Field NMR.

Date: March 11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: John L. Bowers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.
Date: March 11–12, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Joseph Kimm, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SMB (50) Molecular Basis for Contractures RFA.
Date: March 11, 2003.
Time: 10 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: Paul D. Wagner, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809. *wagnerp@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 05M.
Date: March 11, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892. (301) 435–1717.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Malarial Enzymes.
Date: March 11,2003.
Time: 12:30 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892. (301) 435–1050. *freundr@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomics and Bioinformatics.
Date: March 12, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael R. Schaefer, PhD., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7890, Bethesda, MD 20892. (301) 435–2477. *schaefem@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (29) Minority/Disability Predoctoral Fellowship Reviews.
Date: March 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. (301) 435–0902. *krausem@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reparative Medicine (ZRG1 SSS–M 01).
Date: March 12–13, 2003.
Time: 8:30 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Jean D. Sipe, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1743. *sipej@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 9 50 S Biomedical Informatics.
Date: March 12, 2003.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854. (301) 435–1177. *bunnagb@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F04 20 L Chemistry/Biophysics Fellowships Panel.
Date: March 12–14, 2003.
Time: 1 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: David R. Jollie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. (301) 435–1722. *jollieda@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 9 11B: Biomedical Informatics.
Date: March 12–14, 2003.
Time: 2 p.m. to 5 p.m.
Agenda: To reveiw and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854. (301) 435–1177. *bunnagb@csr.nih.gov.*
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REB 02 Reproductive Cancer.
Date: March 12, 2003.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Dennis Leszczynsik, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BISTI Neuroinformatics.
Date: March 12–13, 2003.
Time: 6 p.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Peter Lyster, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892. (301) 435–1256. *lysterp@mail.nih.gov.*

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F06.

Date: March 12–13, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4679 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 Board of Governors of the Warren Grant Magnuson Clinical Center.

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: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: March 31, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: For discussion of planning, operational, and clinical research issues.

Place: National Institutes of Health, Building 10, 9000 Rockville Pike, Room 2C116, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–4676 Filed 2–27–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–08]

Notice of Submission of Proposed Information Collection to OMB: Personal Financial and Credit Statement

AGENCY: Office of the Chief Information Officer, 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: *Comments Due Date*: March 31, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0001) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

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). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement

OMB Approval Number: 2502–0001

Form Numbers: HUD–92417

Description of the Need for the Information and its Proposed Use: Information collected is used to evaluate the character, ability and capital of the sponsor, mortgagor, and general contractor to develop, build, complete, and maintain a multifamily project.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions

Frequency of Submission: On occasion

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,000		1		8		64,000

Total Estimated Burden Hours: 64,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 21, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–4732 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–20]

Announcement of Funding Awards for Fiscal Year 2002; Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877-TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2002 (Pub. L. 107–73) provided $50,250,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicted proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 STAT. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY 2002 Awardees for Cooperatives Agreements

Ameregis, Myron Willard Orfield, Jr., 1313 5th Street, SE, Suite 108, Minneapolis, MN 55414, Grant # H–21393CA, ''Local Fiscal Capacity in the U.S. Metropolitan Areas'', Total Amount $100,000, Date Awarded 09/30/02

American Association for Higher Education, Yolanda T, Moses, One Dupont Circle, Suite 360, Washington, DC 20036–1110, Grant # H–21358CA, ''Developing Socially and Civically Engaged Architects'', Total Amount $18,938, Date Awarded 07/25/02

The Brookings Institution, Jay T. Wang, CPA, 1775 Massachusetts Avenue, NW, Washington, DC 20036–2188, Grant # H–21350CA, ''Conduct a Policy Forum on Affordable Housing and Growth Management'', Total Amount $97,500, Date Awarded 08/15/02

Gabriel, Dr. Stuart A., 801 Sassafras Way, Oak Park, CA 91377, Grant 21360CA, The Impact of Termination Risks and Borrower Heterogeneity on the Pricing of FHA-Insured Mortgages'', Total Amount $19,000, Date Awarded 09/24/02

Manpower Demonstration Research Corporation, Jesus M. Amadeo,16 East 34th Street, New York, NY 10016–4326, Grant # H–21042CA, ''Jobs-Plus Community Revitalization Initiative for Public Housing Families'', Total Amount $700,000, Date Awarded 04/11/02.

McAuley Institute, JoAnne Kane, 8300 Colesville Road, Silver Spring, MD 20910, Grant # H–21375CA, ''Success Measures Guidebook Revision'', Total Amount $160,000, Date Awarded 9/27/02

NAHB Research Center, Liza K. Bowles, 400 Prince Georges Boulevard, Upper Marlboro, MD 20774–8731, Grant # H–21355CA, ''Tool Base Services: The Portal to Technical Information for the Home Building Industry'', Total Amount $999,600, Date Awarded 07/19/02

National Trust for Historic Preservation, Richard Moe, 1785 Massachusetts Avenue, NW, Washington, DC 20036–2117, Grant 21357CA, ''Best Practice Solutions to the Barriers to Affordable Housing Rehabilitation'', Total Amount $183,702, Date Awarded 07/20/02

Portland Cement Association, George B. Barney, 5420 Old Orchard Road, Skokie, IL, 60077–1083, Grant # H–21356CA, ''HVAC Sizing Methodology Manual For Insulated Concrete Homes'', Total Amount $100,000, Date Awarded 09/23/02

University Consortium for Geographic Information Science, Susan McDonald Jampoler, 43351 Spinks Ferry Road, Leesburg, VA 20176–5631, Grant H–21394CA, Global Urban Quality: Urban Indicators Using Geographic Information Science (GIS)'', Phase II, Total Amount $169,625, Date Awarded 09/30/02

University of Maryland at College Park, Antoinette Lawson, 3112 Lee Building, College Park, MD 20742–5141, Grant H–21361CA, ''Feasibility Study of Land Market Monitoring'' Total Amount $74,935, Date Awarded 09/27/02

Dated: February 21, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–4784 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–09]

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: February 28, 2003.

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, 1998, court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes 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.

Dated: February 20, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–4449 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–21]

Announcement of Funding Awards for Fiscal Year 2002 to the Housing Assistance Council and the Native American Indian Housing Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of two awards for Fiscal Year 2002 to the Housing Assistance Council and the Native American Housing Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2002 (Pub. L. 107–73) earmarked $3,300,000 for a grant to the Housing Assistance Council and $2,600,000 for a grant to the Native American Indian Housing Council. HUD's Office of Policy Development and Research administers the grant to the Housing Assistance Council. The administration of the grant to the Native American Indian Housing Council was recently transferred from the Office of Policy Development and Research to the Office of Public and Indian Housing.

The Catalog of Federal Domestic Assistance for these grants is 14.225

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning these awards, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Grant # H–21354CA, ''Rural Housing Research and Technical Assistance'' Amount $3,300,000, Date Awarded 10/01/01.

Native American Indian Housing Council, Gary L. Gordon, Executive Director, 900 Second Street, NE., Washington DC 20002, Grant # H–21362RG Technical Assistance and Training to Indian Housing Agencies and Tribal Housing Agencies, Amount $2,600,000, Date Awarded 09/01/02.

Dated: February 21, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–4785 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–13]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing— Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2003, is 5¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2003, is 5 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW., Room 6164, Washington, DC 20410. Telephone (202) 708–3944, extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a satisfactory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2003, is 5

percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5 percent for the 6-month period beginning January 1, 2003. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2003.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2003, is 5¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in June 2003.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: February 14, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–4783 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–05]

Notice of Planned Closing of Brockton, Massachusetts Post-of-Duty

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of planned closing of Brockton, Massachusetts Post-of-Duty station.

SUMMARY: This notice advises the public that the HUD Office of Inspector General (OIG) is closing its Brockton, Massachusetts post-of-duty station, and also provides a cost-benefit analysis of the impact of the closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (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

In 2000, HUD/OIG established a two person post-of-duty station in Brockton, Massachusetts, to give direct support to the Operation Safe Home (OSH) initiative to combat violent and drug related crime in the public and assisted housing in the city and nearby communities. Although Brockton, Massachusetts, is only about 30 miles from Boston, Massachusetts, where the HUD/OIG has it's Regional Office, the nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when an HUD/OIG Special Agent was physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001), HUD/OIG terminated OSH and is re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminates the need to maintain a separate post-of-duty station in Brockton, Massachusetts, and gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (See House Conference Report No. 95–1792, October 14, 1978 at 58.)

The two-person duty-station in Brockton, Massachusetts, is a single purpose duty station, and the duty station is being closed based on workload rather than a reorganization of HUD/OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, HUD/OIG nevertheless prepared a cost benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Brockton, Massachusetts, duty station and provides the cost benefit analysis of the impact of the closure.

Impact of The Closure of The Brockton, Massachusetts, Post-Of-Duty Station

HUD/OIG considered the costs and benefits of closing the Brockton, Massachusetts, post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area (*i.e.*, OSH activities, of course, will be impacted, but HUD/OIG has been directed to terminate these activities).

Cost-Benefit Analysis

A. Cost Savings: The Brockton, Massachusetts, post-of-duty station currently costs approximately $905 per month for space rental. Additional associated overhead expenses (*e.g.*, telephone service) are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $10,000. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. Additional Costs: There are no offsetting expenses anticipated. Currently, only one Special Agent is assigned to the Brockton, Massachusetts, post-of-duty station, and he is being reassigned to HUD/OIG's Regional Office in Boston, Massachusetts. No relocation costs are associated with this reassignment.

C. Impact on Local Economy: No appreciable impact on the local economy is anticipated. The post-of-duty station is only 679 square feet and is located in the Federal Courthouse. Further, it is anticipated that the space can easily be re-leased to other tenants.

D. Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services: The establishment of the Brockton, Massachusetts, post-of-duty station was based entirely on the needs of the HUD/OIG to have Special Agents in closer proximity to OSH activities conducted in the Brockton area. These activities have been terminated. Further, as was the case prior to 2000, fraud investigations in the Brockton area can be cost-effectively addressed by special agents assigned to the Boston Regional Office, which is about 30 miles away.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Brockton, Massachusetts, post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: February 19, 2003.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 03–4731 Filed 2–27–03; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Department of the Interior announces that is has forwarded a Paperwork Reduction Act submission to OMB to request public comments on this submission. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance 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.

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in our current and future workforce. The job skills we will need are dispersed throughout our eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archaeological and cultural resources of the public lands, and enforcing criminal laws of the United states. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

DATES: 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 within 30 days of publication of this notice in order to assure their maximum consideration.

FOR FURTHER INFORMATION CONTACT: Samuel Bowser, (202) 208–5549, Assistant Director for Workforce Diversity and Evaluation. The collection instrument is also available on the internet at: *http://www.doi.gov/diversity/doc/di_1935.pdf.* Respondents may also obtain hard copies of the DI 1935 form and the Department of the Interior's submission to OMB.

Brief Description: In order to determine if there are barriers in our recruitment and selection processes, we must track the demographic groups that apply for our jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with the Department's records management process.

SUPPLEMENTARY INFORMATION:

Title: U.S. Department of the Interior Applicant Background Survey.

Type of Request: Extension of collection approved under OMB Control No.: 1091–0001.

Description of Respondents: Individuals seeking employment.

Annual Responses: 560,000.

Burden: 46,480 hours total (5 minutes per response).

ADDRESSES: Written comments and recommendations on the proposed information collection should be addressed to: Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. In addition, please provide a copy of your comments to Samuel Bowser, at the contact address.

J. Michael Trujillo,

Deputy Assistant Secretary for Human Resources and Workforce Diversity.

[FR Doc. 03–4749 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–1020–241A]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Revised Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of rescheduled meetings locations and times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at each meeting will include, but are not limited to: April 29–30, 2003 (Fallon, Nevada)-recreational use and tourism promotion of public lands in western Nevada by State of Nevada agencies, Sand Mountain Fee Demonstration Project (including a field trip to Sand Mountain), subcommittee presentation of the Black Rock-High Rock NCA Resource Management Plan, staff update on the Pine Nut Mountains RMP Amendment, and a report on planning progress for the Mustang Ranch; and July 15–17, 2003 (Winnemucca, Nevada)-aspen clone habitat degradation and future management, Sage Grouse program review, field office reports on land fills/mine reclamation, and inspection of riparian habitat sites including an overnight camping trip in the Winnemucca Field Office area. Manager's reports of field office activities will be given at each meeting. The council may raise other topics at any of the two planned meetings.

These two rescheduled meetings are replacing dates/locations originally published in the **Federal Register** for April 24–25 (Reno, Nevada) and July 24–25 (Winnemucca, Nevada).

Dates & Times: The RAC will now meet on April 29–30 (Tuesday and Wednesday), at the Fallon Convention Center (Oasis Room), 100 Campus Way, Fallon, Nevada (including a field trip to the Sand Mountain Recreation Area); and on July 15–17 (Tuesday through Thursday), at the BLM–Winnemucca Field Office, 5100 E. Winnemucca, Blvd., Winnemucca, Nevada (including an overnight field trip on July 16—details to be outlined by July 1, 2003). All meetings and field trips are open to the public. Each meeting will last from approximately 8 a.m. to 4 p.m., plus, a general public comment period, where the public may submit oral or written comments to the RAC, will be at 4 p.m. on the first day of each meeting, unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 14 days before each meeting, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov*

Dated: February 24, 2003.

John O. Singlaub,

Field Manager, Carson City Field Office.

[FR Doc. 03–4736 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (OMB Control Number 1010–0138).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on an information collection request (ICR) that we will submit to the Office of Management and Budget (OMB) for review and approval. The ICR is titled ''30 CFR part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases''.

DATES: Submit written comments on or before April 29, 2003.

ADDRESSES: Submit written comments directly to Sharron L. Gebhardt, Regulatory Specialist, Minerals Mangement Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, CO, 80225. If you use overnight courier, the address is Building 85, Room A614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206 Subpart B, Establishing Oil Value on Royalty Due on Indian Leases.

OMB Control Number: 1010–0138.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian Trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking (60 FR 65610) regarding valuation of oil from Federal and Indian leases. In the notice, we asked all interested parties to submit and/or comment on alternate methodologies for valuing oil production. Additionally, we asked for comments related to ''significant quantities'' in valuation determinations.

Although industry generally had no comments due to pending litigation on this issue, many States and Indian organizations generally believed the current system is outdated and a new system based on either the New York Mercantile Exchange (NYMEX) or spot prices would be more appropriate. In response to these concerns, we published a proposed rule on February 12, 1998 (63 FR 7089), revising the current Indian oil valuation regulations. This proposed rule ''Establishing Oil Value for Royalty Due on Indian Leases,'' added more certainty to valuation of oil produced from Indian lands and eliminated any direct reliance on posted prices.

Then, MMS proposed further changes to its proposed rule regarding the valuation, for royalty purposes, of crude oil produced from Indian leases by publishing a supplementary proposed rule on January 5, 2000 (65 FR 403).

This supplementary proposed rule established a new form—Form MMS–4416, Indian Crude Oil Valuation Report, for collecting value and value differential data. OMB approved the use of this proposed Form MMS–4416 and assigned OMB Control Number 1010–0113. Currently, MMS is seeking OMB's approval to renew the reporting requirements for this form until a final rule is published.

MMS is now requesting OMB to renew its approval for the reporting requirements under the proposed and supplementary proposed rules until a final rule is published. We are also seeking OMB's approval for the existing requirements in 30 CFR part 206, Subpart B, that were overlooked. This notice gives the public an opportunity to comment on the reporting requirements in the proposed and supplementary proposed rules that OMB approved on February 2, 2000, and to also comment on the existing requirements that were inadvertently overlooked and not included in an OMB-approved ICR.

MMS has announced in the **Federal Register** on February 12, 2003 (68 FR 7086), the dates, places, and times for workshops on issues related to the existing rules published March 15, 2000, effective June 1, 2000, governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops will address, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS is reopening the comment period for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS can then consider those comments as they might apply to the Indian oil valuation rule.

Frequency of Response: Annually and monthly.

Estimated Number and Description of Respondents: 236 Companies paying royalties on oil produced from tribal and allotted Indian leases.

- 225 respondents under proposed and supplementary proposed rules, and
- 11 respondents under current regulations.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 6,980 Hours

- 6,680 hours under proposed and supplementary proposed rules, and
- 300 hours under current regulations.

Estimated Annual Reporting and Recordkeeping ''Non-Hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

The following chart details the individual components and estimated hour burdens for the proposed rule, supplementary proposed rule, and the

current reporting requirements under 30 CFR part 206, Subpart B. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

BURDEN HOUR CHART FOR PROPOSED AND SUPPLEMENTARY PROPOSED REPORTING REQUIREMENTS

Proposed 30 CFR 206, subpart B	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
Proposed § 206.52	You must determine the value of oil using the method that yields the highest value.	2	2,700	5,400
Proposed § 206.52(d)	On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values * * * You must file this report * * * you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value.	Burden covered under OMB Control Number 1010–0140.		
Proposed § 206.53(a) and (b)	On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas * * * You must make this data available to the authorized MMS * * *. You must retain all data relevant to the determination of royalty value.	Normal records retention for targeted audit purposes—exempt from the Paperwork Reduction Act.		
Proposed § 206.54	You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary.	400	2	800
Proposed/Supplementary Proposed § 206.60(b)(2).	You may ask MMS to approve a transportation allowance deduction * * * You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant supporting documentation * * *.	Burden covered under OMB Control Number 1010–0095		
Proposed/Supplementary Proposed § 206.61 (c)(3)(i), (ii), (iii), and (iv).	If an MMS-calculated differential * * * does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you * * * After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential. You must demonstrate why the published differential does not adequately reflect your circumstances. * * * If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, * * * Send your request to: Minerals Management Service * * *.	40	12	480
Proposed/Supplementary Proposed § 206.61(d)(4).	You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
Proposed/Supplementary Proposed § 206.61(d)(5).	You must submit information on Form MMS–4416 * * * you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease.	Burden covered under OMB Control Number 1010–0113.		
Total			2714	6,680

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
	Valuation Standards			
§ 206.52(e)(1) and (2)	* * * the lessee shall retain all data relevant to the determination of royalty value * * * A lessee shall notify MMS if it has determined value * * * The notification shall be by letter to MMS * * * The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed.	20	1	20

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.52(g)	The lessee may request a value determination from MMS * * * the lessee shall propose to MMS a value determination method * * * The lessee shall submit all available data relevant to its proposal.	40	1	40
	Transportation Allowances			
§ 206.54(b)(2)	Upon request of a lessee, MMS may approve a transportation allowance deduction * * * The lessee must demonstrate that the transportation costs incurred in excess of the limitation * * * were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and support documentation necessary for MMS to make a determination.	Burden covered under OMB Control Number 1010–0095.		
§ 206.55(a)(1)(i)	* * * the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(a)(2)(i)	* * * no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(a)(2)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(a)(3)	If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	40	1	40
§ 206.55(b)(1)	* * * the lessee must submit a completed Form MMS–4110 * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS * * * MMS may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Numbers 1010–0061 and 1010–0140.		
§ 206.55(b)(2)(iv)	After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.	20	1	20
§ 206.55(b)(2)(iv)(A)	After an election is made, the lessee may not change methods without MMS approval.	20	1	20
§ 206.55(b)(3)(i)	* * * the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(b)(3)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(b)(4)	Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	20	1	20
§ 206.55(b)(5)	A lessee may apply to MMS for an exception from the requirement that it compute actual costs * * *.	20	1	20
§ 206.55(c)(1)(i)	* * * the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(1)(iii)	* * * lessees must submit page one of Form MMS–4410 (and Schedule 1) within 3 months after the applicable contract or rate terminates or is modified or amended, * * *.	Burden covered under OMB Control Number 1010–0061.		

BURDEN HOUR CHART FOR EXISTING REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

Current 30 CFR 206, subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.55(c)(2)(i)	* * * the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(iii)	* * * the lessee shall submit a completed Form 4110 containing the actual costs for the previous reporting period * * * the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year * * * MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(iv)	For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(vi)	Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4410.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0140.		
§ 206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *.	Burden covered under OMB Control Number 1010–0140.		
		Total	11	300

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: February 26, 2003.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–4904 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement for the General Management Plan for the Buck Island Reef National Monument

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for the Buck Island Reef National Monument. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include appropriate levels and types of visitor use in the park, desired conditions for the National Monument's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territory, and other federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Buck Island Reef National Monument.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Buck Island Reef National Monument, telephone (340) 773–1460. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Buck Island Reef National Monument, Danish Customs House, Kings Wharf, 2100 Church St. #100, Christiansted, Virgin Islands 00820–4611, Telephone: (340) 773–1460.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, (404) 562–3124, extension. 637 or Joel Tutein, Superintendent, Buck Island Reef National Monument, (340) 773–1460.

SUPPLEMENTARY INFORMATION: Buck Island Reef National Monument was created to preserve one of the finest marine gardens in the Caribbean Sea. The elkhorn coral barrier reef that surrounds two-thirds of the island has extraordinary coral formations, deep grottoes, abundant reef fishes, sea fans, and sea turtles. The park boundary was expanded in 2001 to include additional coral reefs, barrier reefs, sea grass beds, and sand communities, as well as other habitats not included within the initial boundary. The expansion area also contains significant cultural resources, including the remnants of several shipwrecks. The island, which has an overland nature trail and white coral sand beaches, is a rookery for endangered brown pelicans and a nesting area for three species of sea turtles. Buck Island Reef supports one of the last remaining protected nesting populations of endangered hawksbill sea turtles in the eastern Caribbean. Visitors to the park can enjoy an extraordinary array of marine life and tropical flora and fauna, and various water recreational opportunities in the crystal clear waters around the reef.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/buis.*

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The draft and final environmental impact statement will be distributed to all known interested parties and appropriate agencies. Full public participation by federal, territory, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4811 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for the Virgin Islands Coral Reef National Monument

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for the Virgin Islands Coral Reef National Monument. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include the management of vessels, appropriate levels and types of visitor use in the park, desired conditions for the national monument's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territorial, and other federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Virgin Islands Coral Reef National Monument.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Virgin Islands Coral Reef National Monument, telephone (340) 776–6201, extension 242. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, Virgin Islands, 00830, Telephone: (340) 776–6201, extension 242.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, (404) 562–3124, extension 637 or John King, Superintendent, Virgin Islands National Park, (340) 776–6201, extension 242.

SUPPLEMENTARY INFORMATION: The Virgin Islands Coral Reef National Monument, located in the submerged lands off the island of St. John in the U.S. Virgin Islands, contains all the elements of a Caribbean tropical marine ecosystem. The national monument designation furthers the protection of the scientific objects included in the Virgin Islands National Park, created in 1956 and expanded in 1962. The biological communities of the monument live in a fragile, interdependent relationship and include habitats essential for sustaining and enhancing the tropical marine ecosystem, including mangroves, sea grass beds, coral reefs, sand communities, shallow mud and fine sediment habitat, and algal plains. The monument contains several threatened and endangered species, which forage, breed, nest, or rest in the waters. Humpback whales, pilot whales, four species of dolphins, brown pelicans, roseate terns, least terns, and the hawksbill, leatherback, and green sea turtles all use portions of the monument. Countless species of reef fish, invertebrates, and plants utilize these submerged lands during their lives, and over 25 species of sea birds feed in the waters.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/viis.*

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The draft and final environmental impact statement will be distributed to all known interested parties and appropriate agencies. Full public participation by federal, territory, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4812 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for Virgin Islands National Park

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of the Interior, National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Virgin Islands National Park. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park boundary. Specific issues to be addressed include appropriate levels and types of visitor use in the park, desired conditions for the park's cultural and natural resources, and strategies and approaches needed to achieve and maintain those conditions. In cooperation with local, territory, and other Federal agencies, attention will also be given to cooperative management of resources outside the boundaries that affect the integrity of Virgin Islands National Park.

DATES: Locations, dates, and times of scheduled public scoping meetings will be published in local newspapers and posted in local libraries. Information on scheduled meetings may also be obtained by contacting the Superintendent, Virgin Islands National Park at 340–776–6201. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process for the GMP and EIS at each of the public meetings.

ADDRESSES: Any comments or requests for information should be addressed to: Superintendent, Virgin Islands National Park, P.O. Box 710, St. John, Virgin Islands, 00831–0710, telephone 340–776–6201.

FOR FURTHER INFORMATION CONTACT: John Barrett, National Park Service, Southeast Regional Office, 404–562–3124, extension. 637 or John King, Superintendent, Virgin Islands National Park, 340–776–6201.

SUPPLEMENTARY INFORMATION: Virgin Islands National Park comprises slightly more than half of the island of St. John and almost nine square miles of the waters surrounding St. John. Also part of the park are St. Thomas, Hassel Island, in the Charlotte Amalie harbor, and 15 acres in the Red Hook area. In recognition of its internationally significant natural resources, the park was designated as a Biosphere Reserve in 1976 and is one of the few biosphere reserves in the world to have both significant marine and terrestrial resources. Within its borders lie protected bays of crystal blue-green waters and an abundance of coral reef life, white sandy beaches shaded by seagrape trees, coconut palms, and tropical forests providing habitat for over 800 species of plants. The park's cultural resources are significant in the settlement and colonization of the New World, maritime history and commerce, and African American history. The park features relics from the Pre-Colombian Amerindian civilization, remains of the Danish Colonial sugar plantations, and reminders of African slavery and the subsistence culture that followed during the 100 years after Emancipation. Known submerged resources include 28 shipwrecks recorded in the vicinity of St. John.

This planning effort will evaluate a range of alternative methods to provide a quality visitor experience while maximizing protection of resources and operational efficiency. Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/viis.*

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents,

available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record, however, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Notification of the availability of the draft and final environmental impact statement will be made to all known interested parties and appropriate agencies. Full public participation by Federal, territory and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is the Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–4810 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Committee for the Preservation of the White House; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Committee for the Preservation of the White House will be held at the White House at 1 p.m., Friday, March 28, 2003.

DATES: March 28, 2003.

FOR FUTHER INFORMATION CONTACT: Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, D.C. 20242. (202) 619–6344.

SUPPLEMENTARY INFORMATION: It is expected that the meeting agenda will include policies, goals, and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth and social security number, must be received by March 21, 2003. Due to the present mail delays being experienced, clearance information should be faxed to (202) 619–6353 in order to assure receipt by deadline. Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: February 19, 2003.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 03–4813 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2002, and contract actions that have been completed or discontinued since the last publication of this notice on November 15, 2002. From the date of this publication, future quarterly notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Reclamation announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2003. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the

appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON—Basis of Negotiation
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CUP—Central Utah Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
D&MC—Drainage and Minor Construction
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NEPA—National Environmental Policy Act
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act
R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act
WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

7. North Unit ID and or city of Madras, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the city of Madras.

8. North Unit ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

9. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

10. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

11. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

12. Burley ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main South Side Canal and works incidental thereto.

13. Minidoka ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main North Side Canal and works incidental thereto.

14. Fremont-Madison ID, Minidoka Project, Idaho-Wyoming: Repayment contract for reimbursable cost of SOD modifications to Grassy Lake Dam.

15. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a Corps of Engineers' project) for the purpose of irrigation within the District's service area.

16. Vale ID and Warm Springs IDs, Vale Project, Oregon: Repayment contract for reimbursable cost of SOD modifications to Warm Springs Dam.

17. Hermiston, Stanfield, and West Extension IDs, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries.

18. Emmett ID and 12 individual contract spaceholders, Boise Project, Payette Division, Idaho: Repayment agreements or contracts for reimbursable costs of SOD modifications to Deadwood Dam.

19. Greenberry ID, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 7,500 acre-feet of project water.

20. Twenty-three irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

The following action has been completed since the last publication of this notice on November 15, 2002:

1. (16) Twenty-two irrigation districts of the Storage Division, Yakima Project, Washington: Repayment agreements for the reimbursable cost of SOD modifications to Keechelus Dam. Completed repayment agreements with 21 of 22 contracts. Remaining action withdrawn.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way,

Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available Project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of Project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Upon written request, copies of the standard forms of temporary water service contracts for the various types of service are available from the Regional Director at the address shown above.

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, Friant Division, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division, CVP, California: Early renewal of existing long-term contracts; long-term renewal of the interim renewal water service contracts expiring in 2003; water quantities for these contracts total in excess of 3.4M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Pub. L. 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency authorized by Pub. L. 101–514.

5. Sutter Extension and Biggs-West Gridley WDs, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Pub. L. 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding District facility improvements and exchange agreements to provide water for refuge and private wetlands.

6. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Pub. L. 102–575.

7. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

8. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

9. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

10. Mercy Springs WD, CVP, California: Partial assignment of about 7,000 acre-feet of Mercy Springs WD's water service contract to Westlands WD for agricultural use.

11. Cachuma Operations and Maintenance Board, Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer O&M responsibility of certain Cachuma Project facilities to member units.

12. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: A proposed exchange agreement with M&T, Inc., to take Butte Creek water rights water from the Sacramento River in exchange for CVP water to facilitate habitat restoration.

13. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the El Dorado ID for use within their service area.

14. Horsefly, Klamath, Langell Valley, and Tulelake IDs, Klamath Project, Oregon: SOD repayment of applicable costs. These districts will share in repayment of costs and each district will have a separate contract. Initial contract should be ready by April 2003.

15. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

16. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta-Mendota Canal and the Friant Division facilities.

17. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

18. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

19. Plain View WD, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

20. City of Redding, CVP, California: Amend water service contract No. 14–06–200–5272A, for the purpose of renegotiating the provisions of contract Article 15, ''Water Shortage and Apportionment,'' to conform to current CVP M&I water shortage policy.

21. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

22. Sacramento Area Flood Control Agency, CVP, California: Execution of a long-term Operations Agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

23. Lower Tule River, Porterville, and Vandalia IDs, and Pioneer Water Company, Success Project, California: Repayment contract for SOD costs assigned to the irrigation purpose of Success Dam.

24. Colusa County WD, CVP, California: Proposed long-term Warren Act contract for conveyance of up to 4,500 acre-feet of ground water through the Tehama-Colusa Canal.

25. Friant Water Users Authority and San Luis and Delta-Mendota Water Authority, CVP, California: Amendments to the Operation, Maintenance, and Replacement and Certain Financial and Administrative Activities' Agreements to implement certain changes to the Direct Funding provisions to comply with applicable Federal law.

26. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

27. El Dorado ID, CVP, California: Title transfer agreement for conveyance of CVP facilities. This agreement will allow transfer of title for Sly Park Dam, Jenkinson Lake, and appurtenant facilities from the CVP to El Dorado ID.

28. Foresthill Public Utility District, CVP, California: Title transfer agreement for conveyance of CVP facilities. This agreement will allow transfer of title for Sugar Pine Dam and appurtenant facilities from the CVP to Foresthill Public Utility District.

29. Carpinteria WD, Cachuma Project, California: Contract to transfer title of distribution system to the District. Title transfer subject to Congressional ratification.

30. Montecito WD, Cachuma Project, California: Contract to transfer title of distribution system to the District. Title transfer subject to Congressional ratification.

31. City of Vallejo, Solano Project, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow Solano Project facilities to be used to deliver nonproject water to the City of Vallejo for use within their service area.

32. Sacramento Suburban WD (formerly Northridge WD), CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the Sacramento Suburban WD for use within their service area.

33. Truckee Meadows Water Authority, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest, who may have negotiated rights under Pub. L. 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

34. Contra Costa WD, CVP, California: Amend water service contract No. I75r–3401A to extend the date for renegotiation of the provisions of contract Article 12 ''Water Shortage and Apportionment.''

35. Cachuma Operation and Maintenance Board, Cachuma Project, California: Long-term contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

36. Sacramento River Settlement Contracts, CVP, California: Up to 145 contracts and one contract with Colusa Drain Mutual Water Company will be renewed; water quantities for these contracts total 2.2M acre-feet. Colusa Drain Mutual Water Company will be renewed for a period of 25 years, and the rest will be renewed for a period of 40 years. These contracts reflect an agreement to settle the dispute over water rights' claims on the Sacramento River.

37. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Renewal of the long-term water service contract for up to 850 acre-feet with conveyance through the California State Aqueduct pursuant to the CVP–SWP wheeling agreement.

38. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M contract for the A Canal Fish Screen with Klamath ID.

39. Ady Canal Headgates, Klamath Project, Oregon: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

The following contract action has been completed since the last publication of this notice on November 15, 2002:

1. (11) Cachuma Operations and Maintenance Board, Cachuma Project, California: Temporary interim contract (not to exceed 1 year) to transfer O&M responsibility of certain Cachuma Project facilities to member units. Temporary interim contract executed on November 1, 2002, and expires February 28, 2003.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Cameron Brothers Construction Co., Ogram Farms, John J. Peach, Sunkist Growers, Inc., BCP, Arizona: Colorado River water delivery contracts, as recommended by the Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 3,168 acre-feet per year total.

2. Brooke Water Co., BCP, Arizona: Amend contract for an additional 120 acre-feet per year of Colorado River water for domestic uses, as recommended by the Arizona Department of Water Resources.

3. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in Arizona v. California, and BCP in Arizona and Nevada: Agreement for delivery of Colorado River water for the National Park Service's Federal Establishment PPR for diversion of 500 acre-feet annually and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

4. Miscellaneous PPR entitlement holders, BCP, Arizona and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California,* as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPRs holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty *et al.* And assign a portion of the PPR from Holpal to Hoover.

6. Curtis Family Trust *et al.*, BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

7. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement of Colorado River water for irrigation.

8. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Agreement to administer the Colorado River water entitlement for refuge lands located in Arizona to resolve water rights coordination issues, and to provide for an additional entitlement for non-consumptive use of flow through water.

9. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement.

10. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

11. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation by approximately $168,000.

12. Central Arizona Drainage and ID, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to final order issued by U.S. Bankruptcy Court, District of Arizona.

13. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

14. Coachella Valley WD and/or The Metropolitan WD of Southern

California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

15. Salt River Pima-Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

16. Arizona State Land Department, BCP, Arizona: Colorado River water delivery contract for 1,535 acre-feet per year for domestic use.

17. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting.

18. Berneil Water Co., CAP, Arizona: Water service contracts associated with partial assignment of water service to the Cave Creek Water Company.

19. Canyon Forest Village II Corporation, BCP, Arizona: Colorado River water delivery contract for up to 400 acre-feet per year of unused Arizona apportionment or surplus apportionment for domestic use.

20. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

21. ASARCO Inc., CAP, Arizona: Amendment of subcontract to extend the deadline to December 31, 2003, for giving notice of termination on exchange.

22. Phelps Dodge Miami, Inc., CAP, Arizona: Amendment of subcontract to extend the deadline until December 31, 2003, for giving notice of termination on exchange.

23. Gila River Indian Community, CAP, Arizona: Amend CAP water delivery contract and distribution system repayment and operation, maintenance, and replacement contract pursuant to Arizona Water Settlements Act, when enacted.

24. California Water Districts, BCP, California: Incorporate into the water delivery contracts with several water districts (Coachella Valley WD, Imperial ID, Palo Verde ID, and The Metropolitan WD of Southern California), through new contracts, contract amendments, contract approvals, or other appropriate means, the agreement to be reached with those water districts to (i) quantify the Colorado River water entitlements for Coachella Valley WD and Imperial ID and (ii) provide a basis for water transfers among California water districts.

25. North Gila Valley IDD, Yuma ID, and Yuma Mesa IDD, Yuma Mesa Division, Gila Project, Arizona: Administrative action to amend each district's Colorado River water delivery contract to effectuate a change from a ''pooled'' water entitlement for the Division to a quantified entitlement for each district.

26. Indian and/or non-Indian M&I users, CAP, Arizona: New or amendatory water service contracts or subcontracts in accordance with an anticipated final record of decision for reallocation of CAP water, as discussed in the Secretary of the Interior's notice published on page 41456 of the **Federal Register** on July 30, 1999.

27. Litchfield Park Service Company, CAP, Arizona: Proposed assignments of 5,580 acre-feet of CAP M&I water to the Central Arizona Groundwater Replenishment District and to the cities of Avondale, Carefree, and Goodyear.

28. Shepard Water Company, Inc., BCP, Arizona: Contract for the delivery of 50 acre-feet of domestic water.

29. The United States International Boundary and Water Commission, The Metropolitan WD of Southern California, San Diego County Water Authority, and Otay WD, Mexican Treaty Waters: Agreement for the temporary emergency delivery of a portion of the Mexican Treaty waters of the Colorado River to the International Boundary in the vicinity of Tijuana, Baja California, Mexico.

30. Gila River Indian Community, CAP, Arizona: Operation, maintenance, and replacement contract for an archeological repository named the Huhugam Heritage Center.

31. Jessen Family Limited Partnership, BCP, Arizona: Partial contract assignment of agricultural water from Arlin Dulin to Jessen Family Limited Partnership.

32. Robson Communities, Southern Arizona Water Rights Settlement Act, Arizona: United States contract with Robson Communities for the sale of 1,618 acre-feet of long-term water storage credits accrued in the Tucson area during calendar year 2000.

33. Cities of Chandler and Mesa, CAP, Arizona: Amendments to the CAP M&I water service subcontracts of the cities of Chandler and Mesa to remove the language stating that direct effluent exchange agreements with Indian Communities are subject to the ''pooling concept.''

34. City of Somerton, BCP, Arizona: Contract for the delivery of up to 750 acre-feet of Colorado River water for domestic use.

35. Various Irrigation Districts, CAP, Arizona: Amend distribution system repayment contracts to provide for partial assumption of debt by the Central Arizona Water Conservation District and the United States upon enactment of Federal legislation providing for resolution of CAP issues.

36. Mohave County Water Authority, BCP, Arizona: Amendatory Colorado River Water delivery contract to include the delivery of 3,500 acre-feet per year of fourth priority water and to delete the delivery of 3,500 acre-feet per year of fifth or sixth priority water.

37. Citizens Communications Company (Agua Fria Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City).

38. Harquahala Valley ID, CAP, Arizona: The District has requested that Reclamation transfer title to the District's CAP Distribution System and to assign to the District permanent easements acquired by the United States. Title transfer of the District's CAP distribution system is authorized by Public Law 101–628 and contract No. 3–07–30–W0289 between the District and Reclamation, dated December 8, 1992.

39. All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water (Federal legislation pending).

40. Pasquinelli, Gary J. and Barbara J., BCP, Arizona: Contract for the delivery of 486 acre-feet of Colorado River water for agricultural purposes.

41. Citizens Communications Company (Sun City Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City Division).

42. Citizens Communications Company (Sun City West Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City West Division).

43. Allocation agreement for water conserved from lining the All-American and Coachella Canals, BCP, California: Parties include the United States, The Metropolitan WD of Southern California, the Coachella Valley WD, the Imperial ID, the City of Escondido, Vista, San Luis Rey River Indian Water Authority, and the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians.

44. Tohono O'odham Nation, CAP, Arizona: Amend CAP water delivery contract pursuant to Arizona Water Settlements Act, when enacted.

45. Central Arizona Water Conservation District and the Arizona Department of Water Resources, CAP, Arizona: Arizona Water Settlement Agreement to settle all current CAP water allocation issues.

The following actions have been discontinued since the last publication of this notice on November 15, 2002:

1. (20) Tohono O'odham Nation, CAP, Arizona: Repayment contract for a portion of the construction costs associated with water distribution system for Central Arizona IDD.

2. (21) Tohono O'odham Nation, CAP, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

3. (40) Sonny Gowan, BCP, California: Approval to lease up to 175 acre-feet of his PPR water to Moabi Regional Park.

4. (49) All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, and Metropolitan WD to provide for the construction of lining for 23 miles of the All-American Canal, funded by the State of California.

The following action has been completed since the last publication of this notice on November 15, 2002:

1. (33) Arizona Water Banking Authority and Southern Nevada Water Authority, BCP, Arizona and Nevada: Contract to provide for the interstate contractual distribution of Colorado River water through the off-stream storage of Colorado River water in Arizona, the development by the Arizona Water Banking Authority of intentionally created unused apportionment, and the release of this intentionally created unused apportionment by the Secretary of the Interior to Southern Nevada Water Authority.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, Colorado River Storage Project; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Russell, Harrison F. and Patricia E.; Aspinall Unit; CRSP; Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including home lawn and livestock watering (non-commercial).

(b) Stephens, Walter Daniel; Aspinall Unit; CRSP; Colorado: Contract for 2 acre-feet to support an augmentation plan, Case No. 97CW49, Water Division Court No. 4, State of Colorado, to provide for pond evaporative depletions during the non-irrigation season.

(c) United States Fish and Wildlife Service, Aspinall Unit, CRSP, Colorado: Contract for 25 acre-feet to support an augmentation plan to provide water for the Hotchkiss Fish Hatchery ponds, used to grow out endangered fish, a part of the Endangered Fish Recovery Program.

(d) Upper Gunnison Water Conservancy District (Upper Gunnison), Aspinall Unit, CRSP, Colorado: A 40-year contract for 500 acre-feet of M&I water to support Upper Gunnison's plan of augmentation for non-agricultural water use within the Upper Gunnison District. The 500 acre-feet of water to be resold by Upper Gunnison under third-party contracts approved by Reclamation to water users located within Upper Gunnison's Districts boundaries.

2. Taos Area, San Juan-Chama Project, New Mexico: The United States is reserving 2,990 acre-feet of project water for potential use in an Indian water rights settlement in the Taos, New Mexico area.

3. Water Service Contractors, San Juan-Chama Project, New Mexico: Conversion of water service contracts to repayment contracts for the following entities: City of Santa Fe, County of Los Alamos, City of Espanola, Town of Taos, Village of Los Lunas, and Village of Tao Ski Valley.

4. Various Contractors, San Juan-Chama Project, New Mexico: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

5. Provo River Water Users, Provo River Project, Utah: Contract to provide for repayment of reimbursable portion of construction costs of SOD modifications to Deer Creek Dam.

6. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for up to 25,000 acre-feet for irrigation use.

7. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

8. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

9. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

10. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

11. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Summer Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

12. La Plata Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554).

13. LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 950 acre-feet of water for municipal purposes.

14. Pine River ID, Pine River Project, Colorado: Contract to allow the District to convert up to approximately 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

15. City of Page, Arizona; Glen Canyon Unit; CRSP; Arizona: Long-term contract for 1,000 acre-feet of water for municipal purposes.

16. Castle Valley Special Service District, City of Huntington, Emery County Project: Assignment of contract

for 189 acre-feet of water for municipal purposes.

17. El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for traditional and religious purposes.

18. Carlsbad ID and New Mexico Interstate Stream Commission (ISC), Carlsbad Project, New Mexico: Contract to convert irrigation water appurtenant to up to 6,000 acres of land within the project for use by the ISC for delivery to Texas to meet New Mexico's Pecos River Compact obligation.

The following action has been discontinued since the last publication of this notice on November 15, 2002:

1. (4) Various Contractors, San Juan-Chama Project, New Mexico: Three potential contracts among the United States, Middle Rio Grande Conservancy District, and the City of Albuquerque to implement terms of Agreed Order Resolving Plaintiff's Motion for Preliminary Injunction, dated August 2, 2000, and the supplement dated October 5, 2000. The ordered actions were taken without contracts being put in place.

The following actions have been completed since the last publication of this notice on November 15, 2002:

1. (1)(f) David W. and Rebecca A. Dennis, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 01CW84, Water Division Court No. 4, State of Colorado, to provide for a single-family residential well, including in-house residential, limited lawn, pond evaporation, and livestock watering (non-commercial). Contract executed May 17, 2002.

2. (13) Dolores Water Conservancy District, Dolores Project, Colorado: Amendment to an existing carriage contract to extend the term of the contract from 25 years to a total of 50 years. Amendment executed August 29, 2002.

3. (14) Ogden River Water Users Association and Weber Basin Water Conservancy District, Ogden River and Weber Basin Projects, Utah: Contract to provide for repayment of water users portion of construction contract due to SOD investigations recommendations at Pineview Dam. Contract executed March 28, 2002.

4. (21) Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Contract to allow the District to use up to approximately 2,500 acre-feet of project water for irrigation and M&I uses. Contract executed June 20, 2002.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users: Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board and the U.S. Fish and Wildlife Service for 10,825 acre-feet for endangered fishes.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract will be executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir.

6. Pathfinder ID, North Platte Project, Nebraska: Negotiation of a contract regarding SOD program modifications of Lake Alice Dam No. 1 Filter/Drain.

7. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation for the planning and construction of a rural water supply system.

8. Angostura ID, Angostura Unit, P–SMBP, South Dakota: An interim 3-year contract was executed on June 9, 2000, to provide for a continuing water supply and allow adequate time for completion of the Environmental Impact Statement for long-term contract renewal. A BON for a long-term contract renewal has been approved by the Commissioner's Office. Contract negotiations for a long term 25-year contract have been completed. Both the Record of Decision and the contract will be signed in January 2003.

9. City of Berthoud, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contract for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities.

10. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of a long-term contract for storage space. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiations of the long-term contract.

11. Highland-Hanover ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

12. Upper Bluff ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

13. Fort Clark ID, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

14. Western Heart River ID, P–SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

15. Lower Marias Unit, P–SMBP, Montana: Water service contract with Robert A. Sisk expired in July 1998. Initiating long-term contract for the use of up to 600 acre-feet of storage water from Tiber Reservoir to irrigate 220 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

16. Lower Marias Unit, P–SMBP, Montana: Initiating renewal of long-term water service contract with Julie Peterson for the use of up to 717 acre-feet of storage water from Tiber Reservoir to irrigate 239 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

17. Lower Marias Unit, P–SMBP, Montana: Water service contract with Ray Morkrid as Morkrid Enterprises expired May 1998. Initiating long-term contract for the use of up to 6,855 acre-feet of storage water from Tiber

Reservoir to irrigate 2,285 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

18. Dickinson-Heart River Mutual Aid Corporation, P–SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

19. Savage ID, P–SMBP, Montana: The District is currently seeking title transfer. The contract is subject to renewal on an annual basis pending outcome of the title transfer process. Interim contracts are being issued to allow continued delivery of water. The District has requested information concerning renewal of the long-term contract.

20. City of Fort Collins, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado-Big Thompson Project facilities.

21. Standing Rock Sioux Tribe, P–SMBP, North Dakota: Negotiate a long-term water service contract with the Standing Rock Sioux Tribe in North Dakota for irrigation of up to 2,380 acres of land within the reservation.

22. Glendo Unit, P–SMBP, Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

23. Glendo Unit, P–SMBP, Nebraska: Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

24. Belle Fourche ID, Belle Fourche Project, South Dakota: Belle Fourche ID has requested a $25,000 reduction in construction repayment. Negotiations are pending resolution of contract language.

25. Helena Valley Unit, P–SMBP, Montana: Initiating negotiations with Helena Valley ID for renewal of Part A of the A/B contract which expires in 2004.

26. Crow Creek Unit, P–SMBP, Montana: Initiating negotiations with Toston ID for renewal of Part A of the A/B contract which expires in 2004.

27. Milk River Project, Montana: City of Harlem water service contract expired in December 2002. Initiating negotiations for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract. A draft contract is available for review and public comment. Comments were due by August 15, 2002.

28. Lower Marias Unit, P–SMBP, Montana: Town of Chester water service contract expired in December 2002. Initiating negotiations for renewal of a long-term water service contract for an annual supply of raw water for domestic use from Tiber Reservoir not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract.

29. City of Dickinson, P–SMBP, Dickinson Unit, North Dakota: A temporary contract has been negotiated with the Park Board for minor amounts of water from Dickinson Dam. Negotiate a long-term water service contract with the City of Dickinson or Park Board, for minor amounts of water from Dickinson Dam.

30. Clark Canyon Water Supply Company, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005.

31. East Bench ID, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3593 which expires December 31, 2005.

32. Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado: On September 25, 2002, an amendment was executed to extend the term of a conveyance contract by 1 year from October 2002 to October 1, 2003. Initiating negotiations for renewal of a water conveyance contract for annual conveyance of up to 750 acre-feet of nonproject water through the Nast and Boustead Tunnel System.

33. Lower Marias Unit, P–SMBP, Montana: Initiating long-term water service contract with Allen Brown as Tiber Enterprises for up to 910 acre-feet of storage from Tiber Reservoir to irrigate 303.2 acres. Temporary/interim contracts are being issued to allow continued delivery of water and the time necessary to complete required actions for the long-term contract process.

34. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Acting by and through the Pleasant Valley Pipeline Project Water Activity Enterprise, beginning discussions concerning a long-term contract for conveyance of nonproject water through Colorado-Big Thompson Project facilities.

35. Miles Land and Livestock Co. (Individual), Kendrick Project, Alcova Reservoir, Wyoming: Negotiate a long-term contract for annual conveyance of up to 153.27 acre-feet of nonproject water through the Casper Canal, Wyoming.

36. Helena Valley Unit, P–SMBP, Montana: The long-term water service contract with the City of Helena, Montana, expires December 31, 2004. Initiating negotiations for contract renewal for an annual supply of raw water for domestic and M&I use from Helena Valley Reservoir not to exceed 5,680 acre-feet of water annually.

37. Chippewa Cree Tribe (Tribe), Rocky Boy's Indian Reservation, Montana: Pursuant to title II, section 201(a)(2), of the Rocky Boy's Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Pub. L. 106–163), Reclamation is negotiating to allocate 10,000 acre-feet per year of stored water in Lake Elwell.

38. Canadian River Municipal Water Authority, Lake Meredith Salinity Control Project, New Mexico and Texas: Negotiation of a contract for the transfer of control (care, operation, and maintenance) of the Project to the Authority in accordance with Pub. L. 102–575, title VIII, section 804(c).

39. Belle Fourche ID, Belle Fourche Project, South Dakota: Negotiate a temporary contract for additional supplemental water up to 10,000 acre-feet from Keyhole Reservoir. Negotiate an amendment to the District's Keyhole Dam repayment contract for increased storage space to store additional amounts of water.

40. Clayton and Debbie Fulfer (Individual), P–SMBP, Boysen Unit, Wyoming: Contract for up to 15 acre-feet of supplemental irrigation water to service 5.72 acres.

41. Midvale ID, P–SMBP, Riverton Unit, Wyoming: Negotiations of a SOD Program contract for modification of Bull Lake Dam.

42. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracts in the Fryingpan-Arkansas Project.

43. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Regional Water Infrastructure Authority.

Dated: February 20, 2003.

Wayne O. Deason,

Acting Director, Program and Policy Services.

[FR Doc. 03–4735 Filed 2–27–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Preliminary)]

Certain Ceramic Station Post Insulators From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of certain ceramic station post insulators, provided for in subheading 8546.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On December 31, 2002, a petition was filed with the Commission and Commerce by Lapp Insulator Company LLC, Le Roy, NY; Newell Porcelain Co., Inc., Newell, WV; Victor Insulators, Inc., Victor, NY; and the IUE–CWA, AFL–CIO, Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain ceramic station post insulators from Japan. Accordingly, effective December 31, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1023 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 8, 2003 (68 FR 1068). The conference was held in Washington, DC, on January 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 14, 2003. The views of the Commission are contained in USITC Publication 3578 (February 2003), entitled Certain Ceramic Station Post Insulators From Japan: Investigation No. 731–TA–1023 (Preliminary).

By order of the Commission.
Issued: February 21, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–4808 Filed 2–27–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–005]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: March 7, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–991 (Final) (Silicon Metal from Russia)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 19, 2003.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: February 25, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–4867 Filed 2–26–03; 11:30 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2247–02]

Application for Naturalization, Form N–400: Termination of Acceptance of Editions Issued Prior to May 31, 2001

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice confirms only editions dated May 31, 2001, or later, of the Form N–400, Application for Naturalization, as acceptable for filing by persons applying for United States citizenship. These revised editions include recent legislative changes, clarify the information required from applicants, eliminate obsolete questions, and update the data collection process. This notice advises the public that all Forms N–400 that are mailed, postmarked or otherwise filed on or after March 31, 2003 must bear the edition date of May 31, 2001, or later.

DATES: This notice is effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Business Process and Reengineering Division, Immigration and Naturalization Service, 801 I Street, NW., Washington, DC 20536, telephone (202) 514–0788.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice dated November 16, 2001, at 66 FR 57737–57739, the Department of Justice, Immigration and Naturalization Service (Service) announced the establishment of the revised Form N–400, bearing the edition date of May 31, 2001, as the only edition acceptable for applications for United States citizenship. That notice stated that earlier editions of Form N–400 would not be acceptable for filing after December 31, 2001.

Subsequent to publication of the November 16, 2001, notice the Service

continued to allow additional time for transition to the processing of the current Form N–400, during which the previous edition has been accepted for processing. However, it is necessary to complete the conversion to an updated naturalization application format that reflects all current benefits and requirements.

Accordingly, as of March 31, 2003, only the May 31, 2001, or subsequent editions of Form N–400 will be valid for filing an application for naturalization.

To prevent applicants from mistakenly submitting obsolete editions after the termination date of March 31, 2003, offices involved in the distribution of naturalization applications should only provide editions of Form N–400 having an edition date of May 31, 2001, or later.

What Happens After the ''Sunset Date'' for Accepting the Previous Edition of Form N–400?

Beginning March 31, 2003, only the May 31, 2001, or later editions of Form N–400 will be valid for filing an application for naturalization.

Service Centers will no longer accept earlier editions of the form for filing. Any obsolete editions of the Form N–400 application that the Service Centers may receive on or after March 31, 2003 will be rejected and returned to the applicant with instructions to submit a current Form N–400.

Will the Service Continue to Process the Previous Edition Form N–400 Applications that were Filed Prior to March 31, 2003?

The previous edition of the naturalization applications, if it was properly filed at a Service Center before March 31, 2003 will be processed to completion. However, in cases where there is an eligibility issue that the previous edition does not cover, the Service may ask for additional information.

How Can Applicants Obtain the Current Edition of Form N–400?

Applicants can obtain copies of the current Form N–400 by calling the Service Forms Line at 1–800–870–3676. The current edition of Form N–400 also can be viewed, filled, and printed electronically from the Service's Web site at *www.ins.usdoj.gov*.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–4863 Filed 2–26–03; 12:08 pm]

BILLING CODE 4410–10–U

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. 276(a)) and of the 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

None

Volume II

Pennsylvania
PA020001 (Mar. 1, 2002)
PA020002 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020008 (Mar. 1, 2002)
PA020009 (Mar. 1, 2002)
PA020010 (Mar. 1, 2002)
PA020012 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020015 (Mar. 1, 2002)
PA020016 (Mar. 1, 2002)
PA020018 (Mar. 1, 2002)
PA020019 (Mar. 1, 2002)
PA020020 (Mar. 1, 2002)
PA020021 (Mar. 1, 2002)
PA020023 (Mar. 1, 2002)
PA020027 (Mar. 1, 2002)
PA020028 (Mar. 1, 2002)
PA020029 (Mar. 1, 2002)
PA020038 (Mar. 1, 2002)
PA020040 (Mar. 1, 2002)

PA020042 (Mar. 1, 2002)
PA020051 (Mar. 1, 2002)
PA020053 (Mar. 1, 2002)
PA020055 (Mar. 1, 2002)
PA020060 (Mar. 1, 2002)
PA020061 (Mar. 1, 2002)
PA020062 (Mar. 1, 2002)
PA020065 (Mar. 1, 2002)

Volume III

Georgia
GA020003 (Mar. 1, 2002)
GA020004 (Mar. 1, 2002)
GA020006 (Mar. 1, 2002)
GA020022 (Mar. 1, 2002)
GA020023 (Mar. 1, 2002)
GA020031 (Mar. 1, 2002)
GA020032 (Mar. 1, 2002)
GA020034 (Mar. 1, 2002)
GA020040 (Mar. 1, 2002)
GA020041 (Mar. 1, 2002)
GA020044 (Mar. 1, 2002)
GA020050 (Mar. 1, 2002)
GA020055 (Mar. 1, 2002)
GA020073 (Mar. 1, 2002)
GA020083 (Mar. 1, 2002)
GA020084 (Mar. 1, 2002)
GA020085 (Mar. 1, 2002)
GA020086 (Mar. 1, 2002)
GA020087 (Mar. 1, 2002)
GA020088 (Mar. 1, 2002)

Mississippi
MS020031 (Mar. 1, 2002)

Volume IV

None

Volume V

Louisiana
LA020001 (Mar. 1, 2002)
LA020005 (Mar. 1, 2002)
LA020009 (Mar. 1, 2002)
LA020018 (Mar. 1, 2002)

Volume VI

None

Volume VII

None

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 to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. 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 Volumes, 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 21st day of February 2003.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–4498 Filed 2–27–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC, Monticello Nuclear Generating Plant; Exemption

1.0 Background

The Nuclear Management Company, LLC (the licensee), is the holder of Facility Operating License No. DPR–22 which authorizes operation of the Monticello Nuclear Generating Plant (MNGP). 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 Wright County, Minnesota.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that pressure-temperature (P/T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, limits.

To address provisions of a proposed amendment to change the P/T limits in the Monticello Technical Specifications, the licensee requested an exemption from the application of specific requirements of 10 CFR part 50, Section 50.60(a) and Appendix G, to allow the use of ASME Code Case N–640, ''Alternative Reference Fracture Toughness for Development of P–T Limit Curves.'' ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of ''K_{IC} fracture toughness curve'' instead of ''K_{IA} fracture toughness curve,'' where K_{IC} and K_{IA} are ''Reference Stress Intensity Factors,'' as defined in ASME Code, Section XI, Appendices A and G, respectively) for RPV materials in determining the P/T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P/T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption is required to use ASME Code Case N–640.

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine RPV P/T limits because continued use of the present curves unnecessarily restricts the P/T operating windows for the reactor coolant system (RCS). Since the P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of MNGP with the current P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily require that the RPV be maintained at a temperature exceeding 212 °F in a limited operating window during pressure tests. Consequently, steam

vapor hazards would continue to be a safety concern for personnel conducting inspections in the primary containment. Implementation of the proposed P/T curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in the primary containment to be conducted at a lower coolant temperature.

3.0 Discussion

Pursuant to 10 CFR part 50, Section 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 special circumstances include the following:

(1) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(ii), the circumstance that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. ASME Code, Section XI, Appendix G, provides procedures for determining the allowable loading on the RPV and is approved for that purpose by 10 CFR part 50, Appendix G. Application of these procedures in the determination of P/T operating and test curves satisfies the underlying requirement that (1) the reactor coolant pressure boundary be operated in a regime having a sufficient margin to ensure, when stressed, the vessel boundary behaves in a ductile manner and the probability of a rapidly propagating fracture is minimized; and (2) P/T operating and test limit curves provide an adequate margin in consideration of uncertainties in determining the effects of irradiation on material properties. The ASME Code, Section XI, Appendix G, procedure was conservatively developed based upon the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge concerning these topics has greatly expanded. This increased knowledge permits relaxation of the ASME Code, Section XI, Appendix G, requirements via application of ASME Code Case N–640, while maintaining the underlying purpose of the ASME Code and NRC regulations to ensure an acceptable margin of safety.

(2) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(iii), compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or those incurred by others similarly situated. The P/T operating window from the RCS is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G procedure. As previously noted, continued operation of MNGP with these P/T curves without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P/T operating window. This restriction requires the MNGP Operations Staff to maintain a high temperature during pressure tests and also subjects the inspection personnel to increased safety hazards while conducting inspections of systems with the potential for steam leaks in a primary containment at elevated temperatures.

This constitutes an unnecessary burden that can be alleviated by the application of ASME Code Case N–640 in the development of the proposed P/T limit curves. Implementation of the proposed P/T limit curves, as allowed by ASME Code Case N–640, would not significantly reduce the margin of safety.

(3) Pursuant to 10 CFR part 50, Section 50.12(a)(2)(v), compliance will provide ''only temporary relief from the applicable regulation and the licensee . . . has made good faith efforts to comply with the regulation.'' The NRC staff finds that the licensee for MNGP has made a good faith effort to comply with the regulation, and the requested exemption provides only temporary relief from the applicable regulation until such time that the NRC generically approves ASME Code Case N–640 for use by the nuclear industry.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that the use of the ASME Code Case N–640 would satisfy 10 CFR part 50, Section 50.12(a)(1) as follows:

(1) The requested exemption is authorized by law: No law exists which precludes the activities covered by this exemption request. The regulation 10 CFR part 50, Section 50.60(b), allows the use of alternatives to 10 CFR part 50, Appendices G and H, when an exemption is granted by the Commission pursuant to 10 CFR part 50, Section 50.12.

(2) The requested exemption does not present an undue risk to the public health and safety: ASME Code Case N–640 permits the use of alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{IA} fracture toughness curve) for RPV Materials in determining the P/T limits. The K_{IC} fracture toughness curve is shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, and provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1. The other margins involved with the ASME Code, Section XI, Appendix G process of determining P/T limit curves remain unchanged.

Use of the K_{IC} curve in determining the lower bound fracture toughness in the development of the P/T operating limits curve is more technically correct than the K_{IA} curve. The K_{IC} curve models the slow heatup and cooldown process of a reactor vessel. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV.

Use of this approach is justified by the initial conservatism of the K_{IA} curve when the curve was codified in 1974. This initial conservatism was necessary due to limited knowledge of RPV material fracture toughness. Since 1974, additional knowledge has been gained about the fracture toughness of vessel materials and their fracture response to applied loads. The additional knowledge demonstrates that the lower bound fracture toughness provided by the K_{IA} curve is well beyond the margin of safety required to protect against potential RPV failure. The lower bound K_{IC} fracture toughness provides an adequate margin of safety to protect against potential RPV failure and does not present an undue risk to public health and safety.

P/T limit curves based on the K_{IC} fracture toughness limits will enhance overall plant safety by opening the P/T operating window. Since the RCS P/T operating window is defined by the P/T operating and test limit curves developed in accordance with the ASME Code, Section XI, Appendix G, procedure, continued operation of MNGP with these P/T limit curves without using ASME Code Case N–640 would unnecessarily require the RPV to be maintained at a temperature exceeding 212 °F in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in the primary containment.

Use of the revised curves would result in a reduction in the challenges to operators in maintaining a high temperature in a limited operating window and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted

at lower coolant temperature, while continuing to provide an adequate margin of safety.

(3) The requested exemption will not endanger the common defense and security: The common defense and security are not endangered by this exemption request.

On the basis of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, Appendix G, and ASME Code, Section XI, Appendix G, the NRC staff concludes that application of ASME Code Case N–640, as described above, would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the NRC staff has reached for other licensees under similar conditions based upon the same considerations. The NRC staff has previously granted exemptions to use ASME Code Case N–640 for the Quad Cities Nuclear Power Station and the Limerick Generating Station Unit 1 where the NRC staff concluded that application of ASME Code Case N–640 would provide adequate safety margins consistent with 10 CFR part 50, Appendix G, and Appendix G to ASME Code, Section XI. In the same cases, the NRC staff also concluded that relaxation of the methodology in Appendix G to ASME Code, Section XI, by application of ASME Code Case N–640 is acceptable, and pursuant to 10 CFR 50.12(a)(2)(ii), would maintain the underlying purpose of the NRC regulations to ensure an acceptable margin of safety for the Quad Cities and Limerick Generating Station Unit 1 RPVs and RCSs. The licensee's proposal to use ASME Code Case N–640 for generation of the MNGP P/T limit curves is predicated on the same technical basis as was used for generation of the P/T limits for Quad Cities and Limerick Generating Station Unit 1.

Therefore, the NRC staff concludes that pursuant to 10 CFR part 50, Section 50.12(a)(1), and 10 CFR part 50, Section 50.12(a)(2)(ii), (iii), and (v), granting an exemption is appropriate and that the methodology of ASME Code Case N–640 may be used to revise the P/T limits for MNGP.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50, Section 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 the Nuclear Management Company, LLC, an exemption from the requirements of 10 CFR part 50, Section 50.60(a) and 10 CFR part 50, Appendix G, for MNGP.

Pursuant to 10 CFR part 50, Section 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 (68 FR 8052).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of February 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–4750 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Finding of No Significant Impact Related to Maine Yankee Atomic Power Company's License Amendment Request for Approval of the License Termination Plan

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company (the licensee), for the Maine Yankee Atomic Power Station (Maine Yankee), located in Lincoln County, Maine. The license amendment is related to the licensee's License Termination Plan (LTP). An environmental assessment (EA) was performed by the NRC staff in support of it's review of the license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI).

II. EA Summary

The proposed action would amend Facility Operating License DPR–36 to approve the Maine Yankee LTP. The proposed action is in accordance with the licensee's application dated October 15, 2002.

As described in the EA, the NRC staff found no significant impacts based on it's review of the adequacy of the radiation release criteria and the adequacy of the final status survey to meet NRC's unrestricted release criteria. Also, further described in the EA, the NRC staff focused it's review on land use, ground and surface water, and human health and considered potential non-radiological, radiological, and cumulative impacts. In reviewing the LTP the staff also determined that the environmental impacts were enveloped by the generic analysis performed in support of ''Radiological Criteria for License Termination'' (62 FR 39058).

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant environmental impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

The licensee's request for the proposed action (ADAMS Accession No: ML022970110) and the NRC's complete Environmental Assessment (ADAMS Accession No.: ML030340122), and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents, along with most others referenced in the EA, are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Any questions with respect to this action should referred to John Buckley, Decommissioning Branch, Mailstop T–7F19, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 24th day of February, 2003.

For the Nuclear Regulatory Commission,

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4751 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Environmental Impact Statement for the Construction and Operation of the Proposed Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina, and Notice of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Draft Environmental Impact Statement and notice of public meetings.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a Draft Environmental Impact Statement (DEIS) on the proposed construction and operation of a mixed oxide (MOX) fuel fabrication facility at the Savannah River Site in South Carolina. The DEIS is being issued as part of the NRC's decision-making process on whether to authorize Duke Cogema Stone & Webster (DCS), a contractor of the U.S. Department of Energy (DOE), to construct and operate the proposed MOX fuel fabrication facility (MOX facility).

The proposed MOX facility would convert depleted uranium dioxide and weapons-grade plutonium dioxide into MOX fuel. The DEIS discusses the purpose and need for the proposed MOX facility, and reasonable alternatives to the proposed action, including the no-action alternative. The DEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

Based on the evaluation in the DEIS, the NRC environmental review staff has concluded that mitigation measures identified by DCS, and additional measures identified by NRC staff would reduce or eliminate adverse environmental impacts of the proposed action. The DEIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the DEIS have been received and evaluated. Notice of the availability of the Final EIS will be published in the **Federal Register**.

Availability of Documents for Review

The DEIS, and other documents on which the DEIS is based, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm.html.* A selected group of these documents are on the MOX web page: *http://www.nrc.gov/materials/fuel-cycle-fac/mox/licensing.html.* For those without access to the internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 1–800–397–4209.

Public Comment

The NRC is offering an opportunity for public review and comment on the DEIS in accordance with applicable regulations, including NRC requirements in 10 CFR 51.73, 51.74 and 51.117. Any interested party may submit written comments on the proposed action and on the DEIS for consideration by the NRC staff. To be certain of consideration, comments must be received by April 14, 2003. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before April 14, 2003.

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 the@nrc.gov. Comments will also be accepted by fax at (301) 415–5398, Attention: Tim Harris.

Public Meetings

The NRC will hold three public meetings to present an overview of the DEIS and to accept oral and written public comments. Prior to the Public Meetings, NRC staff will be available to informally discuss the MOX project and answer questions in an ''open house'' format. The meeting dates, times and locations are listed below:

March 25, 2003, Coastal Georgia Center, 305 Fahm Street, Savannah, Georgia, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

March 26, 2003, North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

March 27, 2003, Charlotte-Mecklenburg Government Center, 600 E. Fourth Street, Charlotte, North Carolina, Open House: 5:30 p.m. to 7 p.m. Public Meeting: 7 p.m. to 10 p.m.

All meetings will be transcribed and will include (1) a presentation summarizing the contents of the DEIS and (2) an opportunity for interested government agencies, organizations, and individuals to provide comments on the DEIS. Persons should register prior to the start of each meeting to provide oral comments. Individual oral comments may have to be limited by the time available, depending upon the number of persons who register.

If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Harris' attention no later than March 19, 2003, to provide NRC staff with adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, please contact: Tim Harris at (301) 415–6613. For general or technical information associated with the proposed MOX facility, please contact: Drew Persinko at (301) 415–6522.

SUPPLEMENTARY INFORMATION: In January 2000, the DOE issued a Record of Decision pertaining to its surplus plutonium disposition program and the DOE's 1999 EIS related to this program [65 FR 1608]. The fundamental purpose of the DOE program is to ensure that plutonium produced for nuclear weapons and declared excess to national security needs is converted to forms that are inaccessible and unattractive for use in nuclear weapons.

The DEIS for the proposed MOX facility was prepared by the staff of the NRC and its contractor, Argonnne National Laboratory, in compliance with the National Environmental Policy Act (NEPA), and the NRC's regulations for implementing NEPA (10 CFR part 51). The proposed action involves a decision by NRC of whether to authorize DCS to construct and later operate the proposed MOX facility at the SRS to convert surplus weapons plutonium into MOX fuel.

If approved by the NRC, the proposed MOX facility would be built in the F-Area of the DOE's Savannah River Site (SRS). Feedstock (surplus plutonium dioxide and depleted uranium dioxide) would have to be transported to SRS to make the MOX fuel. To support operation of the proposed MOX facility, two other new facilities would have to be built by the DOE at the SRS.

Infrastructure upgrades, such as construction waste transfer pipelines, electric utility line realignment, and addition of access roads, would also be required. Any MOX fuel made at the proposed MOX facility would be transported to mission reactors, where it would be irradiated.

NRC published a Notice of Intent to prepare an EIS for the proposed MOX facility, and to conduct a scoping process, in the **Federal Register** on March 7, 2001 [66 FR 13794]. NRC staff subsequently held scoping meetings, and issued a Scoping Summary Report in August 2001. In early 2002, DOE announced its decision to alter its planned approach for surplus weapons plutonium disposition [67 FR 19432], causing the NRC to delay its issuance of the DEIS for the proposed MOX facility. On August 22, 2002, the NRC announced three mid-September public meetings to discuss changes in DCS' Environmental Report that resulted from changes in DOE's plans [67 FR 54501]. The meetings were held on September 17 in Savannah, Georgia, September 18 in Augusta, Georgia, and September 19 in Charlotte, North Carolina.

The DEIS describes the proposed action, and alternatives to the proposed action, including the no-action alternative. The DEIS' discussion of the no-action alternative evaluates the environmental impacts of the continued storage of surplus plutonium in various DOE locations nationwide, in the event NRC decides not to approve the proposed MOX facility. Alternatives considered but not analyzed in detail include alternate locations for the proposed MOX facility in the F-Area, alternative technology and design options, immobilization of surplus plutonium instead of producing MOX fuel, deliberately making off-specification MOX fuel, and the Parallex Project, the latter of which involves irradiating the MOX fuel in Candian CANDU reactors. Additionally, the DEIS compares the impacts of using HEPA filters to the impacts of using sand filters for removal of particulate air emissions.

The DEIS assesses the impacts of the proposed action and its alternatives for the issues of human health, air quality, hydrology, waste management, geology, noise, ecology, land use, cultural and paleontological resources, infrastructure, socioeconomics, accident impacts, decommissioning and environmental justice. Additionally, the DEIS analyzes and compares the costs and benefits of the proposed action.

Based on the evaluation in the DEIS, the NRC's preliminary recommendation is that the proposed action be approved, with implementation of proposed mitigation measures which would eliminate or substantially lessen any potential adverse environmental impacts.

This DEIS is a preliminary analysis of the environmental impacts of the proposed action. The NRC will review the public's comments, conduct any necessary analyses, and make appropriate revisions in developing the Final EIS for the proposed MOX facility.

Participation in the public comment process for the DEIS does not entitle participants to become parties to the ongoing NRC adjudicatory proceeding pertaining to the construction of the proposed MOX facility. Participation in adjudicatory proceedings is governed by the 10 CFR part 2 hearing procedures.

Dated at Rockville, Maryland, this 20th day of February 2003.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–4753 Filed 2–27–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c2–1, SEC File No. 270–418, OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–1 prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer account in contravention of the rule, issue and retain copies of notices of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 177 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 3,983 hours to comply with the rule. Each of these approximately 177 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 7,965 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 3,983 burden hours.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 21, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4695 Filed 2–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 3, 2003:

Closed Meetings will be held on Wednesday, March 5, 2003 at 10 a.m., and on Thursday, March 6, 2003 at 10 a.m.

Commissioner Campos, 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 Meetings. 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 Meetings.

The subject matter of the Closed Meeting scheduled for Wednesday, March 5, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matter; and

Amicus consideration.

The subject matter of the Closed Meeting scheduled for Thursday, March 6, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory 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: February 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–4950 Filed 2–26–03; 3:58 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47392; File No. SR–NASD–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Interpretive Material 2260 (''IM–2260'')

February 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 [2] thereunder, notice is hereby given that on February 13, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Interpretive Material 2260 (''IM–2260'') relating to their approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements, and other material.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deleted language is [bracketed].

* * * * *

IM–2260. [Suggested] *Approved* Rates of Reimbursement

(a) The [Board of Governors has determined that the] following [suggested] *approved* rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] *shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.*

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) [60] *40* cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, *unless an opposition proxy statement has been furnished to securities holders,*[3] [plus postage,] with a minimum of $5.00 for all sets mailed;

(B) [20] *15* cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies *with a minimum of $3.00 for all sets mailed*;[.]

(C) $1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of $5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: $20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

(2) Charges for Proxy Follow-Up Mailings

[(A)] 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B) 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

[(3) Surcharge for Proxy Solicitation

Eighteen and one-half cents for each set of proxy material, *i.e.*, proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD represents that there was an error in the proposed rule language in its original 19b–4 filing. The phrase ''unless an opposition proxy statement is furnished to security holders,'' should have been underlined to indicate proposed new rule language. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on February 21, 2003.

[(4)] (*3*) [Additional Fee for Proxy Solicitation] *Charge for Providing Beneficial Ownership Information*

Six and one-half cents per [shareholder] name *of non-objecting beneficial owner* provided to the issuer pursuant to the issuer's request. *Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC rules 14a–13(b) and 14c–7(b) under the Securities Exchange Act of 1934 and notes thereto.)*

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC rule 14b–1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

[(5)] *(4)* Charges for Interim Report, Post Meeting Report and Other Material Mailings

[30] *15* cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of $2.00 for all sets mailed.

[(6)] *(5) Incentive Fees*

An ''incentive fee'' (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] *(b)* Members are reminded that rule 2430 requires that any such charges must be reasonable. *Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company.* [Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC rule 14b–1 under the Act).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to amend IM–2260 to adopt the same fee structure recently adopted by the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC (''Amex'') governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. The proposed amendments to IM–2260 would also advise members that they may request reimbursement of expenses at less than the approved rates, but that no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, rules 14a–13, 14b–1, and 14b–2 under the Act, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for ''reasonable expenses'' incurred. The Commission approved the NYSE's current fee structure on March 25, 2002,[4] following numerous meetings of the Proxy Voting Review Committee (the ''Committee''), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.[5] The Commission found that ''the Committee's recommended fee reductions [for 'large issuers'] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers.'' [6] The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.[7]

The proposed amendments to IM–2260 will provide members with the

[4] Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) (''NYSE Proposal''). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees ''to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate.''

[5] The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to $20.10 per set of material required for ''small issuers'' and $20.05 per set of material required for ''large issuers''; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

[6] *Id.*

[7] Securities Exchange Act Release No. 46146 (June 28, 2002), 67 FR 44902 (July 5, 2002) (''Amex Proposal'').

same schedule of fees that have been adopted by the NYSE and Amex. The proposed amendments to IM–2260 will also permit members to request reimbursement of expenses at less than the rates set forth in IM–2260, but it will require members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM–2260. The proposed rule change also advises members that they are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts), and that they may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. The proposed rule change will continue to provide that a member providing materials under NASD rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies. By conforming its proxy reimbursement guidelines to those adopted by the NYSE and Amex, NASD proposes to adopt reimbursement rates that it believes the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general and with section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change to IM–2260 is designed to accomplish these ends by providing NASD members with rates of reimbursement for expenses incurred in forwarding proxy and other materials that are fair and reasonable and consistent with fees charged by the NYSE and Amex.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary and appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)[10] of the Act and rule 19b–4(f)(6)[11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12]

A proposed rule change filed under rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. NASD has requested that the Commission waive the 30-day pre-operative waiting period because it believes that doing so will be consistent with the protection of investors and public interest.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative as of the date of filing to allow NASD to implement its revised proxy fee schedule immediately.[14] The Commission notes that it has already considered and addressed issues that may be raised by this proposal when it approved a similar proposal by the NYSE, and designated a similar proposal by the Amex as immediately effective upon filing.[15] The Commission further notes that this proposal will allow for consistency in proxy fees between NASD, the NYSE, and, Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under rule 19b–4(f)(6)(iii), NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR–NASD–2003–19 and should be submitted by March 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4696 Filed 2–27–03; 8:45 am]

BILLING CODE 8010–01–P

[15] See NYSE Proposal, *supra* note 4 and Amex Proposal, *supra* note 7. The Commission notes that the NYSE Proposal was published for the full comment period and that the comments received were considered by the Commission and the NYSE.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3479]

Commonwealth of the Northern Mariana Islands (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency effective February

5, 2003, the above-numbered declaration is hereby amended to include Public Assistance for the Islands of Saipan and Tinian within the Commonwealth of the Northern Mariana Islands. Damages were caused by Super Typhoon Pongsona and occurred on December 8, 2002, and continued through December 16, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is February 24, 2003, and for economic injury the deadline is September 24, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 21, 2003.

Hebert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–4730 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Council; Public Meeting

The Wisconsin District Advisory Council (Wisconsin DAC) of the U.S. Small Business Administration will be conducting a meeting on Wednesday, March 19th 2003, 12 noon–1 p.m. at the MMAC Building 743 North Milwaukee Street on the 4th floor, in Milwaukee, Wisconsin. The meeting is open to the public. Seating is limited and is available on a first come, first serve basis. The focus of the meeting will be on the future goals, activities, and operations of the Wisconsin DAC.

Anyone wishing to attend and make an oral presentation to the Board must contact Yolanda Staples-Lassiter, no later than Monday, March 17, 2003 via e-mail or fax. Yolanda Staples-Lassiter, U.S. Small Business Administration, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 400, Milwaukee, WI 53203, (414) 297–1090 phone or (414) 297–3928, fax or e-mail *yolanda.lassiter@sba.gov.*

Candace H. Stoltz,

Committee Management Officer.

[FR Doc. 03–4754 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, March 24, 2003, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than Friday, March 21, 2003 via e-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office, 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or e-mail *marie.record@sba.gov.*

Candace H. Stoltz,

Committee Management Officer.

[FR Doc. 03–4755 Filed 2–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4286]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs, the Special Purpose Islamic Regiment, and the Islamic International Brigade

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that:

1. The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. the Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Shahids (Martyrs));

2. The Special Purpose Islamic Regiment (a.k.a. the Islamic Special Purpose Regiment, a.k.a. the al-Jihad-Fisi-Sabililah Special Islamic Regiment, Islamic Regiment of Special Meaning); and

3. The Islamic International Brigade (a.k.a. the Islamic Peacekeeping Brigade, a.k.a. the Islamic Peacekeeping Army, a.k.a. the International Brigade, a.k.a. Peacekeeping Battalion, a.k.a. International Battalion, a.k.a. Islamic Peacekeeping International Brigade), have committed, or pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 14, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–4781 Filed 2–27–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17–02–005]

Cook Inlet Regional Citizen's Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of recertification.

SUMMARY: The Coast Guard has recertified the Cook Inlet Regional Citizen's Advisory Council for the period covering November 27, 2002 through August 31, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute.

DATES: The Cook Inlet Regional Citizen's Advisory Council is certified through August 31, 2003.

ADDRESSES: You may request a copy of the recertification letter by writing to Commander, Seventeenth Coast Guard District(mor), P.O. Box 25517, Juneau, AK 99802–5517; or by calling 907–463–2807.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Patterson,

Seventeenth Coast Guard District(mor), telephone 907–463–2807.

SUPPLEMENTARY INFORMATION:

Background And Purpose

On November 27, 2002, the Coast Guard recertified the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) through August 31, 2003. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990 (33 U.S.C. 2732), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by Congress, 33 U.S.C. 2732(b).

On September 16, 2002, the Coast Guard published a notice of policy on revised recertification procedures for alternative voluntary advisory groups in lieu of councils at Prince William Sound and Cook Inlet, AK (67 FR 58440, 58441). This revised policy indicated that applicants seeking recertification in 2002 need only submit a streamlined application and public comments would not be solicited prior to recertification.

Upon review of the information submitted by CIRCAC as part of the certification package, it was noted that in an audit of the CIRCAC's financial statements the auditor found that CIRCAC's by-laws and corporate structure aligned with the basic structure for non-profit corporations. The auditor also noted that CIRCAC has proper expenditure measures in place and employs contemporary information technology practices. The auditor performing the audit made a recommendation for improving the financial management of the organization. In particular, the auditor recommended that CIRCAC prepare formal, written policies and procedures for its accounting practices. The Coast Guard agrees and recommends that CIRCAC implement the auditor's recommendation.

Dated: February 6, 2003.

James W. Underwood,

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

[FR Doc. 03–4764 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tay Yoshitani, Executive Director, Port of Oakland, at the following address: 530 Water Street, Oakland, CA 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 12, 2003, the FAA determined that the application to impose and use a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 16, 2003.

The following is a brief overview of the application No. 03–12–C–00–OAK:

Level of proposed PFC: $4.50.

Proposed charge effective date: December 1, 2003.

Proposed charge expiration date: March 1, 2004.

Total estimated PFC revenue: $7,600,000.

Brief Description of the proposed project: Additional Security Expenditures as a Result of September 11, 2001.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31 and Commuters or Small Certificated Air Carriers filing DOT form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application in person at the Port of Oakland.

Issued in Lawndale, California, on February 12, 2003.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–4798 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Diego International Airport, San Diego, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Diego International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.

101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Thella Bowens, Interim Executive Director, San Diego County Regional Airport Authority at the following address: P.O. Box 82776, San Diego, CA 92138–2776. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Diego County Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Milligan, Supervisor Standards Section, Federal Aviation Administration, Airports Division, 15000 Aviation Boulevard, Room 3024, Lawndale, CA 90261, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Diego International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On February 18, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Diego County Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 10, 2003.

The following is a brief overview of the impose and use application No. 03–03–C–00–SAN:

Level of proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: December 31, 2005.

Total estimated PFC revenue: $83,975,730.

Brief description of the proposed project: Replace ARFF Vehicle, Taxiway Improvements, Runway Improvements, Commuter Terminal Apron Improvements, Noise Mitigation, Environmental Remediation, Environmental Studies, Airport Security Improvements, Terminal Improvements, Airport Access Improvements, and Infrastructure Data Management System (Phase 3).

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Diego County Regional Airport Authority.

Issued in Lawndale, California, on February 18, 2003.

Ellsworth Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–4799 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–14116

Applicant: Canadian National Railway, Mr. Kenneth J. Bagby, Signals Supervisor, 3460 Bristol Road, Flint, Michigan 48507.

The Canadian National Railway (CN) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, part 236, section 236.408, to the extent that route locking need not be provided for the ''32nd Street Crossover'' power-operated switches, at milepost 333.28 in the existing traffic control system, at Port Huron, Michigan, on the Flint Subdivision, Midwest Division.

Applicant's justification for relief: The installation is not uncommon in the railroad industry and provides all of the requisite components and safety features of a standard interlocking or an electric lock location that would be found in TCS territory; CN has three similar installations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001.

All Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on February 24, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–4766 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14424, Notice No. 03–2]

Hazardous Materials: Formal Interpretation of Regulations

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Formal interpretation of regulations.

SUMMARY: The Research and Special Programs Administration (RSPA) is

issuing a formal interpretation of the Hazardous Materials Regulations (HMR) identifying when: (1) An airline passenger ''offers'' hazardous materials in carry-on baggage (including items on his/her person) or checked baggage for transportation under Federal hazardous materials transportation law and the HMR, and (2) when an air carrier accepts carry-on baggage (including items on a passenger's person) or checked baggage for transportation under the Federal hazardous materials transportation law and the HMR.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Assistant Chief Counsel for Hazardous Materials Safety, Research and Technology, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION: RSPA issues the HMR (49 CFR parts 171 through 180) as part of its implementation of the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.* From time to time, RSPA's Chief Counsel issues formal interpretations of the HMR which are published in the **Federal Register**. Publication of these interpretations promotes a better understanding of the HMR and improves compliance.

In addition to formal and informal interpretations issued by the Chief Counsel, RSPA's Office of Hazardous Materials Standards provides information and informal clarifications of the HMR on an ongoing basis through a telephonic information center (800–467–4922 or 202–366–4488) and informal written interpretations or clarifications in response to written inquiries. RSPA's informal letters of clarification (and additional information concerning the HMR) are also available through the Hazmat Safety Homepage at *http://hazmat.dot.gov.* The Chief Counsel's formal and informal interpretations are available through the Chief Counsel's homepage at *http://rspa-atty.dot.gov.* In addition, some of RSPA's interpretations and clarifications may be reproduced or summarized in various trade publications. Further information concerning the availability of informal guidance and interpretations of the HMR is set forth in 49 CFR 105.20.

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Background

In general, a hazardous material subject to the HMR is prohibited in the cabin of a passenger-carrying aircraft (49 CFR 175.85) and may only be carried in the cargo compartment of a passenger-carrying aircraft when it fully conforms to the hazard communication, packaging and stowage requirements of the HMR. In order to accommodate the needs of the traveling public, exceptions are provided in 49 CFR 175.10 to allow passengers to carry certain quantities and types of articles, such as medicines and toiletries, in their checked and carry-on baggage (including on one's person). *See* 49 CFR 175.10 for a detailed listing of the materials which passengers are permitted to carry.

Hazardous materials in carry-on baggage and checked baggage are subject to the HMR when offered for transportation in commerce. Section 171.2(a) of 49 CFR provides that ''no person may offer or accept a hazardous material for transportation in commerce unless * * * the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of [the HMR], or an exemption, approval or registration issued under [the HMR] * * *.'' The Secretary of Transportation has delegated to certain agencies within the Department the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who ''knowingly violates'' a requirement in the HMR, including the provision in § 171.2(a) which is discussed above. Section 5123 (a) provides that a person ''acts knowingly'' when (A) the person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

Security concerns have led to enhanced screening of air passengers and their baggage for weapons, explosives, and incendiaries. As a result of this increased focus on passenger carry-on baggage (including items on one's person) and checked baggage, screening personnel are discovering hazardous materials during the screening process. Consequently, there is a need to identify, for purposes of compliance with the HMR, when a passenger ''offers'' a hazardous material for transportation by aircraft in carry-on or checked baggage and when an air carrier ''accepts'' a hazardous material for transportation by aircraft in carry-on or checked baggage.

Interpretation

This formal interpretation identifies, for purposes of the HMR, the point at which: (1) An airline passenger ''offers'' hazardous material in carry-on baggage (including items on his/her person) or checked baggage for transportation in commerce, and (2) an air carrier ''accepts'' hazardous material in carry-on baggage (including items on a passenger's person) or checked baggage for transportation in commerce. This interpretation addresses only passenger carry-on and checked baggage and does not address or apply to cargo shipments. The Federal Aviation Administration (FAA), which has the primary responsibility for enforcing the HMR with regard to air transportation, concurs with this interpretation. Prior advice given by FAA that may be inconsistent with this interpretation is superseded by this formal interpretation. RSPA has coordinated this interpretation with the Transportation Security Administration, which has responsibility for aviation security.

Carry-on items: A passenger in control of carry-on baggage (including items on his/her person) containing a hazardous material offers and represents that the baggage is fit for transportation by aircraft when the passenger tenders the baggage to screening personnel at an airport security screening checkpoint or otherwise attempts to proceed through the checkpoint with the hazardous material on his/her person. A passenger offers carry-on baggage for transportation by placing the baggage on the X-ray machine conveyer belt, handing the baggage to screening personnel, placing the baggage in a bin or tray for examination by screening personnel, or when the passenger physically passes through the security checkpoint with the baggage (including items on his/her person). Screening personnel at the security screening checkpoint do not need to have physical control of the carry-on baggage for an offer to have occurred; simply presenting the baggage for screening at a security screening checkpoint or passing through the checkpoint with the baggage (including items on a passenger's person) is sufficient to constitute an offer.

Carry-on baggage is accepted by an air carrier when the airline accepts the boarding pass of the passenger while boarding the flight. The passenger is responsible for ensuring compliance

with the HMR from the point of offer and at all times until transportation is complete.

Checked baggage: Checked baggage containing a hazardous material is offered to the carrier at the point the passenger presents the baggage for acceptance by the carrier. This can occur at curbside check-in, at the ticket counter at the airport, or when the passenger presents the bag to screening personnel for explosive detection screening as a prerequisite to presentation to the carrier. When the baggage is tendered at curbside check-in or the ticket counter to the air carrier, the baggage is considered to have been accepted when the air carrier issues a baggage claim ticket for the checked baggage.

Accordingly, if a passenger's carry-on baggage or checked baggage contains a hazardous material that does not comply with Federal hazardous materials transportation law or the HMR, and the passenger has tendered the baggage to screening personnel at an airport security screening checkpoint, passed through the checkpoint with the baggage (including items on his/her person), or offered it to the carrier, the passenger may be subject to civil or criminal penalties under Federal hazardous materials transportation law, the HMR, or any other applicable laws or regulations. Likewise, an air carrier that knowingly accepts a passenger's carry-on baggage or checked baggage containing a hazardous material that does not comply with Federal hazardous materials transportation law or the HMR may be subject to civil or criminal penalties under Federal hazardous materials transportation law, the HMR, or any other applicable laws or regulations.

Information Concerning Passengers Who Need Supplemental Oxygen

The above interpretation does not affect the use of oxygen by passengers at airports. Ticketed passengers using their own oxygen on the ground, who do not intend to transport the oxygen because they are receiving oxygen for the flight from the air carrier, are not considered to be offering their oxygen for transportation on an aircraft when they enter or pass through the security screening checkpoint. Passengers may not carry oxygen aboard an aircraft; it must be provided by the aircraft operator (*see* 49 CFR 175.10 and 14 CFR 121.574).

Issued in Washington, DC, on February 25, 2003.

Barbara Betsock,

Acting Chief Counsel.

[FR Doc. 03–4800 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 174X)]

Illinois Central Railroad Company—Abandonment Exemption—in Randolph County, IL

Illinois Central Railroad Company (IC)[1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.45-mile line of railroad between milepost MM 602.55 and milepost 603.0 near Baldwin, in Randolph County, IL. The line traverses United States Postal Service Zip Code 62217.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 30, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 10, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Michael J. Barron, Jr., Illinois Central Railroad Company, c/o Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

IC has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 7, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by February 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 19, 2003.

---

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4551 Filed 2–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–846X and STB Docket No. AB–344 (Sub-No. 2X)]

Illinois Indiana Development Company, LLC—Abandonment Exemption—in LaPorte County, IN; Chicago Southshore & South Bend Railroad—Discontinuance of Service Exemption—in LaPorte County, IN

Illinois Indiana Development Company, LLC (IIDC) and Chicago Southshore & South Bend Railroad (CSS) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for IIDC to abandon and CSS to discontinue service over an approximately 0.6-mile line of railroad from approximately milepost 157.9, near Dickson Street in Michigan City, northwest across Trail Creek to approximately milepost 158.5, near U.S. Highway 12, in LaPorte County, IN. The line traverses United States Postal Service Zip Code 46360.

IIDC and CSS have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on March 30, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 10, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 Nineteenth Street, NW., Fifth Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 5, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IIDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IIDC's filing of a notice of consummation by February 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 21, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–4621 Filed 2–27–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 20, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 31, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0013.

Form Number: PD F 1048 and PD F 2243.

Type of Review: Extension.

Title: Claim for Lost, Stolen or Destroyed U.S. Savings Bonds (1048); and Supplemental Statement for U.S. Savings Bonds (2243).

Description: PD F 1048 and PD F 2243 are used by owner or others having knowledge to request substitute securities or payment of lost, stolen or destroyed securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Respondent: PD F 1048—20 minutes, PD F 2243—5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 26,400 hours.

OMB Number: 1535–0035.

Form Number: PD F 4881.

Type of Review: Extension.

Title: Application for Payment of U.S. Savings Bonds/Notes and/or Related

Checks in an Amount Not Exceeding $1,000 By the Survivor of A Deceased Owner Whose Estate is Not Being Administered.

Description: PD F 4881 is used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,965.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 991 hours.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Type of Review: Extension.

Title: Application by Voluntary Guardian of Incompetent Owner of United States Savings Bonds/Notes.

Description: PD F 2513 is used by voluntary guardian of incompetent bond owner(s) to establish right to act on behalf of incompetent owner.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,650.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 2,600 hours.

OMB Number: 1535–0064.

Form Number: PD F 1980 and PD F 2490.

Type of Review: Extension.

Title: Description of United States Savings Bonds Series HH/H (1980); and Description of United States Bonds/Notes (2490).

Description: PD F 1980 and PD F 2490 are used by owners of United States Savings Bonds/Notes to describe their holdings.

Respondents: Individuals or households .

Estimated Number of Respondents: 19,000.

Estimated Burden Hours Per Respondent: PD F 1980—6 minutes, PD F 2490—6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 1,900 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–4698 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Collection Comment Request; Report of International Transportation of Currency or Monetary Instruments

AGENCY: Financial Crimes Enforcement Network (FinCEN).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 29, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to: FinCEN: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, VA 22183–0039, *Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments.

Comments also may be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text, ''*Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to:

FinCEN: Russell Stephenson, Office of Regulatory Programs, FinCEN at (202) 354–6400.

Customs: Walter Wilkowski, Financial Investigations, 202–927–1469.

SUPPLEMENTARY INFORMATION:

Title: Report of International Transportation of Currency or Monetary Instruments.

OMB Number: 1515–0014.

Form Number: Customs Form 4790.

Abstract: The Bank Secrecy Act, titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically states that ''a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) from a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States.'' 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the Report of International Transportation of Currency or Monetary Instruments (CMIR), U.S. Customs Service Form 4790.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

Current Actions: No changes are being made at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 180,000.

Estimated Time Per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 33,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 21, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4789 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–372–88; INTL–401–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, INTL–372–88, (TD 8632), Section 482 Cost Sharing Regulations (§ 1.482–7); INTL–401–88 (TD 8552), Intercompany Transfer Pricing Regulations Under Section 482 (§§ 1.482–1, 1.482–4).

DATES: Written comments should be received on or before April 29, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: (INTL–372–88) Section 482 Cost Sharing Regulations; (INTL–401–88) Intercompany Transfer Pricing Regulations Under Section 482.

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88; INTL–401–88.

Abstract: The information collections in INTL–372–88 are necessary to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis. INTL–401–88 relates to the pricing of transfers of tangible property, intangible property, or services between related parties to ensure that taxpayers clearly reflect income and to prevent the avoidance of taxes with respect to such transactions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hrs., 51 minutes.

Estimated Total Annual Burden Hours: 7,850 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 20, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–4807 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 2002 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 2002, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Internal Revenue Service, Attn: FOI Reading Room, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, AP:ART, Internal Revenue Service/Appeals, 1099 14th Street, NW., Washington, DC 20005, Telephone (202) 694–1861 (Not a toll free telephone number).

Robert E. Wenzel,

Acting Commissioner of Internal Revenue.

[FR Doc. 03–4806 Filed 2–27–03; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

Correction

In notice document 03–2461 beginning on page 5748 in the issue of Tuesday, February 4, 2003, make the following corrections:

1. On page 5757, under the state ''KENTUCKY'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
KENTUCKY	
* * * * *	* * * * *
BALANCE OF WARREN COUNTY	WARREN COUNTY LESS BOWLING GREEN CITY
* * * * *	* * * * *

2. On page 5759, under the state ''MICHIGAN'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
MICHIGAN	
* * * * *	* * * * *
GLADWIN COUNTY	GLADWIN COUNTY
GOGEBIC COUNTY	GOGEBIC COUNTY
HIGHLAND PARK CITY	HIGHLAND PARK CITY IN WAYNE COUNTY
* * * * *	* * * * *

3. On page 5761, under the state ''NEW JERSEY'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
NEW JERSEY	
* * * * *	* * * * *
BALANCE OF CUMBERLAND COUNTY	CUMBERLAND COUNTY LESS MILLVILLE CITY VINELAND CITY
* * * * *	* * * * *

4. On page 5763, under the state ''NORTH CAROLINA'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
NORTH CAROLINA	
* * * * *	* * * * *
BALANCE OF GASTON COUNTY N.C.	GASTON COUNTY N.C. LESS GASTONIA CITY N.C.
GASTONIA CITY N.C.	GASTONIA CITY N.C IN GASTON COUNTY N.C
* * * * *	* * * * *

5. On page 5765, under the state ''PENNSYLVANIA'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
PENNSYLVANIA	
* * * * *	* * * * *
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY
* * * * *	* * * * *

6. On page 5769, under the state ''UTAH'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
UTAH	
* * * * *	* * * * *
DUCHESNE	DUCHESNE COUNTY
EMERY COUNTY	EMERY COUNTY
* * * * *	* * * * *

7. On the same page, under the state ''VIRGINIA'', correct the table in part to read as follows:

LABOR SURPLUS AREAS—OCTOBER 1, 2002 THROUGH SEPTEMBER 30, 2003

Eligible labor surplus areas	Civil jurisdictions included
* * * * *	* * * * *
VIRGINIA	
* * * * *	* * * * *
DANVILLE CITY	DANVILLE CITY
DICKENSON COUNTY	DICKENSON COUNTY
GALAX CITY	GALAX CITY
* * * * *	* * * * *

[FR Doc. C3–2461 Filed 2–27–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

February 19, 2003.

Correction

In notice document 03–3925 beginning on page 8077 in the issue of Wednesday, February 19, 2003, make the following correction:

On page 8082, in the third column, under the heading **Part 6. Available Funds for Iran-Related Claims**, the last paragraph on the page should be removed.

[FR Doc. C3–3925 Filed 2–27–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 28, 2003

Part II

Environmental Protection Agency

40 CFR Parts 9 and 94

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 94

[AMS–FRL–7448–9]

RIN 2060–AJ98

Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are adopting emission standards for new marine diesel engines installed on vessels flagged or registered in the United States with displacement at or above 30 liters per cylinder. These standards are equivalent to the internationally negotiated standards for oxides of nitrogen and will be enforceable under U.S. law for new engines built on or after January 1, 2004. The certification and compliance program we are adopting is similar to the internationally negotiated program, but contains additional provisions reflecting certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These standards will apply until we adopt a second tier of standards in a future rulemaking. In developing that future rulemaking, which will be completed no later than April 27, 2007, we will consider the state of technology that may permit deeper emission reductions and the status of international action for more stringent standards. We will also consider the application of such a second tier of standards to engines on foreign vessels that enter U.S. ports.

We are also adopting additional standards for new engines with displacement at or above 2.5 liters per cylinder but less than 30 liters per cylinder. These standards, which are currently voluntary, are also equivalent to the internationally negotiated standards for oxides of nitrogen. The standards will apply through 2006. Beginning in 2007, the Tier 2 standards we finalized for these engines in 1999 will go into effect (64 FR 73300, December 29, 1999; 40 CFR part 94).

DATES: This final rule is effective April 29, 2003.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of April 29, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket Number A–2001–11 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B–102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket and Reading Room by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline, (734) 214–4636, *asdinfo@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected Entities

This action will affect companies and persons that manufacture, sell, or import into the United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. Further requirements apply to companies and persons that rebuild or maintain these engines. Affected categories and entities include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	333618	Manufacturers of new marine diesel engines.
Industry	336611	Manufacturers of marine vessels.
Industry	811310	Engine repair and maintenance.
Industry	483	Water transportation, freight and passenger.
Industry	324110	Petroleum refineries.
Industry	422710, 422720	Petroleum Bulk Stations and Terminals; Petroleum and Petroleum Products Wholesalers.

[a] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT.**

Additional Information About This Rulemaking

Emission standards for new marine diesel engines at or above 30 liters per cylinder were considered by EPA in two previous rulemakings, in 1996 and in 1999. The notice of proposed rulemaking for the first rule (for the control of air pollution from new gasoline spark-ignition and diesel compression-ignition marine engines) can be found at 59 FR 55930 (November 1994); a supplemental notice of proposed rulemaking can be found at 61 FR 4600 (February 7, 1996); and the final rule can be found at 61 FR 52088 (October 4, 1996). The notice of proposed rulemaking for the second rule (for the control of air pollution from new marine compression-ignition engines at or above 37 kW) can be found at 63 FR 68508 (December 11, 1998); the final rule can be found at 64 FR 73300 (December 29, 1999). These documents are available on our Web sites, *http://www.epa.gov/otaq/marine.htm* and *http://www.epa.gov/otaq.marinesi.htm.* In addition, we recently adopted emission standards for recreational marine diesel engines (67 FR 68242, November 8, 2003). This final rule relies in part on information obtained for those rulemakings, which can be found in Public Dockets A–92–28, A–97–50, and A–2000–01. Those dockets are incorporated by reference into the docket for this proposal, A–2001–11.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Final Regulatory Support Document, and other rulemaking documents are available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for

internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA–AIR* (either select desired date or use Search features).

2. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

Table of Contents

I. Introduction
A. Background
B. How Is This Document Organized?
C. What Requirements Are We Finalizing?
1. Category 3 Marine Diesel Engines
2. Category 1 and Category 2 Marine Diesel Engines
3. Foreign-Trade Exemption
4. Fuel Controls
D. Why is EPA Taking This Action?
1. What Are the Health and Welfare Effects of Category 3 Marine Diesel Engine Emissions?
2. What Is the Inventory Contribution From the Marine Diesel Engines That Are Subject to This Rule?
E. What Are the Internationally Negotiated Standards and What Is the Status of the U.S. Ratification of Annex VI?
F. Recent European Union Action
G. Statutory Authority
II. Which Engines Are Covered?
A. What is a Marine Vessel?
B. What are Category 1, 2, and 3 Marine Diesel Engines?
C. What is a New Marine Diesel Engine?
1. ''New'' Engines on Vessels Flagged or Registered in the United States
2. ''New'' Engines on Vessels Flagged or Registered Elsewhere
D. What is a New Marine Vessel?
1. Newly Manufactured Vessel
2. Modification of an Existing Vessel with Category 1 or Category 2 Main Propulsion Engines
3. Modification of an Existing Vessel with Category 3 Main Propulsion Engines
E. Is EPA Retaining the Foreign-Trade Exemption?
III. Standards and Technological Feasibility
A. What are the new emission standards?
B. When do the engine emission standards apply?
C. What technologies will engine manufacturers use to meet the Tier 1 emission standards?
D. Voluntary Low-Emission Standards
IV. Future Actions
A. Future Rulemaking for Engine Standards
1. What Is the Timetable for the Future Rule?
2. What Standards Will EPA Consider in the Future Rule?
3. What Technologies Will EPA Consider in the Future Rule?
4. Will the International Community Also Consider More Stringent Standards?
B. Fuel controls
1. Is EPA Adopting Fuel Requirements?
2. What Are the MARPOL Annex VI Fuel Provisions?
3. How Will SO_X Emission-Control Areas Be Designated in the United States?
4. Are There Other Fuel-based Controls That May Be Considered?
V. Demonstrating Compliance
A. Overview of Certification
1. How do I certify my engines?
2. How are these certification requirements different from those of the NO_X Technical Code?
3. How does a certificate of conformity relate to a Statement of Voluntary Compliance or an EIAPP?
4. What are the roles of the engine manufacturer and ship owner after the engine is installed?
B. Other Certification and Compliance Issues
1. How are engine families defined?
2. Which engines are selected for testing?
3. How does EPA treat adjustable parameters?
4. How must engines be labeled?
5. How does EPA ensure durable emission controls?
6. What are the manufacturer's responsibilities for the emission warranty and defect reporting?
7. What are deterioration factors?
8. What requirements apply to in-use maintenance?
9.What requirements apply to rebuilding engines?
10.What are the prohibited acts and related requirements?
11.What general exemptions apply?
12.What regulations apply for imported engines?
13.What are a manufacturer's recall responsibilities?
14.What responsibilities apply to ship owners and operators?
C. Test Procedures for Category 3 Marine Engines
1. What duty cycle do I use to test my engines?
2. How do I account for variable test conditions?
3. How does laboratory testing relate to actual in-use operation?
D. Comparison to NO_X Technical Code Compliance Requirements
1. How are EPA's compliance requirements different from the NO_X Technical Code requirements?
2. Can a manufacturer comply with EPA requirements and Annex VI requirements at the same time?
E. Technical Amendment to 40 CFR Part 94
F. Compliance Issues To Be Considered for Future Rulemaking
1. What are EPA's concerns about parameter adjustment?
2. What are EPA's concerns about off-cycle emissions?
3. What are EPA's concerns about the fuel used for emission testing?
4. What are EPA's concerns about production variability?
VI. Projected Impacts
VII. The Blue Cruise Program
VIII. Public Participation
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction

A. Background

Marine diesel engines can be significant contributors to local ozone, carbon monoxide (CO), and particulate matter (PM) levels, particularly in commercial ports and along coastal areas.[1,2] This rule addresses these air pollution concerns by adopting national emission standards for the first time for marine diesel engines with per-cylinder displacement at or above 30 liters or more that are installed on vessels flagged or registered in the United States.[3] These engines, also known as Category 3 marine diesel engines, are very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships. Category 3 marine diesel engines have not previously been regulated under our nonroad engine programs. This rule also adopts standards for marine diesel engines with per-cylinder displacement at or above 2.5 liters per cylinder but less than 30 liters per

[1] References to diesel-cycle engines, also referred to as ''diesel engines'' in this document are intended to cover a particular kind of engine technology, *i.e.*, compression-ignition combustion. Compression-ignition engines are typically operated on diesel fuel, though other fuels, such as compressed natural gas, may also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline. The requirements set out in this action apply only to compression-ignition engines.

[2] Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and NO_X in the presence of heat and sunlight. Hydrocarbons (HC) are a large subset of VOC, and to reduce mobile source VOC levels we set maximum emission standards for hydrocarbons. VOCs can also be part of the secondary formation of PM.

cylinder installed on vessels flagged or registered in the United States.

The emission-control program we are adopting in this rule is a continuation of the process of establishing emission standards for nonroad engines and vehicles under Clean Air Action section 213(a).[4]

This is our third action for emission standards for marine diesel engines above 37 kW. In our first action, in 1999, we adopted emission standards for commercial marine engines above 37 kilowatts (kW) (64 FR 73300, December 29, 1999; 40 CFR part 94). The standards adopted in that rule consist of mandatory standards, referred to as our Tier 2 standards, that apply to engines above 37 kW with per-cylinder displacement up to 30 liters (also known as Category 1 and Category 2 marine diesel engines).[5] These Tier 2 standards apply to oxides of nitrogen (NO_X), hydrocarbon (HC), PM and CO emissions and go into effect in 2004–2007, depending on engine size. Our Tier 2 marine diesel engine standards are expected to achieve a 32-percent reduction in NO_X emissions for Category 1 and Category 2 marine diesel engines by 2030 relative to uncontrolled levels. The Tier 2 standards for Category 1 and Category 2 marine diesel engines also contain PM standards that are expected to achieve a 26-percent reduction in PM emissions by 2030. We did not adopt mandatory emission standards for Category 3 marine diesel engines in 1999. Manufacturers of those engines were expected to comply voluntarily with internationally negotiated NO_X standards.

In our second action for marine diesel engines above 37 kW, we adopted standards for recreational marine diesel engines (67 FR 68242, November 8, 2002). These numerical standards are identical to those we finalized for commercial marine diesel engines in 1999. However, the engines are tested using a different duty cycle and the effective date for recreational marine diesel engines is 2006–2009, depending on engine size.

This third action for marine diesel engines above 37 kW was proposed on May 29, 2002 (67 FR 37548). At a public hearing on June 13 and during the public comment period, which ended on July 16, 2002, we heard from over 50 commenters. The emission-control program we are adopting in this action follows from the approach described in our proposal, though we have made numerous adjustments in response to the comments and other information received since the proposal.

B. How Is This Document Organized?

After this introductory section, Section II describes the set of engines that will be required to comply with the standards. Section III contains the standards we are finalizing. Section IV describes the future rulemaking we are committing to pursue. Section V describes various compliance provisions. Section VI summarizes the projected impacts of the standards. Section VII gives an update on the Blue Cruise program we described in our proposal. Finally, Sections VIII and IX contain information about how we satisfied our administrative requirements and about the statutory provisions for this final rule.

Additional information on many of these topics can be found in the Final Regulatory Support Document and the Summary and Analysis of Comments. These documents and all the comments we received are in Docket A–2001–11.

The remainder of this section summarizes the new requirements and the air quality need for the rulemaking. We also provide an update on the status of U.S. ratification of MARPOL Annex VI.

C. What Requirements Are We Finalizing?

We are adopting emission standards for new marine diesel engines installed on vessels flagged or registered in the United States. We are adopting standards for the first time for new Category 3 marine diesel engines, beginning in 2004. We are also adopting additional standards for some Category 1 and all Category 2 marine diesel engines, also beginning in 2004. This section presents a brief description of this emission-control program. More details can be found in Sections III and IV of this preamble and in the Final Regulatory Support Document.

1. Category 3 Marine Diesel Engines

Clean Air Act section 213(a)(3) requires EPA to adopt regulations that contain standards concerning certain pollutants reflecting the greatest degree of emission reductions achievable through the application of technology that will be available, taking into consideration the availability and costs of the technology, and noise, energy, safety factors and existing motor vehicle standards. EPA is also to revise these standards from time to time. The emission-control program we are adopting in this rule meets these criteria through a two-part approach. First, we are adopting near-term Tier 1 standards that will go into effect immediately based on readily available emission-control technology. Second, we are adopting regulations that set a schedule for a future rulemaking to assess and adopt an appropriate second tier of standards. We recognize that manufacturers can achieve additional reductions with more lead time than is provided by the Tier 1 standards. They can do this by expanding the use and optimization of in-cylinder controls, combined with the significant emission reductions that may be achievable with advanced technologies such as selective catalytic reduction or water injection. We believe, however, that it is appropriate to defer a final decision on the longer-term Tier 2 standards to a future rulemaking. While there is a certain amount of information available about the advanced technologies at this time, there are several outstanding technical issues concerning the widespread commercial use of these technologies. Deferring the Tier 2 standards to a second rulemaking will allow us to obtain important additional information on the use of the these advanced technologies that we expect to become available over the next few years. This new information may include (1) new developments as manufacturers continue to make various improvements to the technology and address any remaining concerns, (2) data or experience from recently initiated in-use installations using the advanced technologies, and (3) information from longer-term in-use experience with the advanced technologies that will be especially helpful for evaluating the long-term durability of emission controls. We believe the projected time frame for the future rulemaking is appropriate to allow us to make the best use of information that will be available to have a sound technical basis for assessing the technological capabilities of emission-control systems that include

[3] This final rule applies to ''new'' marine diesel engines and to ''new'' marine vessels that include marine diesel engines. In general, a ''new'' marine diesel engine or a ''new'' marine vessel is one that is produced for sale in the United States or that is imported into the United States (*See* section II, below). The emission standards established in this final rule, therefore, will typically apply to marine diesel engines that are installed on vessels flagged or registered in the United States.

[4] Section I of the preamble for our proposal contains an extensive description of the regulatory background for this rulemaking, which we are not repeating here (67 FR 37548, May 29, 2002).

[5] EPA treats voluntary standards equivalent to the internationally negotiated oxides of nitrogen standards as Tier 1 standards. The internationally negotiated standards are contained in MARPOL Annex VI (see footnote 5 and associated text). When they go into force, the internationally negotiated standards will apply to new engines above 130 kW installed on vessels constructed on or after January 1, 2000 and engines that undergo a major conversion on or after January 1, 2000.

advanced technologies. We will then be best situated to make a technology-based decision that maximizes emission reductions from these engines, taking into consideration cost and other appropriate factors.

While deferring adoption of the Tier 2 standards to a future rulemaking is appropriate for the reasons described above, an additional reason supporting this approach is to pursue further negotiations in the international arena to achieve more stringent global emission standards for marine diesel engines. As discussed below, adopting appropriate international standards has the potential to maximize the control of emissions from U.S. and foreign vessels.

The near-term Tier 1 standards we are adopting are equivalent to the internationally negotiated NO_X standards established by the International Maritime Organization (IMO) in Annex VI to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (more commonly referred to as MARPOL or MARPOL 73/78; the standards are referred to as the Annex VI NO_X standards).[6] As explained in Section III below and in the Final Regulatory Support Document, these standards are achievable almost immediately, with less than one year of lead time, because manufacturers are already achieving and certifying to these standards under our Voluntary Statement of Compliance program for Annex VI. These near-term standards are being achieved through the application of currently available technology, including optimized turbocharging, higher compression ratios, and optimized fuel injection. The certification and compliance program we are adopting is similar to the internationally negotiated program, but contains additional provisions reflecting certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These certification requirements are described in Section V of this preamble. These Tier 1 standards are expected to result in negligible costs because engine manufacturers are already producing engines that meet the MARPOL Annex VI NO_X limits. Engine manufacturers should not have to engage in additional research and development to achieve these standards. Recognizing that some additional lead time is needed for manufacturers in some cases, we are including an interim provision that will allow manufacturers to use their Annex VI test data to show compliance with the Tier 1 standards.

We considered, but rejected, setting near-term Tier 1 standards that would require a level of emission control greater than that necessary to meet the MARPOL Annex VI NO_X limits, for a combination of reasons. We concluded that setting more stringent near-term Tier 1 standards would likely delay achieving greater environmental benefits in the longer term. The additional lead time that would be necessary to set a Tier 1 standard based on further use and optimization of in-cylinder control would lead to two separate—and possibly conflicting—design steps, one for Tier 1 and a second for Tier 2. Dividing manufacturers' resources this way has the potential to delay the Tier 2 standards. For example, manufacturers would potentially need to make initial changes to in-cylinder designs, then pursue an additional development program to optimize the in-cylinder technologies for controlling emissions in conjunction with advanced technologies. We believe the best route to achieving the maximum reductions from Category 3 marine engines is a near-term Tier 1 standard based on the use of existing technologies, followed by a Tier 2 rulemaking in the next few years that focuses on designing the optimum combination of in-cylinder and advanced technology to reduce emissions from these engines.

The second phase of our emission-control program for Category 3 marine diesel engines will consist of more stringent standards that reflect the application of advanced emission-control technologies and further optimization of in-cylinder controls. We understand that further use and optimization of in-cylinder control can achieve emission reductions beyond the levels needed to meet the Tier 1 standards. As discussed in the Final Regulatory Support Document, we believe that manufacturers can, with additional lead time, make greater use and optimization of in-cylinder controls to reduce emissions at least 10 to 15 percent below Tier 1 levels. It is not clear at this time that in-cylinder controls alone could reduce emissions 30 percent below Tier 1 levels. However, in combination with advanced technologies, emission reductions should be greater than 30 percent below Tier 1 levels. In the Tier 2 rulemaking, we therefore expect to focus on standards that would be based on achieving greater emission reductions through optimizing in-cylinder controls and incorporating advanced technologies such as SCR or water. As discussed above, adopting Tier 2 standards at this time based only on in-cylinder controls could lead to two separate and possibly conflicting design steps, potentially delaying introduction of advanced emission-control technologies and their anticipated emission reductions.

At this time, however, there are still several outstanding technical issues involving the use of these advanced emission-control technologies. For example, there are technical issues concerning the impacts of fuel sulfur levels on emissions, the ability of these technologies to achieve emission reductions at low engine loads, and their impacts on PM emissions. With regard to fuel-sulfur content, most of the demonstration engines that currently use these technologies are operated on fuel with a sulfur content ranging from 5,000 to 10,000 ppm. However, the average sulfur content of fuel used by Category 3 marine diesel engines is 27,000 ppm, and it can be as high as 45,000 ppm. At this time, it is not clear how engines will perform with this higher sulfur fuel and what types of adjustments will need to be made to accommodate the higher sulfur. Also, it may be the case that this technology will perform well with fuel at 15,000 ppm, which is the maximum sulfur content allowable for ships operating in SO_X Emission Control Areas pursuant to Annex VI. With regard to emissions at low load, some studies suggest that advanced technologies may not perform as well when the engine is not operating at its optimal fuel-consumption rate. This is important because engines typically operate at low load in port. Once we understand this dynamic better we will be able to evaluate the extent to which it can be addressed technically. With regard to PM emissions, some concerns have been raised that using these advanced technologies to control NO_X emissions may raise PM emissions. Again, once we understand this dynamic better we will be able to evaluate the extent to which it can be addressed technically. Part of this analysis will entail developing a method to measure PM emissions from these very large engines. Each of these issues is discussed in greater detail in Section IV and in the Final Regulatory Support Document.

Engine manufacturers are currently working on many of these issues. Water emulsification has been applied for

[6] Annex VI was adopted by a Conference of the Parties to MARPOL on September 26, 1997, but has not yet entered into force. Copies of the conference versions of the Annex and the NO_X Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org*).

some time on the land-based counterparts of these engines, which are primarily used in stationary engines for power generation. Direct water injection and SCR have also been applied in recent years to several engines operating on vessels. These projects are discussed in Section IV and in Chapter 5 of the Final Regulatory Support Document; an Appendix to Chapter 5 provides a list of these vessels. Most of the engines using these technologies have been installed in the past five years. Many of them are on passenger ferries and most are on ships that operate in European waters, with many being delivered only since 1999. To date, the advanced technologies have only been applied in cases where the operating characteristics of the vessels are compatible with the technology. For instance, SCR has primarily been installed on vessels using medium-speed engines, which have higher exhaust temperatures than low-speed engines, and where very low-sulfur fuel is available. Through these projects, engine manufacturers are experimenting with different emission-control techniques and learning about the long-term operation and durability of these systems. These projects will also provide information about the emission levels that can be achieved through the application of these technologies.

Based on these outstanding technical issues, we believe it is not appropriate at this time to attempt to project the engineering answers and solutions to these technical issues. By waiting a few years, we will be able to benefit from the manufacturers' experience as they continue to develop and apply these technologies on marine diesel engines. We can also develop methods to assess the impact of fuel sulfur on emissions, to assess the emission-control potential of these technologies on emissions at low loads, and to measure and address PM emissions. Consequently, we plan to evaluate more stringent Tier 2 standards in a future rulemaking. In the 2004–2005 time frame, engine manufacturers will have five or more years of data on a significant number of vessels. During this period, we will work with manufacturers to learn more about the advanced technologies discussed above and the steps they are taking to resolve operational and technological issues. With this information, we should be in a significantly better position to determine the emission levels that are achievable and appropriate, given appropriate lead time for the use of these advanced technologies.

We have concluded that the standards in this final rule (which are equivalent to the internationally negotiated NO_X standards established under MARPOL Annex VI) are the appropriate controls for the near term. Requiring additional near-term reductions from further use and optimization of in-cylinder controls would potentially delay and disrupt the second tier of standards, which will focus on emission-control systems that rely on optimized in-cylinder controls and advanced technologies to achieve significantly greater reductions. We have also concluded that it is appropriate to defer adoption of Tier 2 standards to a future rulemaking to allow us to take into account several important outstanding technical issues concerning the use of these advanced technologies and address the potential to combine in-cylinder controls with the advanced technologies.

We expect additional information to become available in the next few years that will allow us to more reliably and appropriately determine the level of emission control that is achievable and appropriate for such technologies, given appropriate lead time.

Based on this, we conclude that the near-term Tier 1 emission standards in this final rule satisfy the criteria of Clean Air Act section 213(a)(3) at this time. Section 213(a)(3) directs EPA to promulgate emission standards and from time to time review and revise those standards. This final rule adopts near-term standards and puts EPA on a schedule to review, and if appropriate, revise those standards in accordance with the criteria in section 213(a)(3). We believe this two-step approach is the most appropriate means to address emissions from Category 3 marine engines in the near-term in the face of incomplete information and the significant changes underway in applying emission-reduction technology to very large marine engines.

We are including a regulatory provision in 40 CFR 94.8 that establishes a schedule for a future rulemaking to promulgate additional emission standards for Category 3 marine engines that we determine are appropriate under section 213(a)(3). This rulemaking will reassess the emission standards in light of the developments in and experience with applying emission-reduction technology to Category 3 marine engines. The standards in this final rule will remain in effect until we modify them in a future rulemaking. We are committing to take final action on appropriate standards for marine diesel engines by April 27, 2007, and to issue a proposal no later than approximately one year before. This future rulemaking will allow us to exercise the discretionary authority under Clean Air Act section 213(a)(3), which directs EPA to ''from time to time revise'' regulations under that provision. EPA considers this time as necessary and appropriate to properly take into consideration additional information expected to become available about emerging technologies, as well as any developments in the international negotiations for more stringent emission limits.

In addition to allowing us to benefit from information that engine manufacturers continue to gather on these advanced technologies, delaying adoption of the Tier 2 until a future rule allows us to facilitate negotiations for appropriate consensus international standards. Adoption of international standards has the potential to maximize the level of emission reductions achieved from emission controls on U.S. and foreign vessels. For example, international standards set at an appropriate level would remove the objections to controlling emissions from engines on foreign vessels. Since engines on foreign-flag vessels account for the majority of emissions from Category 3 marine diesel engines impacting U.S. air quality, successful negotiation of international standards that achieve the greatest emission reduction feasible would result in the greatest improvement to air quality here in the U.S. and around the world. Addressing the long-term standards in the future rulemaking could facilitate such international action, but will also allow us to proceed expeditiously on our own if appropriate international standards are not adopted in a timely way.

The United States has already taken a leadership role for more stringent standards at the International Maritime Organization and has requested that organization to begin consideration of a second tier of international standards. Those discussions are likely to begin in 2004, after Annex VI goes into forces, or as part of a review process if enough countries have not ratified it by the end of 2003.

2. Category 1 and Category 2 Marine Diesel Engines

We proposed to adopt a first tier of standards equivalent to the internationally negotiated NO_X limits for marine diesel engines with per-cylinder displacement of 2.5 to 30 liters. We are adopting these standards in this action. By adopting these standards as Tier 1 standards, we are making them mandatory and enforceable for new engines on U.S. vessels. The Tier 1 standards will begin to apply in 2004 and will continue to apply through 2006. Beginning in 2007, the Tier 2

standards we finalized in 1999 will go into effect.

We proposed to apply all the Tier 2 certification and compliance requirements to the proposed Tier 1 standards as well. After considering the public comments, we are finalizing this approach with two exceptions. First, we allow manufacturers to use test data generated using the procedures in the NO_X Technical Code on an interim basis. Second, we will not require manufacturers to perform production-line testing on their Tier 1 engines.

3. Foreign-Trade Exemption

We are eliminating the foreign-trade exemption for all marine diesel engines, which was available for engines installed on U.S. vessels that spend less than 25 percent of total operating time within 320 kilometers of U.S. territory.

4. Fuel Controls

We are not setting standards for the fuel used by marine diesel engines in this final rule. With regard to the residual fuel used by Category 3 marine diesel engines, we remain concerned that regulating fuel sold in the United States would not necessarily ensure that lower-sulfur fuel is used in U.S. waters, since ships could purchase their fuel in other countries. To obtain the benefits of lower-sulfur fuel, we plan to investigate designation of one or more areas in the United States as SO_x Emission Control Areas pursuant to the international process for this purpose. This is described further in Section IV.B.

With regard to the fuel used by Category 1 and Category 2 marine diesel engines, we are considering distillate marine diesel fuel controls as part of the nonroad diesel rule that is currently under development.

D. Why Is EPA Taking This Action?

Category 3 marine diesel engines generate NO_X, HC, PM and CO emissions that contribute to ozone and CO levels above the National Ambient Air Quality Standards (NAAQS) for ozone and CO (*i.e.*, they contribute to ozone and CO nonattainment) as well as adverse health effects associated with ambient concentrations of PM. As described in more detail below and in the Final Regulatory Support Document, Category 3 marine diesel engines accounted for about 1.6 percent of nationwide mobile source NO_X emissions in 2000. They also accounted for about 2.8 percent of nationwide mobile source PM emissions in 2000. These percentages are expected to increase as a result of increased trade and decreases in emissions from other nonroad sources. The contribution of Category 3 marine diesel engines to nationwide mobile source HC and CO levels is small, at 0.1 and 0.02 percent, respectively, in 2000.

The inventory contribution of Category 3 marine diesel engines can be higher on a port-specific basis. We estimate that these engines contribute about 7 percent of mobile source NO_X in Baton Rouge/New Orleans and Wilmington, NC, and about 5 percent in Miami/ Fort Lauderdale and Corpus Christi. These ships can also have a significant impact on inventories in areas without large commercial ports. For example, they contribute about 37 percent of total area NO_X in the Santa Barbara area.

1. What Are the Health and Welfare Effects of Category 3 Marine Diesel Engine Emissions?

There are important public health and welfare concerns related to Category 3 marine diesel engine emissions.[7] This section contains a summary of the general health effects associated with exposure to ozone, PM, and CO. Further information can be found in Chapter 1 of the Final Regulatory Support Document.

a. Ozone. Volatile organic compounds (VOC) and NO_X are precursors in the photochemical reaction which forms tropospheric ozone. Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of VOCs and NO_X in the presence of heat and sunlight. Hydrocarbons are a large subset of VOC, and to reduce mobile-source VOC levels we set maximum emission limits for hydrocarbon and particulate emissions.

Based on a large number of studies, we have identified several key health effects caused when people are exposed to levels of ozone found today in many areas of the country. A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at a greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for individuals with asthma, worsening of symptoms, decrements in lung function, and increased medication use, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems.

In addition to the health effects described above, there exists a large body of scientific literature that shows that harmful effects can occur from sustained levels of ozone exposure at low levels.[8] Studies of prolonged exposures, those lasting about 7 hours, show health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. The health effects at these levels of exposure include transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation.

The current primary and secondary ozone National Ambient Air Quality Standard (NAAQS) is 0.12 ppm daily maximum 1-hour concentration, not to be exceeded more than once per year on average. EPA is replacing the previous 1-hour ozone standard with a new 8-hour standard. The new standard is set at a concentration of 0.08 parts per million (ppm), and the measurement period is 8 hours. Areas are allowed to disregard their three worst measurements every year and average performance over three years to determine if they meet the standard.

[7] Sections II and VI of the preamble for our proposal contain an extensive description of the air quality problems we are addressing in this rulemaking, which we are not repeating here.

[8] Additional information about these studies can be found in Chapter 2 of ''Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements,'' December 2000, EPA420–R–00–026. Docket No. A–2001–11, Document II–A–55. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents.*

That is, the standard is set by the 4th highest maximum 8-hour concentration.

Ground level ozone today remains a pervasive pollution problem in the United States. About 51 million people live in areas with design values above the level of the 1-hour ozone standard based on three years of data (1999–2001). In addition, about 111 million people live in areas with design values above the 8-hour ozone standard based on those three years of data. Approximately 61 million of these people live in areas with design values above the 8-hour standard but are below the design standard for the 1-hour ozone standard (*i.e.*, they are attaining the 1-hour standard). The remainder of these people live in areas with design values above the 8-hour ozone standards but are above the design value for the 1-hour ozone standard (*i.e.*, they are not attaining the 1-hour standard).[9] This represents 291 counties with design values above the level of the 8-hour standard.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels. Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time ozone levels in 11 metropolitan areas with 7 million people have increased.[10] Regionally, California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase. The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities.

b. Particulate Matter. Category 3 marine engines contribute to ambient levels of particulate matter through direct emissions of particulate matter, especially sulfates.

Particulate matter represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to several sources including mobile sources) in contributing to a series of health effects.[11] The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Exposure to fine particles is closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States. Other environmental impacts occur when particles deposit onto soils, plants, water or materials. For example, particles containing nitrogen and sulphur that deposit on to land or water bodies may change the nutrient balance and acidity of those environments. Finally, PM causes soiling and erosion damage to materials, including culturally important objects such as carved monuments and statues. It promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone.

There are two indicators related to PM NAAQS. The first indicator is PM_{10}, and the second is $PM_{2.5}$. Concentrations above the $PM_{2.5}$ standard are much more widespread than are violations of the PM_{10} standard, and emission reductions needed to attain the $PM_{2.5}$ standards will also lead to attainment of the PM_{10} standards. The NAAQS for PM_{10} was established in 1987. According to these standards, the short term (24-hour) standard of 150 $\mu g/m^3$ is not to be exceeded more than once per year on average over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 50 $\mu g/m^3$ over three years. Recent PM_{10} monitoring data indicates that there are 8 serious and 58 moderate PM_{10} nonattainment areas with about 30 million people in 63 mainly western counties. The NAAQS for $PM_{2.5}$ indicator was established in 1997. According to these standards, the short term (24-hour) standard is set at 65 $\mu g/m^3$ based on the 98th percentile averaged over three years. The long-term standard specifies an expected annual arithmetic mean not to exceed 15 $\mu g/m^3$ over three years.

Current $PM_{2.5}$ monitored values for 1999–2001, which cover about a quarter of the nation's counties, indicate that at least 65 million people in 129 counties live in areas where design values of ambient fine particulate matter levels are at or above the $PM_{2.5}$ NAAQS. Three years of complete data are required to make regulatory determinations of attainment or nonattainment but, based on more limited available data, there are an additional 9 million people in 20 counties where levels exceeding the NAAQS are being measured, but there are insufficient data at this time to make an official estimate of the design value. In total, this represents 39 percent of the population in the areas with monitors.[12] To estimate the current number of people who live in areas where long-term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ but for which there are no monitors, we can use modeling performed for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control rule (also called the ''HD07'' rule) described

[9] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, ''Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter,'' December 3, 2002, Air Docket A–2001–11, Document No. IV–B–3.

[10] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28. This document is available at *http://www.epa.gov/oar/aqtrnd98.* Relevant pages of this report can be found in Memorandum to Air Docket A–2000–01 from Jean Marie Revelt, September 5, 2001, (incorporated into Docket A–2001–11 at Document II–A–58).

[11] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA452–R–96–013. Docket No. A–2001–11, Document II–A–52. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm.*

[12] Memorandum to Docket A–2001–11 from Fred Dimmick, Group Leader, Air Trends Group, ''Summary of Currently Available Air Quality Data and Ambient Concentrations for Ozone and Particulate Matter,'' December 3, 2002, Air Docket A–2001–11, Document No. IV–B–3.

elsewhere.[13] At that time, we conducted 1996 base year modeling to reproduce the atmospheric processes resulting in formation and dispersion of $PM_{2.5}$ across the U.S. This 1996 modeling included emissions subject to this final rule. According to our national model predictions, there were a total of 76 million people (1996 population) living in areas with modeled annual average $PM_{2.5}$ concentrations at or above 16 μg/m³ (29 percent of the population).[14]

While the final implementation process for bringing the Nation's air into attainment with the $PM_{2.5}$ NAAQS is still being completed, the basic framework is well defined. EPA's current plans call for designating $PM_{2.5}$ nonattainment areas in late-2004. Following designation, section 172(b) of the Clean Air Act allows states up to three years to submit a revision to their state implementation plan (SIP) that provides for the attainment of the $PM_{2.5}$ standards. We expect states to submit these SIPs in late-2007. Section 172(a)(2) of the Clean Air Act requires that these SIP revisions demonstrate that the nonattainment areas will attain the $PM_{2.5}$ standards as expeditiously as practicable but no later than five years from the date that the area was designated nonattainment. However, based on the severity of the air quality problem and the availability and feasibility of control measures, the Administrator may extend the attainment date ''for a period of no greater than 10 years from the date of designation as nonattainment.'' Therefore, we expect that areas will be ultimately be required to attain the $PM_{2.5}$ air quality standard in the 2009 to 2014 time frame.

c. Diesel Exhaust. Diesel emissions are of concern beyond their contribution to ambient PM. There have been health studies specific to diesel exhaust emissions indicating that potential hazards to human health are specific to this emission source. For chronic exposure, these hazards included respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility. The chemical composition of diesel exhaust includes several hazardous air pollutants, or air toxics.

EPA recently released its final ''Health Assessment Document for Diesel Engine Exhaust'' (the Diesel HAD).[15] There, we concluded that diesel exhaust is likely to be carcinogenic to humans by inhalation and environmental exposures in accordance with the revised draft 1996/1999 EPA cancer guidelines. A number of other agencies (*e.g.*, National Institute for Occupational Safety and Health, the International Agency for Research on Cancer, the World Health Organization, California EPA, and the U.S. Department of Health and Human Services) have made similar determinations.

EPA concluded in the Diesel HAD that it is not possible to currently calculate a cancer unit risk for diesel particles due to a variety of factors that limit the current studies such as lack of adequate dose-response relations between exposure versus cancer incidence. Even though EPA does not have a carcinogenic potency with which to accurately estimate the carcinogenic impact of diesel exhaust, the likely hazard to humans together with the potential for significant environmental risks leads us to conclude that diesel exhaust emissions should be reduced from nonroad engines in order to protect public health.

d. Carbon Monoxide. Carbon monoxide is a colorless, odorless gas produced through the incomplete combustion of carbon-based fuels. Carbon monoxide enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

High concentrations of CO generally occur in areas with elevated mobile-source emissions. Peak concentrations typically occur during the colder months of the year when mobile-source CO emissions are greater and nighttime inversion conditions are more frequent. This is due to the enhanced stability in the atmospheric boundary layer, which inhibits vertical mixing of emissions from the surface.

The current primary NAAQS for CO are 35 parts per million for the one-hour average and 9 parts per million for the eight-hour average. These values are not to be exceeded more than once per year. Air quality carbon monoxide value is estimated using EPA guidance for calculating design values. In 1999, 30.5 million people (1990 census) lived in 17 areas designated nonattainment under the CO NAAQS.[16]

Nationally, significant progress has been made over the last decade to reduce CO emissions and ambient CO concentrations. Total CO emissions from all sources have decreased 16 percent from 1989 to 1998, and ambient CO concentrations decreased by 39 percent. During that time, while the mobile source CO contribution of the inventory remained steady at about 77 percent, the highway portion decreased from 62 percent of total CO emissions to 56 percent while the nonroad portion increased from 17 percent to 22 percent.[17] Over the next decade, we would expect there to be a minor decreasing trend from the highway segment due primarily to the more stringent standards for certain light-duty trucks (LDT2s).[18] CO standards for passenger cars and other light-duty trucks and heavy-duty vehicles did not change as a result of other recent rulemakings.

e. *Environmental Effects.* In addition to the health and welfare concerns just described, Category 3 marine diesel engines can contribute to visibility degradation, haze, acid deposition, and eutrophication and nitrophication. Further information on these effects can

[13] See the Final Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (EPA420–R–00–026, December 2000). Docket No. A–2001–11, Document II–A–55. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents.*

[14] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, ''Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years,'' December 6, 2000; Docket No. A–2001–11, Document II–A–61.

[15] U.S. EPA (2000) Health Assessment Document for Diesel Exhaust: SAB Review Draft. EPA/600/8–90–057E Office of Research and Development, Washington DC. This document is available electronically at *http://cfpub.epa.gov/ncea/cfm/dieslexh.cfm.*

[16] National Air Quality and Emissions Trends Report, 1999, EPA, 2001, at Table A–19. This document is available at *http://www.epa.gov/oar/aqtrnd99.* The data from the Trends report are the most recent EPA air quality data that have been quality-assured. A copy of this table can also be found in Docket No. A–2001–11, Document II–A–59.

[17] National Air Quality and Emissions Trends Report, 1998, March, 2000; this document is available at *http://www.epa.gov/oar/aqtrnd98.* National Air Pollutant Emission Trends, 1900–1998 (EPA–454/R–00–002), March, 2000. These documents are available at Docket No. A–2001–11, Document II-A–60. *See also* Air Quality Criteria for Carbon Monoxide, U.S. EPA, EPA 600/P–99/001F, June 2000, at page 3–10; Docket No. A–2001–11, Document II–A–56. This document is also available at *http://www.epa.gov/ncea/coabstract.htm.*

[18] LDT2s are light light-duty trucks greater than 3750 pounds loaded vehicle weight, up through 6000 pounds gross vehicle weight rating.

be found in Chapter 1 of the Final Regulatory Support Document.

2. What Is the Inventory Contribution From the Marine Diesel Engines That Are Subject to This Rule?

Category 3 marine diesel engines contribute to the health and welfare effects described above through their NO_X, PM, HC, and CO emissions. These emissions are summarized in this section. To estimate these inventory impacts, we used baseline estimates developed under contract with E. H. Pechan and Associates, Inc.[19] Inventory estimates were developed separately for vessel traffic within 25 nautical miles of port areas and vessel traffic outside of port areas but within 175 nautical miles of the coastline. The inventories include all Category 3 traffic, including that on the Great Lakes. Different techniques were used to develop the port and non-port inventories. For port areas we developed detailed emissions estimates for nine specific ports using port activity data including port calls, vessel types and typical times in different operating modes. Emission estimates for all other ports were developed by matching each of those ports to one of the nine specific ports already analyzed based on characteristics of port activity, such as predominant vessel types, harbor draft and region of the country. The detailed port emissions were then scaled to the other ports based on relative port activity. We developed non-port emission inventories using cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors. More detailed information regarding the development of the baseline emission inventories can be found in Chapter 6 of the Final Regulatory Support Document.

In our inventory estimates work for the proposal we included all Category 3 vessel emissions within 175 nautical miles of the U.S. coastline on the assumption that emission transport would bring these emissions on to shore and affect U.S. ambient air quality. We requested comment on the transport issue, including whether 175 nautical miles was the appropriate distance from shore to consider or whether we should consider a range different from 175 nautical miles as our primary scenario, and whether we should consider different distances from the coast for different areas of the country. We also asked if there was additional information available to help us assess the emission transport issue. In general, the comments received were supportive of including all emissions within 175 nautical miles of the coast in the national emission inventory. While some commenters questioned this distance, we received no substantial new data or information suggesting that a different distance would be more appropriate or that would help us determine what distance from shore we should use in our inventory analysis.

For the purpose of this final rule, we are including all Category 3 vessel emissions within 175 nautical miles of the U.S. coast in our emission inventory estimates. However, we acknowledge that this emission transport issue is complex and requires further investigation. For example, as we noted in the proposal for this rule, the U.S. Department of Defense (DoD) has presented some information to us that suggests a different, shorter (offshore distance) limit be established rather than the proposed 175 nautical miles as the appropriate location where emissions from marine vessels would affect on-shore air quality. DoD's modeling work on the marine vessels issue in Southern California led them to conclude that emissions within 60 nautical miles of shore could make it back to the coast due to eddies and the nature of the sea-breeze effects. They note that this distance seems to be confirmed by satellite data showing a distinct tendency for a curved line of demarcation separating the offshore (unobstructed) or parallel ocean wind flow from a region of more turbulent, recirculated air that would impact on-shore areas. That curved line of demarcation was close to San Nicolas Island, which is about 60 nautical miles offshore. Studies and published information on other coastal areas in California indicates that they experience somewhat a narrower (perhaps 30 nautical miles) region of ''coastal influence.'' Nevertheless, commenters from California support a 175 nautical-mile boundary.

Because of the continued data and modeling uncertainties surrounding this issue, we intend to investigate this issue as part of our future rule. As part of this investigation, we will consider the special characteristics of emission transport in separate parts of the country. For example, we expect that the Gulf Coast and East Coast areas of the United States would have their own unique meteorological conditions that might call for different lines of demarcation between on-shore and off-shore effects due to different prevailing winds in those parts of the country.

We also requested comment on both our future growth estimates and our analysis of emissions from U.S. versus foreign vessels. Commenters suggested that the overall growth that we projected was fine, but that the U.S. vessel contribution to future inventories would likely not change and that all of the future growth would be due to increased foreign vessel traffic. We have modified the future U.S. and foreign vessel emissions split accordingly. Further, in response to comments received and new port calls data we have modified our overall estimates of the relative contributions of U.S. and foreign vessels to be more heavily weighted toward foreign vessels. A complete discussion of these changes to the inventories can be found in the Regulatory Support Document and the Summary and Analysis of Comments.

Baseline emission inventory estimates for Category 3 marine diesel engines in 2000 are summarized in Table I.D–1 in the context of other emission sources. This table shows the contributions of the different mobile-source categories to the overall national mobile-source inventory. Of the total emissions from mobile sources, Category 3 marine diesel engines contributed about 1.6 percent of NO_X and 2.8 percent of PM emissions in the year 2000.

Our emission projections for Category 3 marine diesel engines in 2030 show how emissions from these engines are expected to increase over time after implementation of Tier 1/MARPOL Annex VI NO_X limits. The projections for 2030 are summarized in Table I.D–2 and indicate that Category 3 marine diesel engines are expected to contribute 8.9 percent NO_X and 7.3 percent of PM emissions in the year 2030. Population growth and the effects of other regulatory control programs are factored into these projections. The relative contribution of Category 3 marine diesel engines increases between 2000 and 2030 largely because we have adopted requirements that will substantially reduce emissions from most other categories of nonroad engines. Note that the effectiveness of all control programs is offset by the anticipated growth in engine populations.

[19] ''Commercial Marine Emission Inventory Development.'' E. H. Pechan and Associates, Inc. and ENVIRON International Corporation. April 2002. Air Docket A–2001–11, item II–A–67.

TABLE I.D–1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2000

[thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to new standards (U.S. flagged commercial marine—Category 3)	28	0.2	1	0.0	2	0.0	2.5	0.4
Commercial Marine CI—Category 3 (U.S. and foreign)	214	1.6	9	0.1	19	0.02	19.7	2.8
Commercial Marine CI—Categories 1 and 2	703	5.2	22	0.3	103	0.1	20	2.9
Highway Motorcycles	8	0.1	84	1.1	331	0.4	0.4	0.1
Nonroad Industrial SI>19 kW	308	2.3	226	3.1	1,734	2.3	1.6	0.2
Recreational SI	5	0.0	418	5.7	1,120	1.5	12.0	1.7
Recreation Marine CI	38	0.3	1	0.0	6	0.0	1	0.1
Marine SI Evap	0	0.0	100	1.4	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.6	2,144	2.8	38	5.4
Nonroad SI <19 kW	106	0.8	1,460	19.8	18,359	24.2	50	7.1
Nonroad CI	2,625	19.6	316	4.3	1,217	1.6	253	35.9
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,231	39	3,391	46	25,152	33	426	60
Total Highway	7,981	60	3,811	52	49,813	66	240	34
Aircraft	178	1	183	3	1,017	1	39	6
Total Mobile Sources	13,389	100	7,385	100	75,982	100	705	100
Total Man-Made Sources	24,532	.....	18,246	.....	97,735	.....	3,102	
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	78	.....	23	

TABLE I.D–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2030

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Total for engines subject to new standards (U.S. flagged commercial marine—Category 3)[a]	28	0.5	1	0.0	2	0.0	2.5	0.3
Commercial Marine CI—Category 3 (U.S. and foreign)	531	8.9	26	0.5	57	0.05	54.0	7.3
Commercial Marine CI—Categories 1 and 2	680	11.4	26	0.5	137	0.1	20.0	2.7
Highway Motorcycles	17	0.3	172	3.4	693	0.7	1.0	0.1
Nonroad Industrial SI > 19 kW	44	0.7	17	0.3	265	0.3	2.0	0.3
Recreational SI	20	0.3	294	5.8	1,843	1.9	10.5	1.4
Recreation Marine CI	52	0.9	2	0.0	11	0.0	1.4	0.2
Marine SI Evap	0	0.0	122	2.4	0	0.0	0	0.0
Marine SI Exhaust	64	1.1	269	5.3	2,083	2.1	29	3.9
Nonroad SI < 19 kW	126	2.1	1,200	23.7	32,310	33.3	93	12.6
Nonroad CI	1,994	33.4	158	3.1	1,727	1.8	306	41.6
Locomotive	531	8.9	30	0.6	119	0.1	18	2.4
Total Nonroad	4,059	68	2,316	46	39,245	40	535	73
Total Highway	1,648	28	2,496	49	56,303	58	158	22
Aircraft	262	4	262	5	1,502	2	43	6
Total Mobile Sources	5,969	100	5,074	100	97,050	100	736	100
Total Man-Made Sources	16,177	.....	16,094	.....	121,428	.....	3,297	.....

TABLE I.D–2.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE-SOURCE CATEGORIES IN 2030—Continued

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source	Tons	Percent of mobile source
Mobile Source percent of Total Man-Made Sources	37	.....	32	.....	80	.....	22	.....

[a] These inventories are the same as for 2000 because, based on comments received, we assumed no future increase in U.S. domestic trade.

Further analysis suggests that Category 3 marine diesel engines contribute more significantly in individual port areas. For example, we estimate that these engines contribute about 7 percent of mobile-source NO_X in the Metropolitan Statistical Areas (MSA) of Baton Rouge/New Orleans and Wilmington NC, about 5 percent of mobile-source NO_X in the Miami/ Fort Lauderdale and Corpus Christi MSAs, and about 4 percent in the Seattle/ Tacoma/Bremerton/Bellingham MSA.

In addition, these ships can have a significant impact on inventories even in areas without large commercial ports. For example, Santa Barbara estimates that engines on ocean-going marine vessels currently contribute about 37 percent of total NO_X in their area. These emissions are from ships that transit the area, and ''are comparable to (even slightly larger than) the amount of NO_X produced onshore by cars and truck.'' [20] By 2015 these emissions are expected to increase 67 percent, contributing 61 percent of Santa Barbara's total NO_X emissions. This mix of emission sources led Santa Barbara to point out that they will be unable to meet air quality standards for ozone without significant emission reductions from these vessels, even if they completely eliminate all other sources of pollution.

E. What Are the Internationally Negotiated Standards and What Is the Status of the U.S. Ratification of Annex VI?

In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the IMO initiated development of international standards for NO_X, SO_x, and a variety of other air emissions arising from marine vessel operations.[21,22] As a result of these discussions, Annex VI was drafted between 1992 and 1997. The Annex VI engine emission standards cover only NO_X emissions; there are no restrictions on PM, HC, or CO emissions. They are based on engine speed and apply to engines above 130 kW. These standards are set out in Table III.A–1. Originally, these standards were expected to reduce NO_X emissions by 30 percent when fully phased in. More recent analysis by EPA, based on newly estimated emission factors for these engines, indicates an expected reduction on the order of only 20 percent when compared to uncontrolled emissions by 2030 when the standards are fully phased-in. The EPA inventory analysis is described in more detail in the Final Regulatory Support Document.

The Annex VI NO_X standards apply to each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000. The Annex does not distinguish between marine diesel engines installed on recreational or commercial vessels; all marine diesel engines above 130 kW are subject to the standards regardless of the type of vessel they are used on, and the standards apply to engines installed on vessels only in domestic service as well as to engines on vessels engaged in international voyages. The test procedures to demonstrate compliance are set out in the Annex VI NO_X Technical Code.[23] They are based on ISO 8178 and are performed using distillate fuel. Engines can be pre-certified or certified after they are installed on a vessel. After demonstrating compliance, pre-certified engines would receive an Engine International Air Pollution Prevention (EIAPP) certificate. This document, to be issued by the Administration of the flag country, is needed by the ship owner as part of the process of demonstrating compliance with all the provisions of Annex VI and obtaining an International Air Pollution Prevention (IAPP) certificate for the vessel once the Annex goes into force. The Annex also contains engine compliance provisions based on a survey approach. These survey requirements would apply after the Annex goes into force. An engine is surveyed right after it is installed, every five years after installation, and at least once between five-year surveys. Engines are not required to be tested as part of a survey, however. The surveys can be done by a parameter check, which can be as simple as reviewing the Record Book of Engine Parameters that must be maintained for each engine and verifying that current engine settings are within allowable standards.

After several years of negotiation, the Parties to MARPOL adopted a final version of Annex VI at a Diplomatic Conference on September 26, 1997. However, it will not enter into force until twelve months after the date on which not less than fifteen member states, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified the agreement. To date, more than four years after it was adopted, the Annex has been ratified by only 6 countries representing about 26 percent of the world's merchant shipping.[24]

The Annex requires that engines installed on a ship constructed on or after January 1, 2000 must comply with the specifications set forth in Regulation 13 of the Annex and the NO_X Technical Code. In addition, ship owners must bring existing engines into compliance if the engines undergo a major conversion on or after that date.[25]

[20] Memorandum to Docket A–2001–11 from Jean Marie Revelt, *Santa Barbara County Air Quality News,* Issue 62, July-August 2001 and other materials provided to EPA by Santa Barbara County,'' March 14, 2002. Air Docket A–2001–11, Document No. II–A–47.

[21] The Annex covers several aspects air emissions from marine vessels: ozone-depleting substances, NO_X, SO_x, VOCs from tanker operations, incineration, fuel oil quality. There are also requirements for reception facilities and platforms and drilling rigs.

[22] To obtain copies of this document, *see* Footnote 5, above.

[23] To obtain copies of this document, *see* Footnote 5, above.

[24] The countries that have ratified Annex VI are Sweden, Norway, Bahamas, Singapore, Marshall Islands, and Liberia. Information about Annex VI ratification can be found at *http://www.imo.org* (look under Conventions, Status of Conventions—Complete List).

[25] As defined in Regulation 13 of Annex VI, a major conversion means either (i) the engine is

Although the Annex has not yet entered into force and is not yet legally binding, it is widely recognized that the vast majority of marine diesel engines manufactured and installed after January 1, 2000 meet the requirements of the Annex. To facilitate implementation while the Annex is not yet in force and to allow engine manufacturers to certify their engines before the Annex goes into force, we have set up a process for manufacturers to obtain a Statement of Voluntary Compliance.[26] Once Annex VI goes into effect for the United States we will develop a process by which an EPA-issued Statement of Voluntary Compliance can be exchanged for an EIAPP. It should be noted that an engine certificate (EIAPP) or Statement of Voluntary Compliance for an engine installed on a U.S. vessel must be issued by the U.S. EPA. Marine classification or survey societies are not authorized to issue such certificates on behalf of the U.S. government for U.S. vessels.

The U.S. government has prepared the appropriate documents for the President to submit Annex VI to the Senate for its advice and consent to ratification. Besides setting standards for NO_X emissions, Annex VI regulates ozone-depleting emissions, sulfur oxides emissions and shipboard incineration, and contains other environmentally protective measures. In transmitting Annex VI to the Senate, the Administration will work with Congress on new legislation to implement the Annex. The United States government also supports a new effort to revise the Annex VI standards to include a second tier of NO_X standards taking into account the emission-reduction potential of new control technologies. Should the Senate provide its advice and consent to ratification of the Annex, the United States will continue its leadership in promoting environmentally responsible international emission standards at the IMO and recognize the role the IMO plays in protecting the world's marine environment from pollution. As described in Section IV.A.4, we have already requested the Marine Environment Protection Committee to begin consideration of more stringent NO_X emission standards for marine diesel engines. In addition, once the Annex goes into force, amendment of NO_X standards to include a second tier of standards will be made easier through the tacit amendment process that would then apply.

F. Recent European Union Action

In November 2002, the European Union adopted a new strategy to address sulfur emissions from marine engines by reducing the sulfur content of marine fuels used in the European Union. The strategy consists of two documents: A Communication from the Commission to the European Parliament and the Council—A European Union strategy to reduce atmospheric emissions from seagoing ships; and a Proposal for a Directive of the European Parliament and of the Council—amending Directive 1999/32/EC as regards the sulphur content of marine fuel.[27] The strategy contains provisions to push the IMO for more stringent NO_X limits for marine diesel engines. It also encourages the development of a Clean Marine award scheme and market-based instruments to promote emission reductions.

The proposal has two main provisions. The first is a 15,000 ppm sulfur content limit that would apply to the fuel used by all oceangoing vessels in the North Sea, English Channel, and Baltic Sea, and to all regular passenger vessels operating in the EU by 2007. This provision is consistent with the SO_x Emission Control Areas designated under MARPOL Annex VI. The second provision would require ships to use fuel with a maximum sulfur content of 2,000 ppm (0.2%) while they are at berth in ports inside the European Union. This provision is intended to reduce sulfur and particulate matter emissions in populated areas. The analysis accompanying the fuel sulfur proposal estimates that the proposed standards will reduce SO_2 emissions by 507,000 metric tons and PM emissions by 8,000 metric tons, saving about 2,000 lives a year. These benefits are monetized at 2.7 billion Euros. The costs, which they note are likely to be born by shipowners through increased fuel prices, is estimated to be 1.07 billion euros per year.

The strategy was finalized on November 20, 2002. The strategy and communication documents will be sent to the European Parliament and Council. The proposal will be discussed in these legislative bodies, and negotiations are anticipated to take about two years.

G. Statutory Authority

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by section 213(a) of the Clean Air Act (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of NO_X, volatile organic compounds (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that marine diesel engines rated over 37 kW cause or contribute to such air pollution (*see also* the preamble to the proposed rule).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) of the Act authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. We have determined that marine diesel engines rated over 37 kW cause or contribute to such air pollution. That finding, which covers PM, was made in our 1999 rulemaking (December 29, 1999, 64 FR 73300; *see also* the preamble to that proposed rule, December 11, 1998, 63 FR 68508).

Clean Air Act section 307(d) applies to this final rule, as provided by section 307(d)(1)(V) (42 U.S.C. 7607(d)(1)(V)).

II. Which Engines Are Covered?

The standards we are adopting in this action will apply to new marine diesel engines installed on vessels flagged or registered in the United States. To clarify this scope of application, we are extending the definitions contained in 40 CFR 94.2 to apply to all sizes of marine diesel engines, no longer excluding those with per-cylinder displacement at or above 30 liters. According to those definitions, a marine diesel engine is subject to the standards if it is:

replaced by a new engine, (ii) it is substantially modified, or (iii) its maximum continuous rating is increased by more than 10 percent. Any existing engine that undergoes a major conversion on or after January 1, 2000 would be required to comply with the Annex VI NO_X limits. Note that EPA's marine diesel engine emission control program does not have a similar provision for marine diesel engines.

[26] For more information about our voluntary certification program, see ''Guidance for Certifying to MARPOL Annex VI,'' VPCD–99–02. This letter is available on our Web site: *http://www.epa.gov/otaq/regs/nonroad/marine/ci/imolettr.pdf* and in Docket A–2001–11, Document No. II–B–01.

[27] More information on the European Union strategy can be found at *http:www.europa.eu.int/comm/environment/air/transport.htm#3.*

• Manufactured after the emission standards become effective, whether it is made in the United States or is imported;

• Installed for the first time in a marine vessel flagged or registered in the United States after having been used in another application subject to different emission standards (or exempt from emission standards); or

• Installed on a new vessel flagged in the United States.

The standards will apply to new marine diesel engines subject to this rule regardless of how they are used. In other words, engine manufacturers will no longer be able to obtain an exemption for engines used on vessels engaged in foreign trade (defined as vessels flagged or registered in the United States that would spend less than 25 percent of total operating time within 320 kilometers of U.S. territory). This exemption was generally targeted at auxiliary engines, which are invariably less than 30 liters per cylinder.

In the remainder of this section we discuss the scope of application of this final rule in greater detail.

A. What Is a Marine Vessel?

For the purpose of our marine diesel engine standards, ''marine vessel'' has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3 (*see* 40 CFR 94.2). According to that definition, the word ''vessel'' includes ''every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.''

B. What Are Category 1, 2, and 3 Marine Diesel Engines?

In our 1999 commercial marine diesel engine rule, we defined ''marine engine'' as an engine that is installed or intended to be installed on a marine vessel. We also differentiated between three types of marine diesel engines. As explained in that rule, this approach is necessary because marine diesel engines are typically derivatives of land-based diesel engines and those land-based engines are not all subject to the same numerical standards, test procedures, and effective dates.

The definitions for the different categories of marine diesel engines are contained in 40 CFR 94.2. Category 1 marine diesel engines, those having a rated power greater than or equal to 37 kilowatts and a per-cylinder displacement less than 5 liters, are similar to land-based nonroad engines used in construction and farm equipment. Category 2 marine diesel engines, those with per-cylinder displacement at or above 5 liters but less than 30 liters, are most often similar to locomotive engines. Category 1 and Category 2 marine diesel engines are used as propulsion engines (*i.e.,* an engine that moves a vessel through the water or directs the movement of a vessel (40 CFR 94.2)) on tugboats, fishing vessels, supply vessels, and smaller cargo vessels. They are also used as auxiliary engines (*i.e.,* a marine engine that is not a propulsion engine (40 CFR 94.2)) to provide electricity for navigation equipment and crew service or other services such as pumping, powering winches, or handling anchors.

Category 3 marine diesel engines, which are the primary focus of this final rule, are defined as having per-cylinder displacement at or above 30 liters. These are very large engines used for propulsion on large vessels such as container ships, tankers, bulk carriers, and cruise ships. Most of these engines are installed on ocean-going vessels, though a few are found on ships in the Great Lakes. Category 3 marine diesel engines have no land-based mobile-source counterpart, though they are similar to engines used to generate electricity in certain power-plant applications. In marine applications they are either mechanical drive or indirect drive. Mechanical drive engines can be direct drive (engine speed is the same as propeller speed; this is common on very large ships) or have a gearbox (*i.e.,* they have reduction gears; this is common on ships using medium-speed Category 3 marine diesel engines). Indirect drive engines are used to generate electricity that is then used to turn the propeller shaft. These are common in cruise ships, since they have heavy electricity demands. Category 3 marine diesel engines typically operate at a lower speed and higher power than Category 1 and Category 2 engines, with the slowest speed being about 60 rpm (*see* Table II.B–1).

TABLE II.B–1.—MARINE ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	hp range (kW)	rpm range
1	Disp. <5 liters (and power ≥37 kW)	37–2,300	1,800–3,000
2	5 ≤disp. <30 liters	1,500–8,000	750–1,500
3	Disp. ≥30 liters	2,500–80,000	60–900

C. What Is a New Marine Diesel Engine?

In the proposal for this rule, we proposed that the emission standards would apply to new engines on vessels flagged or registered in the United States. We also requested comment on whether to modify the definition of a ''new marine engine'' to find that the engine emission standards apply to marine diesel engines that are built after the standards become effective and that are installed on foreign vessels that enter U.S. ports. We have decided to finalize the scope of application as proposed. However, we intend to revisit this issue in our future rule.

1. ''New'' Engines on Vessels Flagged or Registered in the United States

As set out in 40 CFR 94.2, a new marine engine is (i) a marine engine, the equitable or legal title to which has never been transferred to an ultimate purchaser; (ii) a marine engine installed on a vessel, the equitable or legal title to such vessel has never been transferred to an ultimate purchaser; or (iii) a marine engine that has not been placed into service on a vessel. In cases where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, an engine ceases to be new after it is placed into service.

This means that a marine engine is new and is subject to emission standards before its initial sale is completed or it is placed into service. Practically, it means that any engine must meet emission standards that are in effect the first time it is sold or placed into service or the first time the vessel on which it is installed is sold or placed into service. This is true for any engine that is sold for the first time as a marine engine (placed into service on a marine vessel), regardless of whether it has previously been used for other nonroad or highway purposes. This clarification is necessary because some marine engines are made by ''marinizing'' existing land-based nonroad or highway engines. Without this clarification, a

used highway or land-based engine converted for marine installation would not be subject to the standards, since its title was already transferred to the initial highway or land-based nonroad user.

With respect to imported marine diesel engines, 40 CFR 94.2 defines ''new'' as an engine that is not covered by a certificate of conformity at the time of importation and that was manufactured after the starting date of the emission standards applicable to such an engine (or which would be applicable to such an engine had it been manufactured for importation into the United States). According to this definition, the standards apply to engines that are imported by any person, whether newly manufactured or used, and whether they are imported as uninstalled engines or if they are already installed on a marine vessel that is imported into the United States. In one example, a person may want to import a vessel with an engine built after the effective date of the standards, but the engine does not have a certificate of conformity from EPA because the engines and vessel were manufactured elsewhere. We would still consider it to be a new engine or vessel, and it would need to comply with the applicable emission standards. This provision is important to prevent manufacturers from trying to avoid the emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

2. ''New'' Engines on Vessels Flagged or Registered Elsewhere

This final rule does not apply to Category 1, 2, and 3 marine diesel engines that are built after the standards become effective and that are installed on foreign vessels that enter U.S. ports and are not imported into the United States. Section 213 of the Clean Air Act (42 U.S.C. 7547), authorizes regulation of ''new nonroad engine'' and ''new nonroad vehicle.'' However, Title II of the Clean Air Act does not define either ''new nonroad engine'' or ''new nonroad vehicle.'' Section 216 defines a ''new motor vehicle engine'' to include an engine that has been ''imported.'' EPA modeled the current regulatory definitions of ''new nonroad engine'' and ''new marine engine'' at 40 CFR 89.2 and 40 CFR 94.2, respectively, after the statutory definitions of ''new motor vehicle engine'' and ''new motor vehicle.'' This was a reasonable exercise of the discretion provided to EPA by the Clean Air Act to interpret ''new nonroad engine'' or ''new nonroad vehicle.'' *See Engine Manufacturers Assoc.* v. *EPA,* 88 F.3d 1075, 1087 (D.C. Cir. 1996).

The 1999 marine engine rule did not apply to marine engines on foreign vessels. 40 CFR 94.1(b)(3). At that time, we concluded that engines installed on vessels flagged or registered in another country that come into the United States temporarily will not be subject to the emission standards. Those vessels are not considered imported under the U.S. customs laws and did not meet the definition of ''new'' adopted in that rule (64 FR 73300, Dec. 29, 1999).

The May 29, 2002 proposed rule solicited comment on whether to exercise our discretion and modify the definition of a ''new marine engine'' to find that engine emission standards apply to foreign vessels that enter U.S. ports. As discussed earlier, the standards in this rulemaking will go into effect in 2004. We will also conduct a subsequent rulemaking that will address revisions to these standards for future model years. In this subsequent rulemaking, we will consider adopting more stringent standards that require a longer lead time than the standards adopted in this final rule. The issue of applying these more stringent standards to foreign vessels will also be considered in that subsequent rulemaking.

We must therefore determine whether to revise the definition of ''new'' to include foreign vessels for purposes of the near-term standards adopted in this final rule. EPA need not decide whether we have the discretion to interpret ''new'' nonroad engine or vessel in that manner; however, we believe it would be appropriate not to exercise such discretion at this time even assuming we had the discretion to interpret ''new'to include foreign vessels.

As noted above, one of the reasons we intend to address a second phase of more stringent standards in a subsequent rulemaking is to facilitate the development of more stringent consensus international requirements. Adoption of international standards has the clear potential to maximize the level of emission reductions achieved from emission control on U.S. and foreign vessels. For example, consensus international standards of appropriate stringency would facilitate and effectively reduce or remove the legal and policy objections to controlling emissions from foreign vessels, and therefore would facilitate achieving the greatest emission reductions from Category 3 vessels. This is one reason we determined to address the second phase of standards in a subsequent rulemaking timed to facilitate such international action, but also timed to allow us to proceed expeditiously on our own if appropriate international standards are not adopted.

Applying the first phase of standards adopted in this final rule to foreign vessels would require us to determine that we have the discretion to interpret new nonroad engine or vessel in that manner, and that it is a reasonable exercise of discretion to do so. However even assuming we have the discretion to interpret ''new marine engine'' to include engines on foreign vessels, we believe it would be appropriate not to exercise such discretion at this time.

The same reasons that counsel deferring adoption of more stringent standards to a subsequent rulemaking also counsel deferring a decision on applying Clean Air Act standards to foreign vessels to such a rulemaking. We believe that deferring this decision may help facilitate the adoption of more stringent consensus international standards. A new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Adoption of appropriate international consensus standards has the clear potential to maximize the level of emission reductions from domestic and international vessels.

Our decision to defer application of the standards to engines on foreign flag vessels is not expected to lead to any significant loss in emission reductions. We fully expect that foreign vessels will comply with the MARPOL standards whether or not they are also subject to the equivalent Clean Air Act standards being adopted in this final rule. Consequently, no significant emission reductions would be achieved by treating foreign vessels as ''new'' for purposes of the near-term standards in this final rule and there is no significant loss in emission reductions by not including them.

In conclusion, we are not including foreign engines and vessels in this rulemaking and are not revising the definition of ''new marine engine'' at this time. We do not need to decide now whether we have the discretion to include foreign vessels under the nonroad provisions of the Clean Air Act. In the subsequent rulemaking, we will be in a better position to resolve under what circumstances we may and should define new nonroad engine and vessel to include foreign engines and vessels. As part of that determination, we will also assess the progress made by the international community toward the adoption of new more stringent international consensus standards that reflect advanced emission-control technologies.

D. What Is a New Marine Vessel?

1. Newly Manufactured Vessel

The definition of new vessel is set out in 40 CFR 94.2. This definition is similar to the definition of new engine: a new marine vessel is a vessel whose equitable or legal title has never been transferred to an ultimate purchaser. In the case where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, a vessel ceases to be new when it is placed into service.

2. Modification of an Existing Vessel With Category 1 or Category 2 Main Propulsion Engines

In addition, our definition in 40 CFR 94.2 specifies that a vessel is considered new when it has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. As noted in our 1999 rulemaking, this provision is intended to prevent someone from re-using the hull or other parts from a used vessel to avoid emission standards. This provision is based on a similar provision in our locomotive engine emission control program (*see* 40 CFR 92.2 definition of ''freshly manufactured locomotive''). Since we finalized our 1999 commercial marine diesel engine rule we received several questions about how to apply this provision. The following is intended to clarify this provision.

When applying this provision, the modifications must be completed prior to the effective date of the standards that would otherwise apply. For example, for the Tier 2 engine standards that go into effect in 2007 for Category 1 and Category 2 marine diesel engines, modifications that are completed by December 31, 2006 will not trigger the engine requirements and the engines on that vessel would not have to meet the standards. However, if the vessel modifications are completed on or after January 1, 2007, and they exceed 50 percent of the value of the modified vessel, then the engines on the vessel must meet the standards regardless of whether they have been changed as part of the vessel modification.

The definition in 40 CFR 94.2 refers to the ''value'' of the modifications, rather than the costs. These figures must therefore be based on the appraised value of the vessel before modifications compared with the value of the modified vessel. The following equation demonstrates the calculation, showing that a vessel is new if:

[assessed value after modifications] − [assessed value before modifications] ≥ 0.5 [assessed value after modifications]

If the value of the modifications exceeds 50 percent of the final value of the modified vessel, we would treat the vessel as new under 40 CFR part 94. To evaluate whether the modified vessel would be considered new, one would need to project the fair market value of the modified vessel based on an objective assessment, such as an appraisal for insurance or financing purposes, or some other third-party analysis. While the preliminary decision can be based on the projected value of the modified vessel, the decision must also be valid when basing the calculations on the actual assessed value of the vessel after modifications are complete.

3. Modification of an Existing Vessel With Category 3 Main Propulsion Engines

EPA is adopting a separate definition of ''new vessel'' for those vessels equipped with a Category 3 engine. A separate definition for these vessels is reasonable because large ocean-going vessels are already subject to a different definition of ''new vessel'' pursuant to the U.S. adoption of the requirements in MARPOL Annex I, Regulations for the Prevention of Pollution by Oil.[28] The MARPOL Annex I criteria for determining when the modifications made to an existing vessel make that vessel ''new'' and thereby subject to MARPOL Annex I are contained in its definition for ''major conversion'' of a ship. The goal of the Annex I provision is similar to the goal of our provision: To require ships that have been so modified as to make them substantially new, to comply with the standards otherwise applicable to new vessels.

Note that while the provisions of MARPOL Annex I apply to all vessels, Annex I distinguishes between vessels at or above 400 gross tonnage, which are subject to the specific MARPOL requirements, and those below 400 gross tonnage, which are subject to potentially different provisions, adopted by each Member State to ''ensure that it is equipped as far as practicable and reasonable with [relevant] installations.'' Vessels above 400 gross tonnage, which are likely to be ocean-going vessels equipped with Category 3 main propulsion engines, are therefore subject to the Annex I criteria for determining when an existing vessel is modified in such a way that it is considered ''new'' and subject to MARPOL Annex VI's requirements.

For the purpose of this Clean Air Act regulation, we are adopting a definition of ''new vessel'' for vessels with Category 3 main propulsion engines that is consistent with the way Annex I was adopted into U.S. law (see 40 U.S.C. 2101). According to this approach, an existing vessel with a Category 3 main propulsion engine will be considered a ''new vessel'' and will be subject to the requirements of using a new engine certified to the emissions standards adopted in this final rule if that vessel undergoes a modification that:

- Substantially alters the dimensions or carrying capacity of the vessel;
- Changes the type of the vessel; or
- Substantially prolongs the life of a vessel.

Under our provision, once a vessel with a Category 3 propulsion engine is determined to be ''new'' according to the above criteria, then all the engines on that vessel would have to comply with EPA's marine diesel engine emission limits. To the extent that any judgment is required in interpreting this provision, EPA intends to implement this definition consistently with the application of the MARPOL.

E. Is EPA Retaining the Foreign-Trade Exemption?

In addition to their main propulsion engines, which are generally Category 3 marine diesel engines, ocean-going commercial vessels typically have several Category 1 and Category 2 engines that are used in auxiliary power applications. They provide electricity for important navigational and maneuvering equipment, and crew services.

Several commenters to our earlier marine diesel engine rulemaking expressed concern that requiring ship owners to obtain and use compliant Category 1 and Category 2 engines for vessels that spend most of their time outside the United States could be burdensome for those vessels if these engines need to be repaired or replaced when they are away from U.S. ports. Consequently, we provided a foreign-trade exemption for these engines. A vessel owner could obtain this exemption for Category 1 and Category 2 marine diesel engines if it was demonstrated to the Administrator's satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 kilometers of U.S. territory; or (b) will not operate between two U.S. ports (40 CFR 94.906(d)).

We are eliminating the foreign-trade exemption because the conditions on

[28] Annex I to the International Convention on the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto.

which it was based no longer apply. Specifically, we have learned that many spare engine parts are kept onboard vessels to enable ship operators to perform maintenance and repairs while the ship is underway. In addition, obtaining parts that are not kept onboard is not expected to be a problem. Modern package delivery systems allow ship owners to obtain parts quickly, even overnight, and necessary parts can be shipped to the next convenient port on a ship's route. In the unlikely case that an engine fails catastrophically and must be replaced by a compliant engine, we are confident that the ship operator will be able to make arrangements to obtain a certified engine, since the major manufacturers of marine diesel engines operate abroad as well as in the United States. Because the burden associated with repairing or replacing engines away from the United States is not significant, we believe it is appropriate to eliminate the exemption. We do not expect this change to have any impact on shipowners and operators.

III. Standards and Technological Feasibility

The emission standards we are adopting reflect a two-step approach. The first step involves near-term standards designed to be achievable immediately without additional research and development. This section presents these Tier 1 standards and the technologies that will be used to achieve them. The second step consists of a set of long-term standards, discussed in Section IV.

A. What Are the New Emission Standards?

We are adopting standards for marine diesel engines that are equivalent to the internationally negotiated NO_X standards, beginning in 2004. These standards, which are presented in Table III.A–1, apply to marine diesel engines with per-cylinder displacement over 2.5 liters. By adopting these standards, we are making them enforceable under U.S. law for engines on vessels flagged or registered in the United States, regardless of whether Annex VI has entered into force or whether the United States has deposited its instrument of ratification to MARPOL Annex VI.

TABLE III.A–1.—NO_X EMISSION STANDARDS

[g/kW–hr]

Engine Speed (n)		
$n \geq 2000$ rpm	$2000 > n \geq 130$ rpm	$n < 130$ rpm
9.8	$45.0 \times n^{-0.2}$	17.0

As described in Section V, we will accept emission data for certification to the near-term standards based on testing with either distillate or residual fuel. Because most or all manufacturers have been using distillate fuel to comply with Annex VI requirements, we expect manufacturers to meet the near-term standards generally by submitting their available emission data from testing with distillate fuels.

For marine diesel engines with per-cylinder displacement between 2.5 and 30 liters, these standards apply from 2004 to 2006, after which the EPA Tier 2 marine engine emission standards established in December 1999 apply (64 FR 73300, December 29, 1999). Testing to show compliance for these engines is generally based on emission measurements with distillate fuels meeting the specifications in 40 CFR 94.108.

We are not adopting the internationally negotiated standards for engines under 2.5 liters per cylinder. This is because our Tier 2 standards for most of those engines are effective in 2004. Marine diesel engines below 0.9 liters per cylinder need not meet EPA emission standards until 2005, but most of those engines are under 130 kW and are therefore not subject to Annex VI standards.

In the December 1999 final rule, we included a requirement to measure or prevent crankcase emissions. We have clarified in the final regulations that this applies only for engines subject to Tier 2 standards. As a result, none of the emission standards in this final rule include requirements related to crankcase emissions.

B. When Do the Engine Emission Standards Apply?

Adopting emission standards for new Category 3 marine engines starting in 2004 allows less than the usual lead time for meeting EPA requirements. We note, however, that manufacturers are generally already meeting the internationally negotiated standards, which apply to engines installed on vessels built on or after January 1, 2000. The near-term standards will require no additional development, design, or testing beyond what manufacturers are already doing to meet the internationally negotiated Annex VI NO_X standards.

Engine manufacturers will need to comply with emission standards for all engines produced after January 1, 2004. For Category 1 and Category 2 engines, the date of manufacture is the date of the final assembly of the engine. However, we recognize that Category 3 engines are often disassembled for shipment to the site at which it is installed in the ship. Therefore, for Category 3 engines, the date of manufacture is based on the first full assembly of the engine.

Shipbuilders and owners are not required to certify their vessels under the program we are adopting in this action. However, shipbuilders are prohibited from selling vessels with noncompliant engines if they initiate construction of a vessel after the date that regulations begin to apply.

C. What Technologies Will Engine Manufacturers Use To Meet the Tier 1 Emission Standards?

The near-term Tier 1 standards are interim standards. They are intended to ensure that Category 3 engines achieve the greatest reductions achievable in this time frame, until the more stringent long-term standards we adopt go into effect. The short lead time associated with these interim standards means they call for the use of engine technologies that already have been or can be applied immediately, with little or no lead time.

The Tier 1 standards are achievable immediately because engine manufacturers are already producing engines that meet these standards. The short lead time involved in meeting Tier 1 standards by January 2004 allows manufacturers only enough time to work through this program's compliance requirements and do all the testing and paperwork required to complete the certification process.

Setting Tier 1 standards that are more stringent than the internationally negotiated NO_X standards (for example, one requiring further development and optimization of in-cylinder controls), would require more lead time to allow engine manufacturers to develop and to optimize existing in-cylinder technologies and apply them to these engines. Moreover, as discussed in Section I.C, adopting an emission standard now that is based only on in-cylinder control technologies would likely delay the adoption of future more stringent emission standards that may be based on optimized in-cylinder controls in combination with advanced technologies such as SCR or water injection.

Similarly, we are not adopting Tier 1 emission standards for HC or CO emissions because the short lead time does not allow manufacturers sufficient time to do the testing and design work that would be necessary to ensure compliance with such standards. As described in the proposal, the focus of controlling emissions from Category 3 engines is on NO_X. The standards we contemplated for HC and CO in the proposal would have achieved modest reductions from baseline levels or, more likely, merely prevented increases in these pollutants as manufacturers apply emission-control technologies to address NO_X emissions. Manufacturers do not have a complete data set to characterize HC and CO emissions from their Category 3 engines, so some engines may well have emission rates above the level we would consider to be a cap that would merely prevent increasing emissions. The short lead time associated with the Tier 1 standards is too short to allow manufacturers in these cases to address this potential. As a result, we believe it is most appropriate to include appropriate emission standards for HC and CO emissions in the future rulemaking, as described below.

Engine manufacturers are meeting the Annex VI standards today with a variety of emission-control technologies. These basic emission-control technologies include a variety of in-cylinder technologies, generally including optimized turbocharging, higher compression ratio, and optimized fuel injection, which may include timing retard or changes to the number and size of injector holes to increase injection pressure.

D. Voluntary Low-Emission Standards

Several state and environmental groups and manufacturers of emission controls have supported our efforts to develop incentive programs to encourage the use of engine technologies that go beyond federal emission standards. Some companies have already significantly developed these technologies. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as ''Blue Sky Series'' engines (63 FR 56967, October 23, 1998). We included similar programs in several of our other nonroad rules, including that for commercial marine diesel engines. The general purposes of such programs are to provide incentives to manufacturers to produce clean products as well as create market choices and opportunities for environmental information for consumers regarding such products. The voluntary aspects of these programs, which in part provides an incentive for manufacturers willing to certify their products to more stringent standards than necessary, is an important part of the overall application of ''Blue Sky Series'' programs. While these are voluntary standards, they become binding once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives should be in place to motivate the production and sale of these engines. These incentive programs can be put in place by users and state and local governments.

To be designated as a Blue Sky engine, an engine must have emissions at least 80 percent below Annex VI NO_X levels. The specific voluntary low-emission NO_X standard is expressed as $9.0 \times n^{-0.2}$ (in g/kW–hr), with a cap of 3.4 g/kW–hr for engines with rated speed over 130 rpm (no specific standard applies to engines over 2000 rpm, because Category 3 engines all have engine speeds well below 2000 rpm). Data suggest that engines utilizing selective catalytic reduction should be able to meet these emission levels. Establishing an objective qualifying level for voluntary low-emission engines allows state and local governments or individual port authorities to develop meaningful incentive-based programs to encourage preferential use of these very low-emitting engines.

Engines certified to the voluntary low-emission standards must also meet HC and CO standards reflecting baseline emission levels for these pollutants. As described in the proposal, we believe the appropriate levels to cap emissions of these pollutants are 0.4 g/kW–hr for HC and 3.0 g/kW–hr for CO.

IV. Future Actions

The standards we are adopting in this action are equivalent to the internationally negotiated standards contained in MARPOL Annex VI and are expected to achieve a 20-percent reduction in the national Category 3 NO_X inventory by 2030. As noted in Section I, the inventory contribution of these engines to local NO_X and PM inventories, particularly around commercial ports and coastal areas, can be significant. We recognize that manufacturers can achieve additional reductions with more lead time than is provided by the Tier 1 standards. They can do this by expanding the use and optimization of in-cylinder controls and by incorporating advanced technologies, such as selective catalytic reduction or water injection, that may achieve much greater reductions. We believe, however, that it is appropriate not to make a final decision on setting the longer-term Tier 2 standards in this final rule. This section describes how we plan to conduct a future rulemaking that will address a new tier of standards.

Separately, we also intend to pursue additional action to set controls for the fuels used by these engines. The sulfur content of these fuels is considerably higher than the fuel used in land-based nonroad engines. This high sulfur content leads to high PM and SO_X emissions. MARPOL Annex VI contains a provision that would require ships to use lower sulfur fuel when operating in specially designated SO_X Emission Control Areas, or be equipped with an exhaust gas cleaning system or other system that reduces the total SO_X emissions from the ship to 6.0 g/kW-hr or less. If the Annex goes into force, we will assist the other federal agencies in investigating and developing an application to the IMO by the United States for designating relevant coastal and port areas as SO_X Emission Control Areas. If the Annex does not go into force, we may address this issue under our existing authority in a future rule. In addition, we are considering fuel controls as part of the nonroad diesel rule that is currently under development that could affect the distillate fuels used by marine vessels.

A. Future Rulemaking for Engine Standards

1. What Is the Timetable for the Future Rule?

We are adopting a regulatory provision in 40 CFR 94.8 that establishes a schedule for a future rulemaking to promulgate additional engine controls that EPA determines are appropriate under section 213(a)(3) of the Act. This future rulemaking will reassess the standards in place at the time using information about the feasibility of optimizing in-cylinder controls and applying advanced NO_X and PM control technologies to these engines. We intend to consider an additional tier of standards for all marine diesel engines and will also consider application of these standards to engines on foreign vessels that enter U.S. ports. We will also include in our evaluation an assessment of the status of international action to set more stringent standards. The standards in this final rule will remain in effect unless modified by a future rulemaking. We are committing to take final action

on appropriate standards for marine diesel engines by April 27, 2007, and to issue a proposal no later than approximately one year before. This future rulemaking will allow us to exercise the discretionary authority under Clean Air Act section 213(a)(3), which directs EPA to ''from time to time revise'' regulations under that provision.

This schedule for our future rule will allow us to coordinate with future actions of the U.S. government with respect to negotiations for a future tier of standards under MARPOL. As described in Section IV.A.4 below, in 2000 the United States requested the Marine Environment Protection Committee to consider more stringent emission controls for marine diesel engines. We are hopeful that the committee will begin these discussions in the next year or so. At the same time, while harmonizing with future, more stringent MARPOL emission limits is desirable, the standards contained in our future rule will be promulgated pursuant to the Clean Air Act, as described in the next section.

EPA considers this time as necessary and appropriate to properly take into consideration additional information expected to become available about emerging technologies, as well as any developments in the international negotiations for more stringent emission limits.

2. What Standards Will EPA Consider in the Future Rule?

a. Standards for Category 3 Marine Diesel Engines. For the future rule, we intend to set more stringent standards for Category 3 marine diesel engines based on the greatest degree of emission control achievable from technologies that will be available with appropriate lead time. In our proposal, we considered a 30-percent reduction below Annex VI levels to be the primary option for adopting long-term standards for Category 3 marine diesel engines. At the time we believed this could be achieved through the use of in-cylinder controls. However, further review of information on this technological approach shows that these technologies are already being used to meet the internationally negotiated standards. At this point we are not confident that in-cylinder controls alone would reduce emissions much more than 10 or 15 percent below the Tier 1 levels.

We are concerned that, if we were to implement standards based on traditional in-cylinder controls to reduce emissions beyond Annex VI levels, either in this or a future rule, manufacturers would need to divert resources from their advanced technology development programs. In addition, manufacturers would need to optimize their use of in-cylinder controls again when incorporating the advanced emission-control technologies. As a result, the readiness of this technology could be delayed in return for a standard based on traditional in-cylinder controls alone, which may not be capable of reducing NO_X emissions by an additional 30 percent.

We are therefore now considering Tier 2 standards that would focus on optimizing in-cylinder controls with the advanced technologies presented in the proposal, which together are projected to reduce NO_X emissions by significantly more than 30 percent. This approach was supported by commenters representing environmental and state interests, who strongly objected to emission standards that rely on engine-based technologies because of the expectation that these other advanced technologies are available and appear to be cost-effective.

We are, however, not finalizing such Tier 2 standards in this final rule because we believe there are substantial outstanding issues associated with water technologies and selective catalytic reduction. These issues, which include fuel compatibility, low-load effectiveness, and PM impacts, are discussed below in Section IV.A.3.

During the next few years we will have the opportunity to develop a better understanding of the issues that prevent us from adopting standards based on advanced technologies now. For example, several vessels have been equipped recently with selective catalytic reduction, as described in Chapter 5 of the Final Regulatory Support Document. Observing these installations will allow us to gain insight into the effectiveness and durability of these systems, while highlighting any potential technical constraints or problems. We would also have opportunity to learn with engine manufacturers and other industry contacts who are actively pursuing development and implementation of the advanced technologies.

In the future rulemaking, we will also consider the need to adopt emission standards for HC and CO emissions. Although HC and CO emissions are generally low from diesel engines, HC emissions nevertheless combine with NO_X emissions to form ozone; HC and CO can also have direct health impacts. Setting standards for HC and CO may achieve modest emission reductions, but more importantly, may be necessary to prevent HC and CO emission increases that might otherwise result from controlling NO_X emissions alone.

Regarding PM from Category 3 marine engines, the majority of emissions comes directly from the high concentration of sulfur in the residual fuel used by these engines. Short of changing in-use fuel quality, emission-control technologies only address the remaining portion of PM, because engine technologies are ineffective at reducing sulfur-related PM emissions. Furthermore, no acceptable procedure exists for measuring PM from Category 3 marine engines, because currently established PM test methods show unacceptable variability when sulfur levels exceed 0.8 weight percent. Both distillate and residual marine fuels used in these engines commonly exceed that level. No PM test method or calculation methodology has yet been developed to correct that variability. However, the additional time available to prepare the future rulemaking will allow us to take into account any developments related to regulation of in-use fuel quality and PM measurement equipment and procedures as we consider the appropriateness of adopting a PM standard for Category 3 marine diesel engines.

We also intend to revisit various other issues raised in the proposal. For example, we continue to be concerned about controlling emissions at low-power test modes and at operating points between test modes. As described in the proposal, we would like to take steps to ensure that engines meet emission standards when operating on residual fuel, including an appropriate means to correct for the nitrogen content of the test fuel. We also believe that basing emission standards on engine displacement instead of rated speed warrants further consideration. We will also revisit several compliance issues such as onboard NO_X monitoring, adjustable parameters, deterioration factors with advanced technologies, post-certification testing (PLT), broader test conditions, defect reporting, and test fuel. These compliance issues are discussed in Section V.

b. Standards for Category 1 and Category 2 Marine Diesel Engines. For Category 1 and Category 2 marine diesel engines, we have already established Tier 2 emission standards based on in-cylinder controls. However, there are several differences between these engines and Category 3 engines, which made this possible. First, for Category 1 and Category 2 marine diesel engines, manufacturers are able to transfer emission-control technology already developed for the land-based counterparts to these engines. Second,

Category 1 and Category 2 engines are produced in much greater volumes than Category 3 engines which allows manufacturers to more easily amortize their research and development costs. Third, because Category 3 engines generally operate on residual fuel, this provides an additional constraint on what can be achieved through in-cylinder control.

While this final rule primarily addresses Category 3 engines, we intend to use the future rulemaking as an opportunity to reconsider Tier 3 emission standards for Category 1 and Category 2 standards. We proposed Tier 3 standards for these engines on December 11, 1998 (63 FR 68508, December 11, 1998), but chose not to finalize the Tier 3 standards at that time. Given the current and expected advances in emission-control technologies for land-based diesel engines and the need to coordinate standards for all categories of marine engines, we believe this will be the appropriate context to reopen the proposed Tier 3 standards. In the future rulemaking we would also be able to consider applying compliance provisions such as onboard NO_X monitoring to Category 1 and Category 2 engines. This may be especially appropriate for certain applications, such as ferries and tugboats that operate closest to metropolitan areas.

3. What Technologies Will EPA Consider in the Future Rule?

As discussed above, the future rulemaking will focus on technologies we believe can be used to reduce NO_X emissions by significantly more than 30 percent below Tier 1 levels for Category 3 marine diesel engines. These emission-control systems are expected to include a combination of optimized in-cylinder controls and advanced technologies such as selective catalytic reduction and water. These advanced technologies are discussed below. Although we do not believe it is appropriate to set standards for Category 3 marine engines based on these approaches at this time, we believe that remaining technological and operational issues can be addressed in the future. Technologies that could be used to achieve emission reductions beyond the Tier 2 standards for Category 1 and Category 2 marine diesel engines were discussed in an earlier proposal (63 FR 68508, December 11, 1998).[29]

a. Water-based technologies. We believe that significant NO_X control of approximately a 50-percent reduction can be achieved in the future, once certain technical and practical challenges are overcome, by introducing water into the combustion process in combination with appropriate in-cylinder controls. Water can be used in the combustion process to lower maximum combustion temperature, and therefore lower NO_X formation, with an insignificant increase in fuel consumption. Water has a high heat capacity, which allows it to absorb enough of the energy in the cylinder to reduce peak combustion temperatures. Data presented below and in the Final Regulatory Support Document suggest that NO_X reductions significantly more than 30 percent below the Tier 1 standards can be achieved, depending on the ratio of water to fuel and on the method of introducing water into the combustion chamber. These data are primarily based on developmental engines; however, given enough lead time, we believe that introducing water into the combustion process may become an effective emission-control strategy.

Water may be introduced into the combustion process through emulsification with the fuel, direct injection into the combustion chamber, or saturating the intake air. Water emulsification refers to mixing the fuel and water prior to injection. This strategy is limited by the instability of suspending water in fuel. To increase the effective stability, a system can be used that emulsifies the water into the fuel just before injection. Another option is to stratify the fuel and water through a single injector. The Final Regulatory Support Document presents data on these approaches showing a 30–40 percent reduction in NO_X with water fuel ratios ranging from 0.3 to 0.4.

More effective control of the water injection process can be achieved through the use of an independent nozzle for water. Using a separate injector nozzle for the water allows larger amounts of water to be added to the combustion process because the water is injected simultaneously with the fuel, and larger injection pumps and nozzles can be used for the water injection. In addition, the fuel injection timing and the amount of water injected can be better optimized. Data presented in the Final Regulatory Support Document show NO_X reductions of 40 to 70 percent with water-to-fuel ratios ranging from 0.5 to 0.9 if a separate nozzle is used for injecting water. Direct water injection has been installed on medium-speed Category 3 engines on more than a dozen vessels, and there are plans for using it on additional vessels. These vessels are primarily ferries and roll-on roll-off (ro-ro) vessels operating in European waters where there are economic incentives for reducing NO_X emissions. In addition, they make relatively short trips, so water storage is not a significant issue.

Other strategies for introducing water into the combustion process are being developed that will allow much higher water-to-fuel ratios. These strategies include combustion air humidification and steam injection. With combustion air humidification, a water nozzle is placed in the engine intake and an air heater is used to offset condensation. With steam injection, waste heat is used to vaporize water, which is then injected into the combustion chamber during the compression stroke. Data on initial testing, presented in the Final Regulatory Support Document, show NO_X reductions of more than 80 percent with water-to-fuel ratios as high as 3.5.

We believe that the results from initial testing of water introduction strategies is encouraging. We will continue to evaluate this technology in the future. However, we believe there are still outstanding technical issues concerning the use of water-introduction technologies for widespread application on marine engines. These issues are discussed below.

A primary concern with the use of water in the combustion process is the effect on PM emissions. The water in the cylinder reduces NO_X, which is formed at high temperatures, by reducing the temperature in the cylinder during combustion. However, PM oxidation is most efficient at high temperatures. At this time, we do not have sufficient information on the effect of water emulsification and injection strategies on PM emissions to quantify this effect.

Fresh water is necessary for any of these water-based NO_X-reduction strategies. Introducing salt water into the engine could result in serious deterioration due to corrosion and fouling. For this reason, a ship using water strategies would need either to produce fresh water through the use of a desalination or distillation system or to store fresh water on board. Cruise ships may already have a source of fresh water that could be used to enable this technology. This water source is the ''gray'' water, such as drainage from showers, which could be filtered for use in the engine. However, the use of gray water would have to be tested on these engines, and systems would have to be devised to ensure proper filtering. For example, it would be necessary to

[29] Further analysis of potential Tier 3 standards for Category 1 and Category 2 marine diesel engines may be found in the Draft Regulatory Impact Analysis associated with this proposal which is available in Air Docket A–97–50.

ensure that no toxic wastes are introduced into the gray waste-water stream. One manufacturer stated that today's ships operating with direct water injection carry the amount needed to operate the system between ports (two to four days).

Depending on the amount of water necessary, other vessels that use Category 3 marine engines may not be able to generate sufficient amounts of water for this technology, especially at low loads where less heat is available from the engine. These ships would have to carry the water or be outfitted with new or larger distillation systems. Both of these options could displace cargo space. Finally, it should be noted that vessels currently equipped with water-based NO_X-reduction technologies are four-stroke engines and include fast ferries, cruise ships, and cargo ships. The specific vessels travel relatively short distances between stops and need a much smaller volume of fresh water for a trip than would be required for crossing an ocean. More information is needed regarding operation on ocean-going vessels. If the ships were to use this technology only while traveling from 175 nautical miles of the U.S. coast to port, less water-storage capacity would be needed than if the ship used this NO_X reduction strategy at all times. However, ships operating primarily within 175 nautical miles of the U.S. coast would need to be able to carry a volume of water of about one-half the volume of fuel they carry if they wish to keep the same refueling schedule. Ships making long runs, such as from California to Alaska, would have to be able to store enough water for that trip even if the ship travels that route infrequently. Because the standards would not be retroactive to existing vessels, ships could be designed to carry this water, however, this space would not be available to carry cargo or fuel. Lastly, if this technology were applied to two-stroke engines there may be lubricity concerns with the cylinder liner. One manufacturer is developing a strategy to use direct water injection with exhaust gas recirculation to minimize water requirements on such engines.

b. Selective catalytic reduction. Selective catalytic reduction is one of the most effective means of reducing NO_X from large diesel engines. In SCR systems, a reducing agent such as ammonia, is injected into the exhaust. The exhaust then goes through a catalyst where NO_X emissions are reduced. As discussed in the Final Regulatory Support Document, SCR can be used to achieve NO_X reductions of 90 percent or more below the Tier 1 limits, at exhaust temperatures above 300 °C. Lower-cost SCR systems can also be designed for less effective control of NO_X emissions by reducing the amount of reducing agent used in the SCR unit. These systems are being successfully used for stationary applications, which operate under constant, high-load conditions. These systems are also installed in Category 3 engines used on ferries and cruise ships where they operate largely at high loads and over short distances so exhaust temperature and urea storage are not primary issues.

As discussed in the Final Regulatory Support Document, manufacturers are demonstrating similar NO_X reduction using SCR technology for marine applications. These SCR demonstrations include both test systems and in-use vessels. One manufacturer has demonstrated a standard SCR system on eight vessels and a compact SCR system, which uses an oxidation catalyst upstream of the SCR reactor to reduce reactor size, on four vessels. Combined, these twelve vessels are equipped with a total of 40 medium-speed Category 3 marine engines. Another manufacturer has installed systems on 56 Category 2 or Category 3 marine engines. The majority of these engines were in ferries and ro-ros operating in European waters where there are economic incentives to use SCR. In addition, these engines are four-stroke medium-speed engines, which have higher exhaust temperatures than two-stroke low-speed engines which better enables the use of SCR. To prevent sulfur poisoning of the catalysts, the fuel used by these vessels ranges from 0.1 to 1.0 percent sulfur. This fuel includes both residual fuel and marine distillate fuel. In addition, they make relatively short trips between European ports, so urea availability and storage are not significant issues. Also, the relatively short trips allow time for maintenance and provide better access to any needed parts compared with ocean-going trips.

In one case, SCR was equipped on vessels with two-stroke low-speed engines. The goal of this program was to reduce the emissions emitted during the transportation of steel to a facility in Pittsburg, California. Because the vessels were equipped with two-stroke low-speed engines, the exhaust temperatures were low. In addition, the vessels operate at low load near the coast; therefore, certain modifications to the system were necessary. Primarily, the exhaust system was reconfigured to provide the maximum heat to the reactor, which had negative impacts on transient response and efficiency. Also, the catalyst was formulated to be effective at temperatures as low as 270°C. Because such a reactive catalyst is vulnerable to sulfur poisoning, the vessels operate only on 0.05 percent sulfur fuel when the SCR unit is active. These vessels make about 6 calls to California per year and the SCR unit is active for about 12 hours per call, when the vessel is within about 50 miles from the port.

We believe that the results from initial applications of SCR systems are encouraging. We will continue to evaluate this technology in the future. However, we believe there are still outstanding technical issues concerning the use of SCR for widespread application on marine engines. These issues are discussed below.

Lower-sulfur fuel is necessary to ensure the durability of the SCR system because sulfur can be trapped in the active catalyst sites and reduce the effectiveness of the catalyst. This sulfur poisoning can require additional maintenance of the system. We need more information on the impacts of fuel sulfur on SCR. As discussed above, SCR units in service today are operating on fuel ranging from 500 to 10,000 ppmS. Even if these systems can be made to operate on 15,000 ppmS fuel, an infrastructure would be necessary to ensure that ships could refuel with 15,000 ppmS fuel at ports they visit. Lower-sulfur residual fuel is available in areas that provide incentives for using such fuel, including the Baltic Sea; however, such fuel is not yet available at ports throughout the United States. During the next few years we expect to develop a better understanding of the availability of lower-sulfur fuels through the process related to designating SO_X Emission Control Areas under Annex VI. We also intend to learn more about the sensitivity of SCR systems to fuel-sulfur concentrations.

Another issue is the effectiveness of SCR during low-load engine operation. SCR systems available today are effective only over a narrow range of exhaust temperatures (generally above 300 °C). The effectiveness of the SCR system is decreased at reduced temperatures that occur during engine operation at partial loads. Most of the engine operation in and near commercial ports and waterways close to shore is likely to be at these partial loads. In fact, reduced-speed zones can be as large as 100 miles for some ports. Because of the cubic relationship between ship speed and engine power required, engines may operate at less than 25 percent power in a reduced-speed zone. During this low-load operation, no NO_X reduction would be expected, so SCR would be less effective while operating near ports. Some

additional heat to the SCR unit can be gained by placing the reactor upstream of the turbocharger; however, this temperature increase would not be large at low loads and the volume of the reactor would diminish turbocharger response when the engine changes load. The engine could be calibrated to have higher exhaust temperatures; however, this could affect durability if this calibration also increased temperatures at high loads (depending on the fuel used). For an engine operating on residual fuel, vanadium in the fuel can cause damage by reacting with the valves at higher temperatures. In addition, a catalyst that is formulated to be more reactive at lower temperatures is also more sensitive to sulfur poisoning. Any information that becomes available over the next few years would help us understand the potential for SCR systems to control emissions at low engine loads and ensure proper operation in port areas, where emission reductions are most important. This will help ensure that we adopt requirements with an appropriate expectation regarding the effectiveness of the anticipated emission-control technologies.

Sulfur in fuel is also a concern with an oxidation catalyst because, under the right conditions, sulfur can also be oxidized to form direct sulfate PM. At higher temperatures, up to 20 percent of the sulfur could be converted to direct sulfate PM in an oxidation catalyst compared to about a 2 percent conversion rate for a typical diesel engine without aftertreatment. Depending on the precious metals used in the SCR unit, it could be possible to convert some sulfur to direct sulfate PM in the reactor as well. Manufacturers would have to design their exhaust system (and engine calibration) such that temperatures would be high enough to have good conversion of NO, but low enough to minimize conversion of sulfur to direct sulfate PM. Direct sulfate PM emissions could be reduced by using lower sulfur fuel such as distillate.

SCR systems traditionally have required a significant amount of space on a vessel; in some cases the SCR unit is as large as the engine itself. However, at least one manufacturer is developing a compact system that uses an oxidation catalyst upstream of the reactor to convert some NO to NO_2, thus reducing the reactor size necessary. The reactor size is reduced because the NO_2 can be reduced without slowing the reduction of NO. The catalytic reaction is faster by reducing NO_X through two mechanisms. This compact SCR unit is designed to fit into the space already used by the silencer in the exhaust system. If designed correctly, this could also be used to allow the SCR unit to operate effectively at somewhat lower exhaust temperatures. The oxidation catalyst and engine calibration would need to be optimized to convert NO to NO_2 without significant conversion of sulfur to direct sulfate PM. NO_X reductions of 85 to 95 percent have been demonstrated with an extraordinary sound attenuation of 25 to 35 dB(A).[30]

A vessel using an SCR system would also require an additional tank to store ammonia (or urea to form ammonia). This storage tank would be sized based on the vessel use, but could be large for a vessel that travels long distances in U.S. waters between refueling, such as between California and Alaska. Urea consumption increases operating costs. If lower sulfur diesel fuel were required to ensure the durability of the SCR system or to minimize direct sulfate PM emissions, this lower sulfur fuel would also increase operating costs. The operational characteristics of ocean-going vessels may interfere with correct maintenance of the SCR system. Ferries that have incorporated this technology do not run continuously and therefore any maintenance necessary can be performed during regular down times. The availability of time for repair can be an issue for ocean-going vessels that operate continuously for long periods.

Because SCR units are so easily adjustable, if allowed, ship operators may choose to turn off the SCR unit when not operating near the U.S. coast. If they were to use this approach, they would need to construct a bypass in the exhaust to prevent deterioration of the SCR unit when it is not in use. To ensure that the SCR system is operating properly within 175 nautical miles of the U.S. coast, we would need to consider continuous monitoring of NO_X emissions for engines using SCR. This is discussed in more detail below.

If the combustion is not carefully controlled, some of the ammonia can pass through the combustion process and be emitted as a pollutant. This is less of an issue for Category 3 marine engines, which generally operate under steady-state conditions, than for other mobile-source applications. In addition, in ships where banks of engines are used to drive power generators, such as cruise ships, the engines generally operate under steady-state conditions near full load. If ammonia slip still occurred, an oxidation catalyst could be used downstream of the reactor to burn off the excess ammonia.

Slow-speed marine engines generally have even lower exhaust temperatures than medium-speed engines due to their two-stroke design. However, we are aware of four slow-speed Category 3 marine engines that have been successfully equipped with SCR units. Because of the low exhaust temperatures, the SCR unit is placed upstream of the turbocharger to expose the catalyst to the maximum exhaust heat. Also, the catalyst design required to operate at low temperatures is very sensitive to sulfur. Especially at the lower loads, the catalyst is easily poisoned by ammonium sulfate that forms due to the sulfur in the fuel. To minimize this poisoning on these four in-service engines, highway diesel fuel (0.05% sulfur) is required. In addition, these ships operate with the exhaust routed through the SCR unit only when they enter port in the United States, which is about 12 hours of operation every 2 months. Therefore, the sulfur loading on the catalyst is much lower than it would be for a vessel that continuously used the SCR system. To prevent damage to the catalyst due to water condensation, this system needs to be warmed up and cooled down gradually using an external system. Another issue associated with the larger slow-speed engines and lower exhaust temperatures is that a much larger SCR system would be necessary than for a vessel using a smaller medium-speed engine. Size is an issue because of the limited space on most ships.

c. Fuel cells. A third advanced technology that may allow for significant reduction of NO_X emissions involves the use of fuel cells to power the vessel in place of an internal-combustion engine. A fuel cell is like a battery, except where batteries store electricity, a fuel cell generates electricity. The electro-chemical reaction taking place between two gases, hydrogen and oxygen, generate the electricity from the fuel cell. The key to the energy generated in a fuel cell is that the hydrogen-oxygen reaction can be intercepted to capture small amounts of electricity. The byproduct of this reaction is the formation of water. Current challenges include the storage or formation of hydrogen for use in the fuel cell and cost of the catalyst used within the fuel cell.

Recently, several efforts to apply fuel cells to marine applications have been conducted. These include grants from the Office of Naval Research and the U.S. Navy. The Office of Naval Research initiated a three-phase advanced development program to evaluate fuel

[30] Paro, D., ''Effective, Evolving, and Envisaged Emission Control Technologies for Marine Propulsion Engines,'' presentation from Wartsila to EPA on September 6, 2001 (Docket A–2001–11; document II–A–72).

cell technology for ship service power requirements for surface combatants in 1997. In early 2000, the U.S. Navy sponsored an effort to continue the development of the molten carbonate fuel cell for marine use. The Society of Naval Architects and Marine Engineers released the technical report ''An Evaluation of Fuel Cells for Commercial Ship Applications.'' The report examines fuel cells for application in commercial ships of all types for electricity generation for ship services and for propulsion.

Fuel cell research is currently supported by several sources including the U.S. Maritime Administration (MARAD) and the state of California's Fuel Cell Partnership. MARAD's Division of Advanced Technology has also included the topic of fuel cells as a low air emission technology that should be demonstrated. California's Fuel Cell Partnership seeks to achieve four main goals which include (1) demonstrate vehicle technology by operating and testing the vehicles under real-world conditions in California; (2) demonstrate the viability of alternative fuel infrastructure technology, including hydrogen and methanol stations; (3) explore the path to commercialization, from identifying potential problems to developing solutions; and (4) increase public awareness and enhance opinion about fuel cell electric vehicles, preparing the market for commercialization. At this time, we consider fuel cell technology still be in the early stages of development. Because a mature fuel cell system could have significant environmental benefits, we will consider fuel cells in the future rulemaking.

4. Will the International Community Also Consider More Stringent Standards?

At the time the Annex VI NO_X limits were adopted in September 1997, several Member States expressed concern that the NO_X limits were not stringent enough and would not result in the emission reductions they were intended to achieve. Due to the efforts of these Member States, the Conference of the Parties adopted a resolution that provides for review of the emission limits with the aim of adopting more stringent limits, taking into account the adverse effects of such emissions on the environment and any technological developments in marine engines. This review is to occur at a minimum of five-year intervals after entry into force of the Annex, with amended NO_X limits to reflect more stringent controls if appropriate.

In March 2000, the United States requested the Marine Environment Protection Committee (MEPC) to begin consideration of more stringent emission limits for marine diesel engines.[31] EPA's analysis of emission-control technology for our 1999 rulemaking indicated that more stringent standards are feasible for all Category 1 and Category 2 marine diesel engines. Engine manufacturers were also beginning to apply these emission-control strategies to Category 3 marine diesel engines, as well as more advanced strategies such as water emulsification and selective catalytic reduction. Reflecting the potential emission reductions that could be obtained from applying these strategies to all marine diesel engines, the United States recommended Annex VI Tier 2 NO_X limits be set at 25 to 30 percent below the existing Annex VI NO_X limits for all engines subject to the regulation (engines above 130 kW), to go into effect in 2007. This would allow a seven-year period of stability for the Annex VI NO_X limits, permit engine manufacturers to adjust their engine designs to include new emission-control technologies, and allow manufacturers of marine diesel engines at or above 30 liters per cylinder to develop emission-control strategies for those large engines. This recommendation was discussed at the 44th session of the MEPC (London, March 3–16, 2000), but the committee took no action.

The United States will continue to promote more stringent standards at IMO and encourage MEPC to adopt a second tier of emission limits that will reflect available technology and reduce the impact of marine diesel engines on the world's air quality. Technology has continued to advance since we made our request for review in 2000. EPA now believes that Member States of the IMO should consider further reductions of significantly more than 30 percent from the NO_X limits currently stipulated under Regulation 13 of the Annex, to be applicable to engines installed on vessels constructed on or after a date to be determined. Consideration should be given to use of emission-control systems that include a combination of optimized in-cylinder controls and advanced technologies such as selective catalytic reduction and water-based control technologies.

[31] MEPC 44/11/7, Prevention of Pollution from Ships, Revision of the NO_X Technical Code, Tier 2 Emission Limits for Marine Diesel Engines at or Above 130 kW, submitted by the United States. This document is available at Docket A–2001–11, Document No. II–A–16.

B. Fuel Controls

The majority of Category 3 engines are designed to run on residual fuel. This fuel is made from the very end products of the oil refining process, formulated from residues remaining after the primary distilling stages of the refining process. It has higher contents of ash, metals, and nitrogen that may increase emissions of exhaust pollutants. Residual fuel also has sulfur content up to 45,000 ppm; the global average sulfur concentration is currently about 27,000 ppm, though fuel sold in the United States has sulfur levels somewhat above the average.[32] Operating on fuels with such high sulfur contents results in high SO_X and direct sulfate PM emissions.

Using a residual fuel with a lower sulfur content would reduce the fraction of PM emissions from ash and metals. Using distillate fuel instead of residual fuel could result in even lower emissions. The simpler molecular structure of distillate fuel may result in more complete combustion with reduced levels of carbonaceous PM. Operation on distillate fuel would also reduce NO_X emissions because distillate fuel generally contains less nitrogen and has better ignition qualities. In general, engines that are designed to operate on residual fuel are capable of operating on distillate fuel. For example, if the engine is to be shut down for maintenance, distillate fuel is often used to flush out the fuel system. However, there are several complications associated with using distillate fuel to reduce emissions. Switching to distillate fuel requires 20 to 60 minutes, depending on how slowly the operator wants to cool the fuel temperatures. According to engine manufacturers, switching from a heated residual fuel to an unheated distillate fuel too quickly could cause damage to fuel pumps. There could also be fuel pump durability problems if the engine is operated on distillate fuel for more than a few days. For continued operation on distillate, ships would need to have separate (or modified) pumps and lines. In addition, modification to the fuel tanks may be necessary to ensure sufficient capacity for lower-sulfur fuel.

1. Is EPA Adopting Fuel Requirements?

In our proposal, we requested comment on whether we should set standards for the fuel that ships use and, if so, what form the standards should take. After reviewing the comments and

[32] Sulphur Monitoring 2002. Report to Marine Environmental Protection Committee, 47th Session. MEPC 47/INF.2, August 28, 2001. A copy of this document can be found in Docket A–2001–11, Document No. II–E–9.

other information, we have decided not to set fuel-based regulations at this time. We remain concerned that regulating fuel sold in the United States would not necessarily ensure that distillate fuel was used in U.S. waters. It is not clear under the Clean Air Act whether we can set standards for more than the fuel sold in the United States. If so, then a fuel sulfur standard would be unlikely to have a significant impact on emissions because ships may choose to refuel before entering or after leaving the United States.

However, as we noted in our proposal, Regulation 14 of MARPOL Annex VI allows areas in need of SO_X emission reductions to petition to be designated as SO_X Emission Control Areas. After the Annex goes into force, ships operating in these designated areas must use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust gas cleaning system to reduce total vessel SO_X emissions to 6.0 g/kW-hr or less. The United States may propose designation of one or more areas in the future pending a review of the relevant emissions, the potential benefits, and the associated costs. However, if the Annex does not go into effect, we will address this issue in the future to the extent appropriate under the Clean Air Act.

2. What Are the MARPOL Annex VI Fuel Provisions?

MARPOL Annex VI contains requirements for fuels used onboard marine vessels. These requirements, which will be effective if and when the Annex goes into force, consist of two parts. First, Annex VI specifies that the sulfur content of fuel used onboard ships cannot exceed 45,000 ppm (4.5 percent). Information gathered in an international monitoring program indicates refiners are currently complying with this requirement and that the current sulfur level of marine bunker fuels ranges between 5,000 and 45,000 ppm with an average sulfur content of about 27,000 ppm. Second, the Annex provides a mechanism to designate SO_X Emission Control Areas, within which ships must either use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust-gas cleaning system or other technology to reduce total vessel SO_X emissions (including both auxiliary and main propulsion engines) to 6.0 kW-hr or less. To date, two SO_X Emission Control Areas have been designated: the North East Atlantic (North Sea, Irish Sea, and English Channel) and the Baltic Sea. After the Annex goes into forces, ships operating in these designated areas must use fuel with a sulfur content not to exceed 15,000 ppm or an exhaust gas cleaning system to reduce total vessel SO_X emissions to 6.0 g/kW-hr or less.

Refiners can produce lower-sulfur residual fuel from a lower-sulfur crude oil or they can put the fuel through a de-sulfonation step in the refinery process. They can also produce it by blending marine distillate fuel, which typically has fuel sulfur levels between 2,000 and 3,000 ppm.

3. How Will SO_x Emission-Control Areas Be Designated in the United States?

Annex VI stipulates that any proposal for designation of a SO_x Emission Control Area (SECA) must meet certain requirements before it will be taken under consideration by the Parties through IMO's Marine Environment Protection Committee (MEPC). The specific requirements, as set out in Appendix III to Annex VI, are:

- A clear delineation of the area and its boundaries;
- A description of the land and sea areas at risk from the impacts of maritime SO_x emissions;
- An assessment that describes the impact of SO_x emissions on terrestrial and aquatic ecosystems, areas of natural productivity, critical habitats, water quality, human health, and areas of cultural and scientific significance, if applicable. The source of relevant data including methodologies used, shall be identified;
- Relevant information pertaining to the meteorological conditions in the proposed area of application and the land and sea areas at risk, in particular prevailing wind patterns, or to topographical, geological, oceanographic, morphological, or other conditions that may lead to an increased probability of higher localized air pollution or levels of acidification;
- The nature of the ship traffic in the proposed area, including the patterns and density of such traffic; and
- A description of the control measures taken by the proposing Party or Parties addressing land-based sources of SO_x emissions affecting the area at risk that are in place and operating concurrent with the consideration of the proposal.

The Treaty does not establish arbitrary limits to the geographic extent of the area to be designated. Instead, it stipulates that the proposing Party or Parties support the size and extent of the proposed area by the relevant science. The two most important factors in determining the offshore boundaries of the area are meteorological conditions in the proposed area and how they influence emission transport to areas ashore and the volume and patterns of maritime traffic.

We plan to begin investigating designation of one or more areas in the future, including a review of the relevant emissions, the potential benefits that could be attained and the associated costs. The first step will be to identify the areas we would like to be considered for SECA designation. Then, we will need to identify data necessary to support any such applications, and the organizations (other federal agencies, State agencies, ports, *etc.*) who are likely to have that data. Once we obtain the data, we will use it to develop any such applications. EPA will work with interested states to consider whether the designation of specific SO_x Emission Control Areas under the Treaty would offer significant benefits to air quality (including PM), considering associated costs. Depending upon the outcome of these consultations and the analysis of the relevant vessel traffic and emissions, the United States may propose designation of one or more areas by amendment to Regulation 14(3) of Annex VI.

4. Are There Other Fuel-Based Controls That May Be Considered?

Additional particulate matter emission benefits could be achieved from engines that use distillate marine diesel fuel by controlling the sulfur content of that fuel. Distillate marine diesel fuel is used in Category 1 and Category 2 marine diesel engines, and is used in Category 3 marine diesel engines for specific purposes such as engine maintenance and, sometimes, for maneuvering and in-port operations. Distillate marine diesel fuel is similar to land-based nonroad diesel fuel and currently has a sulfur content in the range of 2,000 to 3,000 ppm (0.2–0.3 percent).

As noted in Section I.F, above, the European Union is considering a requirement for ships to use fuel with a maximum sulfur content of 2,000 ppm while at port. This generally means that these vessels would use distillate marine diesel fuel for those operations.

In the United States, we recently set fuel standards applicable to distillate highway diesel fuel. Today, the sulfur content of this fuel is under 500 ppm; a 15-ppm cap will apply beginning in 2007. We are currently developing a separate rulemaking that will set limits for the sulfur content of distillate non-road diesel fuel. Among other things, this rule will address what level of sulfur content would be appropriate for distillate marine diesel fuel.

V. Demonstrating Compliance

We are finalizing many, but not all of the compliance provisions that we proposed. As described earlier, we are only finalizing an initial tier of standards in this final rule. Given the nature of these standards, which are equivalent to the internationally negotiated NO_X standards, we are adopting an interim compliance program for Category 3 engines that is harmonized with the international program to the maximum extent possible. This compliance program will apply only for the initial tier of standards in this final rule. Nevertheless, we continue to believe that additional compliance requirements, such as those that we proposed, may be appropriate for later tiers of standards. See Section V.F. for more information about the kinds of additional compliance provisions that we expect to include for later standards. The certification and compliance provisions for the internationally negotiated NO_X standards contained in MARPOL Annex VI are set out in the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (the NO_X Technical Code).[33]

For those Category 1 and Category 2 engines for which we proposed Tier 1 emission standards (*i.e.*, engines over 2.5 liters per cylinder), we proposed to apply all the Tier 2 requirements for the proposed Tier 1 standards. (Note that we established those Tier 2 requirements in a previous rulemaking, in which we set the Tier 2 standards.) After considering the public comments, we are finalizing this approach with two exceptions. First, we allow manufacturers to use test data generated using the procedures in the NO_X Technical Code on an interim basis, as described below. Second, we will not require manufacturers to perform production-line testing on their Tier 1 engines. Commenters expressed concerns about the lead time available to meet the Tier 1 requirements, and the burdens of deviating from the Annex VI requirements. We believe that these comments are particularly relevant to production-line testing. Given the nature of the Tier 1 standards that are being finalized, we do not believe that the burdens associated with starting a production-line testing program with less than two years lead time would be appropriate. We do not believe that the remainder of the existing compliance program for these engines will be particularly burdensome or require additional lead time. The compliance program that was promulgated previously for Tier 2 engines is not being changed, and will remain in effect as specified in 40 CFR part 94.

Except as noted, the remainder of this section addresses the compliance program for Category 3 engines.

A. Overview of Certification

1. How Do I Certify My Engines?

We are adopting certification and compliance requirements for new Category 3 marine engines that are similar to those already in place for Category 1 and Category 2 marine engines. These provisions are contained in 40 CFR part 94 and were described in detail in the preamble to the final rule establishing those regulations (64 FR 73300, December 29, 1999). In general, these provisions require that a manufacturer do the following things to certify engines:

- Divide engines into groups of engines with similar emission characteristics. These groups are called ''engine families''.
- Test the highest emitting engine configuration within the family.
- Determine deterioration rate for emissions and apply it to the ''zero-hour'' emission rate. The deterioration rate is essentially the difference between the emissions of the engine when produced and the point at which it will need to be rebuilt.
- Determine the emission-related maintenance that will be necessary to keep the engines in compliance with the standards.
- Submit the test data to EPA along with other information describing the engines within the engine family. This submission is called the ''application for certification''.

The certification provisions for new Category 3 engines are discussed more fully below, including discussions of the differences between the requirements the NO_X Technical Code (NTC) and this final rule.

2. How Are These Certification Requirements Different From Those of the NO_X Technical Code?

Our certification process is similar to the NTC pre-certification process. However, the Clean Air Act specifies certain requirements for our certification program that are different from the NTC requirements. The EPA approach differs from NTC in three areas: (1) We allow, but do not require witness testing, (2) we include various provisions to hold the engine manufacturer responsible for the durability of emission controls (*see* Section V.B.5), and (3) we specify broader temperature ranges and allow manufacturers less discretion in setting engine parameters for testing, with the goal of adopting test procedures that represent a wide range of normal in-use operation. Note also, as described in Section III.B, that the timing of the new standards is based on the date of first full assembly of the engine, while NTC generally applies the standards based on the start-date of the manufacture of the vessel, which may occur before the engine is fully assembled.

We believe the regulations in this final rule are sufficiently consistent with NTC that manufacturers can use a single harmonized compliance strategy to certify under both systems. If manufacturers have used good engineering judgment in exercising their discretion for test parameters under the TNC, there will be little or no difference between the two systems. However, we are aware that the short lead time may not allow manufacturers to take whatever steps may be necessary to address any potential differences. As a result, we are adopting an interim provision in 40 CFR 94.12 to allow manufacturers to rely on test data generated under NTC provisions in place of EPA provisions for certifying all categories of engines through the 2006 model year. Beginning with the 2007 model year, EPA may extend this waiver on a case-by-case basis, provided the manufacturer satisfies EPA that any differences between its application of the NO_X Technical Code test procedures and the test procedures contained in this rule will not adversely affect NO_X emission rates. For the Category 1 and Category 2 engines subject to this rule, manufacturers will start certifying to EPA's Tier 2 standards starting in 2007. For Category 3 engines, the standards don't change in 2007, but this marks an appropriate time to expect manufacturers to make any minor adjustments that might be necessary to fully comply with the EPA provisions for testing and certification.

The relationship between our program and the NTC requirements is described in more detail in Section V.D.

3. How Does a Certificate of Conformity Relate to a Statement of Voluntary Compliance or an EIAPP?

The Clean Air Act requires that manufacturers obtain a certificate of conformity before they introduce a new engine into commerce. Once it goes into force, MARPOL Annex VI will require manufacturers to obtain an ''Engine International Air Pollution Prevention

[33] A copy of the conference version of the NO_X Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org).*

Certificate'' (EIAPP). We anticipate that engines that receive an EPA certificate of conformity will also be eligible for an Engine International Air Pollution Prevention Certificate, since the near-term emission limits are the same as the Annex VI NO_X limits.

Note that EIAPPs will not be issued until the Annex goes into force and can be issued only by the flag-state Administration. Prior to entry into force of the Annex, and to encourage vessel owners to purchase MARPOL Annex VI compliant engines, we have developed a voluntary certification program. Under this program, the engine manufacturer can apply for and obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_X limits.[34] It is anticipated that ship owners will be able to exchange this Statement of Voluntary Compliance for an EIAPP after the Annex enters into force. If a shipowner does not have a valid Statement of Voluntary Compliance for an engine, it may be necessary to recertify the engine to obtain an EIAPP after the Annex enters into force. Finally, note that obtaining an EIAPP in this way requires a Statement of Voluntary Compliance from EPA. A shipowner with a Statement of Voluntary Compliance issued by another Administration or by a classification society will have to apply for EPA certification to obtain an EIAPP.

4. What Are the Roles of the Engine Manufacturer and Ship Owner After the Engine Is Installed?

Unlike the provisions of MARPOL Annex VI, the Clean Air Act makes the engine manufacturer responsible for in-use compliance of properly maintained engines. Manufacturers must demonstrate that their engines can meet emission standards through the engine's ''useful life'' (as described below, the useful life generally refer to the first rebuild cycle). Manufacturers are responsible for correcting failures that occur during that period. The ship owner must ensure that all proper maintenance is performed during the entire ''service life'' of the engine (service life is the period during which the engine is in service, including the periods after it has been rebuilt). Under both Annex VI and the regulations adopted in this final rule for Category 3 engines, the ship owner is also responsible for compliance with the recordkeeping provisions contained in the NO_X Technical Code. EPA and Coast Guard will work together to develop procedures to verify onboard performance of Annex VI requirements, as Coast Guard has general authority to carry out such procedures on vessels.

While this final rule does not require operators or owners of Category 1 or Category 2 engines to comply with the recordkeeping provisions contained in the NO_X Technical Code, we believe operators will generally choose to comply with these Annex VI recordkeeping requirements anyway, for three reasons. Most importantly, once Annex VI is ratified, compliance with these recordkeeping provisions will be required for U.S. ships that go overseas. Also, full compliance with the maintenance logging requirements under Annex VI would be a simple way to show that an operator is not tampering with the engine. Finally, manufacturers often condition warranty coverage to some degree on proper maintenance of the engine. Thus, having the Annex VI log would facilitate warranty claims.

B. Other Certification and Compliance Issues

1. How Are Engine Families Defined?

Engine grouping for the purpose of certification is accomplished through the application of an ''engine family'' definition. Engines expected to have similar emission characteristics throughout their useful life are classified in the same engine family. As a default, we are defining engine families consistent with Annex VI. However, to provide for administrative flexibility, we may separate engines normally grouped together or combine engines normally grouped separately, based upon a manufacturer's request, substantiated with an evaluation of emission characteristics over the engine's useful life. It is worth noting that we are not adopting the Annex VI definition of ''engine groups''. Under Annex VI, manufacturers can choose to certify their engines under a more narrowly defined engine group than an engine family. Annex VI allows more in-use adjustment of these engine group-certified engines.

2. Which Engines Are Selected for Testing?

Manufacturers must select the highest-emitting engine (*i.e.*, ''worst-case'' engine) in a family for certification testing. This is consistent with the NTC requirements. In making that determination, the manufacturer must use good engineering judgment (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring the worst-case engine to be tested, we are assured that all engines within the engine family are complying with emission standards for the smallest number of test engines. If manufacturers believe that the engine family is grouped too broadly, they may request separating engines with dissimilar calibrations (based on an evaluation of emission characteristics over the engine's useful life) into separate engine families.

For these large marine engines, conventional emission testing on a dynamometer becomes more difficult. Often the engine mock-ups that are used for the development of these engines use a single block for many years, while the power assemblies are changed out. For Category 3 engines, certification tests may be performed on these engine mock-ups, as long as their configuration is the same as that of the production engines. In addition, manufacturers may conduct single-cylinder tests, since this should give the same brake-specific emission results as a full engine test, as long as each cylinder in an engine is equivalent in all material respects.

Manufacturers must allow EPA to perform confirmatory testing using their certification engines. In other rules, we have required manufacturers to provide us with actual engines for our confirmatory testing program. However, this would be impractical for Category 3 engines because of their size and cost. Thus, confirmatory testing of Category 3 engines would most likely require the manufacturer to test a specific engine model according to our specifications. For example, we might require that an engine be retested in our presence or tested with specific settings for adjustable parameters.

3. How Does EPA Treat Adjustable Parameters?

Diesel engines are often designed with adjustable components. For example, it is common to be able to adjust the fuel injection timing of an engine. EPA has historically required that these important adjustable parameters be physically limited to the range over which an engine would comply with the standards. Thus, while an uncontrolled diesel engine would typically have a broad (or even unlimited) range of adjustability, EPA-certified engines have a very narrow range of adjustability. Typically, this narrow range is enforced through physical stops on the adjustable parts. In some cases, manufacturers seal a component after final assembly to prevent any adjustment in use. Disabling physical stops, breaking seals, or otherwise adjusting an engine outside

[34] Information on how to obtain a Statement of Voluntary Compliance can be found on our Web site *http://www.epa.gov/otaq/marine.htm.*

of the certified range is considered tampering with the emission controls, and is a violation of section 203(a) of the Clean Air Act.

For marine engines, broad adjustability allows engines to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. While we recognize the need for this practice, we are also concerned that the engine meet the proposed emission limits throughout the range of adjustment. Therefore, the Agency has established provisions for Category 2 engines to allow manufacturers to specify in their applications for certification the range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance only across that range. We will also allow such adjustments for Category 3 engines. Practically, this requirement means that a manufacturer would specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality, which can be very significant for Category 3 engines. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer. The operators have to maintain records onboard the vessel demonstrating compliance, and must submit these records to EPA upon request. NTC also allows engines to be adjusted in use, and requires the engine manufacturer to include a description of the allowable adjustments in the Technical File for the engine.

4. How Must Engines Be Labeled?

Each new engine must have a permanent emission label on the engine block or on some other part of the engine that is not normally replaced during maintenance or rebuild. This label must include specific emission-related information such as engine family name, model year, and basic maintenance specifications. The inclusion of this information on the label is in addition to the recordkeeping requirements specified in the NO_X Technical Code.

5. How Does EPA Ensure Durable Emission Controls?

To achieve the full benefit of the emission standards, we need to ensure that manufacturers design and build their engines with durable emission controls. It is also necessary to encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation. Therefore, we believe it is necessary to adopt measures to address concerns about possible in-use emission performance degradation. The durability provisions described in the following sections are intended to help ensure that engines are still meeting applicable standards when operated in use. Most of these provisions are carried over from our program for smaller marine diesel engines.

The most fundamental issue related to durability is the concept of useful life. The Clean Air Act specifies that useful life is the period during which an engine is required to meet the emission standards. For Category 3 marine engines subject to our standards, the useful life is the period during which an engine is expected to be properly functioning with respect to reliability and fuel consumption without being rebuilt. For engines that are rebuilt completely at one time, the useful life would be the expected period between original manufacture and the first engine rebuild. For engines that are maintained by replacing individual power assemblies, the useful life would be the expected period between original manufacture and the point at which the last power assembly is replaced. We expect that this period will vary to some degree among engine models. Manufacturers must therefore specify the useful life for their engines at the time of certification. The specified useful life is subject to EPA approval and may not be less than 3 years or 10,000 hours of operation (based on total engine operation, not just operation in or near U.S. waters). This specification does not limit in-use operation. Rather it gives the manufacturer direction for addressing emission deterioration by defining the period during which the manufacturer must demonstrate to EPA that the engine will meet the standards. The useful life period may also not be less than any mechanical warranty that the manufacturer offers for the engine.

These minimum useful life values are lower than the minimum values for Category 2 engines due to the effect of using residual fuel, which generally has much higher sulfur levels than distillate fuels. The high sulfur levels create a more corrosive environment within the combustion chamber, which decreases durability. The period of years (three years) is also affected by the higher usage rate in terms of hours per year.

6. What Are the Manufacturer's Responsibilities for the Emission Warranty and Defect Reporting?

Tied to the useful life is the minimum period for the emission warranty required under section 207(a) of the Clean Air Act. We believe it is important to ensure that the engine manufacturer has designed and built the engine to ensure that it will comply with the emission standards throughout its useful life, as long as it is properly maintained. We therefore specify that the period for the emission warranty is equal to the useful life period (*e.g.*, 10,000 hours or 3 years). The engine manufacturer is responsible for any emission-related repairs to any properly maintained and properly used engine that fails to meets the standard in use during the warranty period. Engine operators are responsible to repair any engines that fail to meet the standards because of improper maintenance during the service life of the engine.

We are also adopting defect-reporting requirements. These provisions require Category 3 engine manufacturers to report to us whenever a specific emission-related defect occurs in two or more engines (or two or more cylinders within the same engine). We generally expect manufacturers to identify defects as part of their normal warranty process. The manufacturer must, however, report all defects, without regard to how they were identified. Note that the defect reporting requirements do not expressly require the manufacturer to collect new information. However if their practice for safety and production defects is to collect new information or conduct investigations, then they must do so with respect to emission-related defects under this regulation. Manufacturers must also track and report information they obtain through normal business practice.

7. What Are Deterioration Factors?

To further ensure that the emission standards are met in use, we require manufacturers to apply a deterioration factor (DF) to engines to evaluate emission-control performance throughout the useful life. The emissions from new engines are mathematically adjusted using the DF to account for potential deterioration in emissions due to aging of emission-control technologies or devices. The resulting emission level is intended to represent the expected emissions at the end of the useful life period for a properly maintained engine. We believe the effectiveness of some emission-control technologies, such as aftertreatment, sophisticated fuel-

delivery controls, and some cooling systems, can decline as these systems age. The DF is applied to the certification emission test data to represent emissions at the end of the useful life of the engine. We are proposing that marine diesel engine DFs be determined by engine manufacturers in accordance with good engineering practices. This is more flexible than some more prescriptive approaches that are required for other program. The DFs, however, are subject to EPA approval and must be consistent with in-use test data. Manufacturers must calculate DF values based on the worst-case engine configuration offered within the engine family.

It is not our intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, we are applying the DF requirement to all engines so we can be sure that reasonable methods are being used to determine the capability of engines to meet standards throughout their useful lives. Consistent with other programs, we allow manufacturers the flexibility of using durability emission data from a single engine for other engine families that are being certified to the same standards.

DFs are calculated as an additive value (*i.e.*, the arithmetic difference between the emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs are calculated as a multiplicative value (*i.e.*, the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration. Given the type of emission controls projected to be used to meet the near-term standards (calibration changes and combustion chamber redesign, but not aftertreatment), it is possible that NO_X emissions may actually decrease with time as the piston rings and cylinder liners wear (thereby reducing peak pressures). In such cases, manufacturers would not be allowed to use a negative DF, and would instead be required to use a DF of zero.

One of the reasons we are adopting a very flexible DF program for this rulemaking is that we do not expect deterioration to be a major problem for these engines. Our history with in-cylinder NO_X control suggests that engine-out NO_X emissions are relatively stable over time. If we eventually adopt an aftertreatment-forcing standard or a standard for PM, we would likely consider more specific requirements for calculating DFs. For example, it might be appropriate to apply to these engines the more specific DF provisions that have been developed for heavy-duty highway engines (40 CFR 86.004–26).

8. What Requirements Apply to In-Use Maintenance?

In previous rules, we have required manufacturers to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission-control system. (Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties.) If such required maintenance is not performed by the engine operator, then in-use emission deterioration can result. We therefore require operators of vessels with Category 3 to perform the emission-related maintenance specified by the manufacturer, which we approve as part of the application for certification. This provision is comparable to our requirement for railroads to perform emission-related maintenance for locomotives (40 CFR 92.1004). In that approach, locomotive owners who fail to properly maintain a locomotive are subject to civil penalties for tampering. For marine engines, we consider rebuilding engines and power assemblies to be a part of emission-related maintenance. We believe these requirements are generally consistent in practice with the provisions specified for ship operators in Technical File required by the NO_X Technical Code.

Unlike our regulation for smaller marine engines, we are not adopting minimum allowable maintenance intervals for Category 3 marine diesel engines. This is also consistent with our approach for locomotives. In both cases, we believe the engine manufacturers, allowing for input from the engine owner, can assess what should be the specific maintenance schedules before completing the sale of the engine. The engine manufacturer will then provide those specific maintenance instructions to the ship operator or owner as part of the required maintenance information.

9. What Requirements Apply to Rebuilding Engines?

We are adopting in-use maintenance provisions that require operators to properly perform emission-related maintenance throughout the service life of the engine. This also applies whenever an engine or engine subsystem is rebuilt. In general, we require that all rebuilds return the engine to its original certified condition. We consider failure to rebuild an engine to its original certified condition to be tampering with the emission controls. We believe these maintenance and rebuild provisions address the vast majority of in-use servicing of these engines.

10. What Are the Prohibited Acts and Related Requirements?

We are regulating Category 3 engines under 40 CFR part 94. This means that we are extending the general compliance provisions for smaller marine engines to Category 3 marine engines. These include the general prohibition against introducing an uncertified engine into commerce, as well as the tampering and defeat-device prohibitions. These prohibitions are listed in 40 CFR 94.1103. As discussed above, certain prohibitions applying to ship owners and ship operators are also described in this section.

11. What General Exemptions Apply?

We are applying the exemptions for smaller marine engines to Category 3 marine engines. These include, for example, exemptions for the purpose of national security and exemptions for engines built in the United States for export to other countries. These exemptions, described in 40 CFR part 94, subpart J, typically exempt the engines from emission standards and other requirements, but require the manufacturer to keep records and label exempted engines.

12. What Regulations Apply for Imported Engines?

We are extending the current importation provisions found in 40 CFR part 94 for smaller marine engines to Category 3 marine engines. Imported engines are generally subject to the same requirements, based on their date of original manufacture. The existing provisions for smaller engines include permanent and temporary exemptions from this requirement.

13. What Are a Manufacturer's Recall Responsibilities?

Section 207(c)(1) of the Act specifies that manufacturers must recall and repair in-use engines if we determine that a substantial number of them do not comply with the regulations in use. We are proposing to apply the existing provisions for smaller marine engines to Category 3 marine engines. These provisions are described in 40 CFR part 94, subpart H.

14. What Responsibilities Apply to Ship Owners and Operators?

In this final rule we are requiring ship owners and operators to maintain all records of maintenance, repair, and adjustment of the ship's engines as it relates to emission-control performance. We believe these records currently are kept by most ship operators as part of normal recordkeeping associated with engines of this magnitude, initial investment, and cost of operation. These records would be essential for both the ship operator and the Administration to determine compliance with the applicable requirements. This is especially important for Category 3 marine engines, because operators need to be able to make adjustments that significantly affect the engine's ability to control emissions. These records must be maintained on-board the vessel and be provided to EPA upon request. It is a separate violation of the record keeping and submission requirements to fail to meet the requirements with respect to each required submission or record. Penalties are assessed for each day of each such violation.

In order to maintain the proper emission-control performance of the engine, the ship owner and operator are responsible for maintaining all adjustable parameters within the certified ranges specified by the engine manufacturer, and for ensuring that the engine is rebuilt pursuant to the regulatory requirements. The regulations establish that any adjustment outside the range specified by the manufacturer for proper emission-control performance constitutes a violation of the regulations and the Clean Air Act. Additionally, the regulations require the ship owner and operator to correct any noncompliance within a two-hour period. Failure to correct the noncompliance within a two-hour period is a violation of the regulations, with each two-hour period considered a separate violation. These provisions, like the other maintenance-related provisions, are intended to ensure that owners and operators perform adjustments properly to avoid the significant increase in emissions associated with improper adjustments. In effect, the timely correction of the improperly adjusted parameter is considered a required maintenance event, and failure to properly perform this required maintenance is considered tampering. Given the significant emission increases that can occur with improper adjustments, the reasonable time needed to correct an improper adjustment, and the need for an effective deterrent, the regulations establish a recurring two-hour period as the appropriate requirement.

As a minimum measure of compliance, the ship owner is required to comply with certain basic recordkeeping, as described above, and to review those records periodically to ensure compliance. Specifically, owners must perform an end-of-year review of the applicable maintenance and repair records and send us an annual statement confirming that they have met the emission-related requirements of the regulations for the previous year, or acknowledging any noncompliance, as appropriate. If the ship is operated by a company not controlled by the ship owner, then both companies are responsible to meet this reporting requirement. If EPA receives a valid compliance statement regarding a particular vessel from either the owner or the operator of the vessel, EPA will consider both the owner and the operator to have complied with the reporting requirement.

As described in Section I.E, the NO_X Technical Code Section 2.1 will require each engine covered by the Annex VI NO_X requirements to be surveyed to ensure that it complies with the NO_X limits (this requirement will apply once Annex VI goes into force). Two of the surveys, the pre-certification survey and initial certification survey, are required as part of a ship's initial survey and the issuance of an International Air Pollution Prevention certificate for the vessel. Section 2.1 also contains a requirement for periodic and intermediate surveys ''to ensure the engine continues to fully comply with the provisions of the Code.'' The periodic and interim surveys are to occur every five and every 2½ years, respectively. Annex VI also requires additional unscheduled surveys unless the scheduled surveys are carried out on an annual basis. These surveys are required for engines installed on vessels of 400 gross tonnage or above, as specified in Regulation 5 of the Annex. For smaller vessels, it is up to each country to establish appropriate programs.

The periodic and interim surveys are somewhat similar to the annual compliance statement we are finalizing today. However, while the Annex VI surveys will be carried out by government surveyors, the annual compliance statement described in this section must be completed by the owner of the vessel and therefore creates a liability requirement for the vessel owner. In addition, it is not clear at this time whether the Annex VI survey will be designed only to inspect the engine to make sure it is in compliance at the time of the survey or if it will be designed to ascertain whether the engine has been taken out of compliance (*i.e.*, if there has been tampering) during the interim period. This is because the U.S. Senate has not yet ratified Annex VI, so the implementing legislation and corresponding regulations for adopting the Annex VI and NO_X Technical Code requirements into U.S. law have not yet been adopted. For both of these reasons, we believe it is necessary to include this annual compliance statement requirement in this rule. However, it is possible that the additional documentation required by Annex VI and the associated surveys may be sufficient to ensure compliance. Therefore, in light of this possibility, EPA will reconsider the need for this annual compliance statement in the context of the development of the implementing legislation and supporting regulations for U.S. implementation of MARPOL Annex VI. If such reconsideration leads EPA to rely in the future on the Annex survey in lieu of the annual statement of the compliance, the owner and operator of the vessel would remain liable for all other compliance provisions of the regulations adopted today. This would include maintaining all records of maintenance, repair and adjustment of the ship's engines as it relates to emission-control performance, and maintaining the proper emission-control performance of the engine. The annual compliance certification requirement will remain in effect unless it is specifically rescinded.

C. Test Procedures for Category 3 Marine Engines

Engine manufacturers are currently testing according to the test procedures outlined in The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (hereafter referred to as ''NO_X Technical Code'').[35] The new EPA standards are based on these Annex VI test procedures, with some modifications described below. These modifications are necessary to ensure that the test data used for certification are consistent with the requirements of the Clean Air Act.

1. What Duty Cycle Do I Use To Test My Engines?

The duty cycle used to measure emissions is intended to simulate operation in the field. Testing an engine for emissions consists of exercising it

[35] A copy of the conference version of the NO_X Technical Code can be found in Docket A–97–50, Document II–B–01. Copies of updated versions can be obtained from the International Maritime Organization (*http://www.imo.org*).

over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emission-control performance of engines designed to those standards.

To address operational differences between engines, we are adopting two different duty cycles for different types of Category 3 marine engines. Engines that operate on a fixed-pitch propeller curve must be certified using the E3 duty cycle adopted by the International Organization for Standardization (ISO). This is a four-mode steady-state cycle developed to represent in-use operation of marine diesel engines. The four modes lie on an average propeller curve based on the vessels surveyed in the development of this duty cycle. We are adopting the ISO E2 duty cycle for propulsion engines that operate at a constant speed. These are the same cycles specified by Annex VI.

2. How Do I Account for Variable Test Conditions?

We are not limiting certification testing based on barometric pressure or ambient humidity. We limit the allowable ambient air temperature for laboratory testing to a range between 13°C and 30°C and charge air cooling water between 17°C and 27°C. This is somewhat broader than is specified by the NTC. We are adopting the NTC correction factors for temperature and humidity for certification testing in this temperature range. These corrections adjust emission measurements to be equivalent to measurements taken at 25°C and a humidity of 10.71 g/kg. We will allow the use of the corrections for a broader range of test conditions, as long as the manufacturer verifies the accuracy of the correction factors outside of the range of test conditions for certification.

3. How Does Laboratory Testing Relate to Actual In-Use Operation?

If done properly, laboratory testing can provide emission measurements that are the same as measurements taken from in-use operation. However, improper measurements may be unrepresentative of in-use operation. We are therefore adopting regulatory provisions to ensure that laboratory measurements accurately reflect in-use operation. The regulations include a general requirement that manufacturers must use good engineering judgment in applying the NO_X Technical Code test procedures to ensure that the emission measurements accurately represent emission-control performance from in-use engines. We are adding specific requirements for manufacturers to ensure that intake air and exhaust restrictions and coolant and oil temperatures are consistent with in-use operation. Most importantly, we require that manufacturers' simulation of charge-air cooling replicate the performance of in-use coolers within ±3°C.

The definition of maximum test speed, (the maximum engine speed in revolutions per minute, or rpm) is an important aspect of the test cycles. Under the NO_X Technical Code, engine manufacturers are allowed to declare the rated speeds for their engines, and to use those speeds as the maximum test speeds for emission testing. However, we are concerned that a manufacturer might declare a rated speed that is not representative of the in-use operating characteristics of its engine in order to influence the parameters under which their engines may be certified. We are therefore applying the current definition of ''maximum test speed'', which is already specified for Category and Category 2 engines 40 CFR 94.107, to Category 3 engines. We will also allow manufacturers to ask us to use the maximum in-use engine speed as the maximum test speed.

D. Comparison to NO_X Technical Code Compliance Requirements

1. How Are EPA's Compliance Requirements Different From the NO_X Technical Code Requirements?

We have attempted to define compliance requirements that are sufficiently consistent with the NO_X Technical Code (NTC) to allow manufacturers to use a single harmonized compliance strategy to certify under both systems. This has involved making several changes to proposal to align the certification and compliance program with that specified by NTC. For example, (1) the final rule specifies a test fuel based on engine operation with cleaner-burning distillate fuel; (2) we are not requiring engine manufacturers to test engine emissions to verify compliance after engines are installed in vessels; and (3) operators do not need to conduct onboard emission measurements after adjusting the engines (or before they enter U.S. territorial waters) to demonstrate that the engine continues to meet the standards after such adjustments. We intend to revisit these issues in our future rulemaking.

We are adopting several provisions in our compliance program that are different from the NTC requirements. The differences are based on certain Clean Air Act-specific compliance provisions and the related need to adopt test procedures designed to achieve the emission reductions called for under Clean Air Act section 213. These differences are discussed in detail in Section V.A.2 above and are summarized as follows:

- Liability for in-use compliance—We require that the engine manufacturer be responsible for designing and producing an engine that will comply with the emission standards for the full useful life of the engine, while the NTC program makes the ship operators solely responsible for ensuring in-use compliance. Both the EPA regulations and the NTC provisions require ship operators to properly maintain their engines and to keep records of the maintenance and engine adjustment throughout the service life of the engine. Under NTC, these records are referred to as the Record Book of Engine Parameters.
- Durability demonstration—We require that the engine manufacturer demonstrate prior to production that a properly maintained and used engine will comply with the emission standards for the full useful life of the engine (*see* Section V.B.5). The NTC program only requires manufacturers to demonstrate that the engine meets the standards when it is installed in the vessel; there is no durability demonstration under NTC.
- Witness testing—We allow, but do not require, witness testing for U.S. compliance. Some other countries require witness testing for marine engines. Manufacturers must take this into consideration if they plan to sell the same engines in the United States and those other countries.
- Test conditions—We certify Category 3 marine engines using the NTC test procedures with certain modifications. Annex VI specifies narrow ranges for air and water temperature. This can make it easier for manufacturers to certify, because they might not design for the wide ranges of conditions that actually occur. We believe it is necessary to specify wider temperatures to achieve the level of emission reductions called for under the Act. Test procedures based on real operating parameters provide a robust method of measuring emissions. To address the concern for varying emission levels under extreme conditions, we correct emissions back to standard conditions using Annex VI correction factors.
- Test parameters—NTC allows manufacturers full discretion to adjust certain engine parameters to appropriate

settings. For engine parameters such as aftercooler and backpressure simulation, these parameters may significantly affect emission levels. As with the test conditions for air and water temperatures, to avoid unrealistic parameter settings, we simply require good engineering judgment to select representative values for such engine parameters. Also, under NTC, manufacturers may specify a maximum test speed for engine testing that selectively includes lower-emission operation, even if those speeds do not represent an engine's actual operation when installed on a vessel. We instead define an objective way of identifying an engine's maximum test speed, based on the way the engine will operate in use.

• Compliance date for standards—As described in Section III, we apply the new emission standards based on the date the engine is fully assembled for the first time, while Annex VI applies the standards based on the date that the vessel is manufactured. Note that this difference would not matter for the near-term standards, since the effective date of the Annex VI limits has already passed (January 1, 2000).

• Parameter adjustment—We are allowing manufacturers to specify in their applications for certification the range of adjustment across which the engine is certified to comply with the applicable emission standards. This would allow a manufacturer to specify different fuel injection timing calibrations for different conditions. These different calibrations would be designed to account for differences in fuel quality. Operators would then be prohibited by the anti-tampering provisions from adjusting engines to a calibration different from the calibration specified by the manufacturer. The NTC would also prohibit operators from adjusting engines to a calibration different from the calibration specified by the manufacturer.

The durability requirements of the Clean Air Act represent the most fundamental differences between the NTC certification program and the program required by the Clean Air Act. The Act requires that a certificate of conformity be based on a demonstration of compliance with the engine standards, and the engine standards require that the engine manufacturer produces an engine that will comply with the emission standards for the specified useful life of the engine. The NTC certification provisions do not include this kind of requirement, instead making the ship operators solely responsible for ensuring in-use compliance through periodic survey requirements. Nevertheless, since requiring compliance with both would be at least partially duplicative, this rule harmonizes the Act and NTC requirements as closely as possible.

The requirements related to representative engine testing are important to ensure that engines are not designed with emission-control systems that operate well in the laboratory, with less effective control during in-use operation. However, based on our expectation that manufacturers are designing their engines properly today, we will allow manufacturers to rely on test data generated under NTC on an interim basis, as described in Section V.A.2,

2. Can a Manufacturer Comply With EPA Requirements and Annex VI Requirements at the Same Time?

Manufacturers complying with EPA requirements will need to do very little additional work to meet the Annex VI requirements. Engine manufacturers must give the operator a Technical File that has more information than we require. The manufacturer may also need to ensure that the relevant emission testing is witnessed appropriately.

For manufacturers already complying with the NTC, the amount of additional work necessary to satisfy the new EPA requirements depends on how they conducted emission testing. The NTC allows more discretion in testing engines than we allow under our regulations, and does not necessarily require that the engine be tested fully consistent with in-use operation. Under the EPA regulations tests of engines that are not consistent with in-use operation would not be allowed, unless the manufacturer could demonstrate that the test results were equivalent to test results that would result from testing conducted in accordance with the proposed regulations. In these cases, manufacturers would need to repeat the tests according to the proposed test procedures. However, we recognize that some additional lead time is needed for manufacturers that will be repeating tests. Therefore, we have included in 40 CFR 94.12(f) of the final regulations an interim provision which will allow manufacturers to use their Annex VI test data to show compliance with Tier 1 standards. Manufacturers would not need prior approval to do this. We are limiting this allowance to the first three model years of the Tier 1 standards. Beginning with model year 2007, manufacturers would need to make a showing of equivalence before they could deviate from the EPA test procedures.

On the other hand, manufacturers that used good engineering judgment to test their engines consistent with their in-use operation may generally use the same test data for EPA certification. For future testing, manufacturers may test their engines in a way that allows them to simultaneously meet the NTC and EPA requirements.

With respect to other EPA compliance requirements not related to certification testing, manufacturers must do the following things in addition to the Annex VI requirements:

• Demonstrate prior to production that the engines will comply with the emission standards for the useful life of the engine.

• Warrant to the purchasers that the engines will comply with the EPA requirements for the useful life of the engine.

• Specify how the operator should adjust the engine in use and how proper adjustment should be verified through testing.

E. Technical Amendment to 40 CFR Part 94

The regulations in 40 CFR 94.7(d) require that a marine engine be equipped with a connection in the exhaust system for the temporary attachment of gaseous and/or particulate emission-sampling equipment. This provision is intended to facilitate in-use emission testing. Where the engine manufacturer does not add a sample port, for example when an inadequate amount of the exhaust system is supplied to make such an installation practical, the engine manufacturer would have to provide installation instructions for the sample port. If the engine manufacturer properly supplies such instructions, the engine would be covered by the applicable engine certificate when the engine manufacturer provides the engine to the vessel manufacturer for the purposes of installation. The vessel manufacturer would then have to follow these installation instructions or the vessel manufacturer's sale or placement of the vessel into service could be a violation of the prohibited acts. Manufacturers expressed concern that the wording of this requirement could be taken to mean that a failure to install the sample port by the vessel manufacturer could affect their engine certificate. This was clearly not the intent of this provision. To further clarify this issue, we are amending 40 CFR 94.7(d) by deleting the words ''invalidate a certificate and'' from the last sentence of that regulatory provision.

F. Compliance Issues To Be Considered for Future Rulemaking

The compliance program being finalized in this final rule is appropriate to implement the Tier 1 standards. However, we continue to believe that additional compliance provisions will be necessary for later standards that require more advanced technology and more challenging calibrations. These include provisions related to (1) parameter adjustment, (2) off-cycle emissions, (3) test fuels, and (4) post-certification testing. These issues were discussed in detail in the proposal for this rule, along with potential compliance provisions that could address our concerns. We intend to assess the need for such compliance provisions in our future rulemaking.

1. What Are EPA's Concerns About Parameter Adjustment?

Given the broad range of ignition properties for in-use residual fuels, we expect that our in-use adjustment allowance for Category 3 engines would result in a broader range of adjustment than is expected for Category 2 engines. Because of this broader allowance, we proposed that operators be required to perform a simple field measurement test to confirm emissions after a parameter adjustment or maintenance operation, using onboard emission measurement systems with electronic-logging equipment. We expect that this issue will be equally important for more advanced engines that rely on water injection or after treatment for emission reductions. In addition, in most cases, these advanced technologies can be turned on and off by the operator. Thus, we expect there to be a need for an onboard verification system for these engines as well.

We envision a simpler measurement system than the type specified in Chapter 6 of NO_X Technical Code. As is described in the Final Regulatory Support Document, we believe that onboard emission equipment that is relatively inexpensive and easy to use could be used to verify that an engine is properly adjusted and is operating to the specifications of the engine manufacturer. Note that Annex VI includes specifications allowing operators to choose to verify emissions through onboard testing, which suggests that Annex VI also envisioned that onboard measurement systems could be of value to operators.

We proposed to allow vessel operators to adjust an engine's operating parameters different from the manufacturer's specification when the vessel is sufficiently far from the U.S. coastline. This flexibility is not included in the NTC provisions. Under the proposed approach, engine adjustments different from engine manufacturer's specifications would have been conditional on readjusting the engine's parameters within its certified range and confirming that emissions are within the range of emissions to which the engine is certified to comply before a vessel approaches the U.S. coastline. Failure to take these actions would have constituted tampering with the engine in violation of Clean Air Act section 203(a)(3)(A) and 40 CFR 94.1103(a)(3)(i). While we are finalizing our Tier 1 program without this flexibility, we will continue to evaluate whether it is appropriate for more advanced standards.

While we may revisit some of these issues in our future rulemaking, under this final rule ship operators may not adjust the parameters outside of the ranges specified by engine manufacturers in their application for certification. Any adjustment outside of the certification range would be considered tampering (*see* Sections V.B.3 and V.B.14).

2. What Are EPA's Concerns About Off-Cycle Emissions?

We are concerned about emission-control performance when the engine is not operating on the ISO E3 test cycle points. For Category 1 and Category 2 engines, we adopted ''not-to-exceed'' provisions to define an objective measure to ensure that engines would be reasonably controlling emissions under the whole range of expected normal operation, as well as the defeat-device prohibition. Since these smaller engines are mass produced for a wide range of vessels used in many different applications, we expected ''normal operation'' for these engines to vary considerably around the ideal propeller curve. Generally, Category 3 engines are intended to operate on a propeller curve matched with a propeller for custom installation on a specific vessel. However, we remain concerned that Category 3 engines may have higher emissions between test modes. While the defeat device provisions prohibit manufacturers from producing their engines to control emissions more effectively at established test points than at other points not included in the test, it can be a difficult prohibition to enforce. We expect to revisit this issue in our future rulemaking. For example we may require manufacturers to develop emission targets to allow the operator to ensure that the engine has been readjusted to have performance equivalent to the certified configuration. These emission targets would vary with operating conditions and would include targets for engine speeds other than the test points speeds. In the proposal we defined equivalent control to be either the use of the same injection timing map for the tested and nontested engine speeds, or following a linear interpolation between test points for NO_X emissions at nontest speeds.

In addition, we remain concerned that Category 3 engines operate at relatively low power levels when they are operating within range of a port. Ship pilots generally operate engines at reduced power for several miles to approach a port, with even lower power levels very close to shore. Because of the relatively low weighting of the low-power test modes in the ISO E3 test cycle, it is very possible that manufacturers could meet emission standards without significantly reducing emissions at the low-power modes that are more prevalent for these engines as they operate close to commercial ports. This issue would generally not apply to vessels that rely on multiple engines providing electric-drive propulsion, since these engines can be shut down as needed to maintain the desired engine loading. We will consider several options in our future rulemaking to address this concern. We could re-weight the modes of the duty cycle to emphasize low-power operation. This has several disadvantages. For example, we have no information to provide a basis for applying different weighting factors. Also, changing the duty cycle would depart from the historic norm for marine engine testing. This would make it more difficult to make use of past emission data, which is all based on the established modal weighting. An alternative approach would be to cap emission rates at the two low-power modes. We could set the cap at the same level as the emission standard, or allow for a small variation above the emission standard. For mechanically controlled engines, such an approach could dictate the overall design of the engine. On the other hand, it is likely that Tier 2 engines will have electronic controls, which would enable the manufacturer to target emission controls specifically for low-power operation without affecting the effectiveness of emission controls at higher power.

3. What Are EPA's Concerns About the Fuel Used for Emission Testing?

Appropriate test procedures need to represent in-use operating conditions as much as possible, including specification of test fuels consistent with the fuels that compliant engines

will use over their lifetimes. For the standards we are adopting in this rule, we are allowing engine testing using distillate fuel, even though vessels with Category 3 marine engines primarily use the significantly less expensive residual fuel. This allowance is consistent with the specifications of the NTC. We proposed to base the standards on testing using residual fuel, but are not finalizing this requirement at this time due to concerns about the lead time needed by manufacturers to develop the necessary testing capabilities for residual fuels. Most manufacturers have test facilities designed to test engines using distillate fuel because it is easier to work with than residual fuel. Nevertheless, we believe that long-term standards should be based on actual in-use fuels. Thus, we will reconsider the issue of test fuel in a future rulemaking.

In our proposal, we also included a correction factor to account for the emission-related effects of fuel quality, specifically fuel-bound nitrogen. We are not finalizing the correction here. This correction would have been needed for residual fuel testing because of the high levels of nitrogen contained in those fuels. For all testing with Category 3 engines, we proposed to require measuring fuel-bound nitrogen and correcting measured values to what would occur with a nitrogen concentration of 0.4 weight percent. This corrected value would be used to determine whether the engine meets emission standards or not. This correction methodology would have applied equally to testing with distillate or residual fuels. While we are not adopting any correction for fuel effects in this rule, we will reconsider the need for such corrections in a future rulemaking.

4. What Are EPA's Concerns About Production Variability?

To ensure compliance of production engines, we proposed a simple testing program that is modeled loosely on our production line testing (PLT) requirements for other marine engines. The general object of any PLT program is to enable manufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards. We proposed that each engine a manufacturer produces be tested. We are not including new production testing requirements in this final rule because of concerns about the amount of lead time needed to start such program. However, we will revisit the need to include this type of post-certification testing in our future rulemaking.

VI. Projected Impacts

Our analysis of the projected impacts of new emission standards typically consists of estimating the costs, emission benefits, and cost per ton of pollutant reduced.

We expect the costs of compliance to be negligible. We do not anticipate any engineering or design costs associated with the near-term standards because manufacturers should already be certifying engines to the Annex VI standards to comply with the internationally negotiated program and new Category 3 marine diesel engines installed on ships since January 1, 2000 are widely understood to already comply with the standards set forth in both Annex VI and this rule. While there will be certification and compliance costs, these costs will be negligible, because manufacturers will be able to use the same test data for both programs. As detailed in the information collection request associated with this final rule (OMB #2060–0460), total annual reporting and recordkeeping costs for all affected entities is estimated to be $144,000.[36] Consequently, this program does not impose significant additional costs.

The emission reductions will reflect only reductions from engines that are currently in noncompliance with the Annex VI NO_X limits. For these reasons, the projected impacts of this rule are expected to be negligible (see Table VI–1). Accordingly, we have not calculated values to quantify the cost-effectiveness of the final rule.

TABLE VI–1.—CATEGORY 3 MARINE VESSEL NO_X NATIONAL EMISSION INVENTORIES

	1996	2010	2020	2030
No control baseline (thousand short tons)	190	303	439	659
EPA/MARPOL Annex VI:				
(Thousand short tons)	190	274	367	531
Percent reduction (relative to no control)	.....	9.6	16.2	19.5

VII. The Blue Cruise Program

As described in Section VIII of the proposal, we are interested in developing a voluntary program to encourage ship owners and operators to reduce their air and waste emissions to minimize adverse environmental impacts. Under the envisioned program, a participant ship owner would be awarded a certain designation based on the combination of air and waste emission-control programs adopted. These technologies and systems could be different for new or existing vessels, but would be in addition to any equipment or systems they are already required to have. Qualifying ship owners could use the EPA designation on advertising materials (including the ship itself) to educate consumers and encourage them to choose their vessels.

We will continue the development of the Blue Cruise program separate from the emission-control programs for marine diesel engines. We intend to interact extensively with interested parties through public workshops and a proposal that we intend to publish in mid-2003. After consideration of the public comments we receive on that proposal, we will publish a final program.

VIII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for public comment following the proposal that we published May 29, 2002 (67 FR 37548). We considered these comments in developing the final rule.

We have prepared a detailed Summary and Analysis of Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule and on the Office of Transportation and Air Quality Internet home page at *http://www.epa.gov/otaq/marine.htm.*

[36] Note that manufacturers have already incurred most of these estimated compliance costs for meeting Annex VI standards. New costs related to the final rule will be much smaller.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because it raises novel legal or policy issues due to the international nature of the use of Category 3 marine diesel engines and is therefore subject to OMB review. The Agency believes this regulation will result in none of the economic effects set forth in Section 1 of the Order. A Final Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the Internet address listed under **ADDRESSES** above. Written comments from OMB and responses from EPA to OMB are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval any federal requirements and activities that result in the collection of information from ten or more persons. Information-collection requirements may include reporting, labeling, and recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that do not display a currently valid OMB control number.

The information collection requirements in this final rule have been approved by OMB under the Paperwork Reduction Act. The OMB control number for this information collection is 2060–0460, which we sent to OMB under the EPA ICR number 1897.04. The information being collected will be used by EPA to ensure that new marine vessels and fuel systems comply with emission standards through certification requirements and various subsequent compliance provisions.

In addition, this notice announces OMB's approval of the information collection requirements for commercial marine diesel engine for which we adopted emission standards on December 29, 1999 (64 FR 73300) and for recreational marine diesel engines for which we adopted emission standards on November 8, 2002 (67 FR 68242). The estimated annual public reporting and recordkeeping burden for collecting information from these engines is shown in Table IX.B–1.

TABLE IX.B–1.—BURDEN COLLECTING INFORMATION FOR MARINE DIESEL EMISSION-CONTROL PROGRAMS

Engine type	Respondents	Hours per respondent	Hours for all respondents	Capital costs for all respondents	Operating and maintenance costs for all respondents	Total costs for all respondents
Category 3	6	302	1,812	$0	$67,104	$144,022
Commercial—Category 1 and 2	232	93	21,520	0	40,000	2,494,272
Recreational	12	606	7,273	0	870,238	1,178,061

The Information Collection Requests (ICR) were subject to public notice and comment prior to OMB approval and, as a result, EPA finds that there is ''good cause'' under section 553(b) of the Administrative Procedures Act (5 U.S.C. 553(b)) to include these information-collection requirements in 40 CFR part 9 without additional notice and comment. EPA received various comments on the rulemaking provisions covered by the ICRs, but no comments on the paperwork burden or other information in the ICRs. All comments that were submitted to EPA are considered in the relevant Summary and Analysis of Comments, which can be found in the docket. A copy of any of the submitted ICR documents may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822–T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by e-mail at *auby.susan@epamail.epa.gov.*

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this rulemaking, ''small entity'' is defined as any one of the following: (1) A small business that meets the definition for businesses based on size standards adopted by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The following Table X.B–1 provides an overview of the primary SBA small business categories that may be affected by this regulation.

TABLE X.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

Industry	NAICS [a]	Defined by SBA as a small business if: [b]
Internal Combustion Engines	333618	< 1000 employees
Ship Building	336611	< 1000 employees

TABLE X.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION—Continued

Industry	NAICS [a]	Defined by SBA as a small business if: [b]
Water transportation, freight and passenger	483	< 500 employees

[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

After considering the economic impacts of this rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Our review of the list of manufacturers of Category 3 marine diesel engines indicates that there are no U.S. manufacturers of these engines that qualify as small businesses. We are unaware of any foreign manufacturers of such engines with a U.S.-based facility that qualify as a small business. In addition, this rule will not impose significant economic impacts on engine manufacturers. Engine manufacturers are already achieving the Tier 1 standards and our program will impose only negligible compliance costs. Our review of the U.S. shipyards that build ships that use Category 3 marine diesel engines indicates that there are no U.S. manufacturers of these ships that qualify as small businesses.

Ship operators must take minimal steps to comply with this final rule. This includes an obligation to do emission-related maintenance specified by the engine manufacturer. These costs are not expected to be greater than the costs of maintaining unregulated engines except to the extent that ship operators do not currently maintain engines as specified by the engine manufacturer. Maintenance costs are expected to be minimal, given the overall costs of maintaining all of the vessel's systems and structures. In addition, operators must record certain information related to operating and servicing their engines. For example, maintaining the ''record book of engine parameters'' and detailing the ship's location when servicing engines is generally already required under MARPOL Annex VI or is readily available as a matter of routine recordkeeping. Finally, we require owners of marine vessels with Category 3 engines to send minimal annual notification to EPA to state whether engine maintenance and adjustments have caused engines to be noncompliant.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. According to our cost estimates, we estimate the aggregate costs (annualized over 20 years) of this rule to be negligible. This final rule is therefore not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule creates no mandates on State, local, or tribal governments. The rule imposes no enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule will be implemented at the Federal level and impose compliance obligations only on private industry. Executive Order 13132 therefore does not apply to this rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

F. 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 rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers and shipbuilders. Tribal governments will be affected only to the extent they purchase and use vessels having regulated engines. Executive Order 13175 therefore does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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, Section 5–501 of the Order directs the Agency to 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 under the terms of Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The aim to reduce emissions from certain nonroad engines and have no effect on fuel formulation, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule involves technical standards for testing emissions from marine diesel engines. EPA is adopting test procedures contained in the MARPOL NO_X Technical Code, with the certain modifications as described in this document. The MARPOL NO_X Technical Code includes the International Standards Organization (ISO) duty cycle for marine diesel engines (E2, E3, D2, C1) and the American Society for Testing and Materials (ASTM) fuel standards.[37] These procedures are currently used by virtually all Category 3 engine manufacturers to demonstrate compliance with the Annex VI NO_X limits and to obtain Statements of Voluntary Compliance to those standards.

J. Congressional Review Act

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

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: January 31, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by adding the center heading and the entries under that center heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Emissions From New and In-Use Marine Compression-Ignition Engines	
94.7–94.12	2060–0460.
94.101–94.109	2060–0460
94.203–94.222	2060–0460
94.303–94.310	2060–0460
94.403–94.408	2060–0460
94.508–94.509	2060–0460
94.804	2060–0460
94.904–94.911	2060–0460
* * * * *	

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

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

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 94.1 is amended by revising paragraph (b) to read as follows:

§ 94.1 Applicability.

* * * * *

[37] The Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines in the Annex VI of MARPOL 73/78 Regulations for the Prevention of Air Pollution from Ships and NO_X Technical Code, International Maritime Organization. *See* footnote 1 regarding how to obtain copies of these documents.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) and (2) of this section where such engines are:

(1) Marine engines with rated power below 37 kW; or

(2) Marine engines on foreign vessels.

* * * * *

3. Section 94.2 is amended by adding, in alphabetical order, definitions to paragraph (b) for ''Annex VI Technical Code'', ''Brake-specific fuel consumption'', ''Hydrocarbon standard'', ''Maximum test speed'', ''Residual fuel'', ''Round'', ''Tier 1'', ''Vessel operator'', and ''Vessel owner'', and revising the definitions for ''Designated Officer'', ''Diesel fuel'', and ''New vessel'' to read as follows:

§ 94.2 Definitions.

* * * * *

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

Annex VI Technical Code means the ''Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines,'' adopted by the International Maritime Organization (incorporated by reference in § 94.5).

* * * * *

Brake-specific fuel consumption means the mass of fuel consumed by an engine during a test segment divided by the brake-power output of the engine during that same test segment.

* * * * *

Designated Officer means the Manager of the Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel or marine distillate fuel.

* * * * *

Hydrocarbon standard means an emission standard for total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent; or a combined emission standard for NO_X and total hydrocarbons, nonmethane hydrocarbons, or total hydrocarbon equivalent.

* * * * *

Maximum test speed means the engine speed defined by § 94.107 to be the maximum engine speed to use during testing.

* * * * *

New vessel means:

(1)(i) A vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) For vessels with no Category 3 engines, a vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel. The value of the modification is the difference in the assessed value of the vessel before the modification and the assessed value of the vessel after the modification. Use the following equation to determine if the fractional value of the modification exceeds 50 percent:

Percent of value = *[(Value after modification) − (Value before modification)]* × 100% (Value after modification)

(iii) For vessels with Category 3 engines, a vessel that has undergone a modification, which:

(A) Substantially alters the dimensions or carrying capacity of the vessel; or

(2) Changes the type of vessel; or

(3) Substantially prolongs the vessel's life.

(2) Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

* * * * *

Residual fuel means a petroleum product containing the heavier compounds that remain after the distillate fuel oils (*e.g.*, diesel fuel and marine distillate fuel) and lighter hydrocarbons are distilled away in refinery operations.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 94.5), unless otherwise specified.

* * * * *

Tier 1 means relating to an engine subject to the Tier 1 emission standards listed in § 94.8.

* * * * *

Vessel operator means any individual that physically operates or maintains a vessel, or exercises managerial control over the operation of the vessel.

Vessel owner means the individual or company that holds legal title to a vessel.

* * * * *

4. Section 94.5 is revised to read as follows:

§ 94.5 Reference materials.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 94.5 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., PO Box C700, West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 94.5.—ASTM MATERIALS

Document No. and name	Part 94 reference
ASTM D 86–01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure	94.108
ASTM D 93–02, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester	94.108
ASTM D 129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)	94.108
ASTM D 287–92 (Reapproved 2000), Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).	94.108
ASTM D 445–01, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity).	94.108
ASTM D 613–01, Standard Test Method for Cetane Number of Diesel Fuel Oil	94.108
ASTM D 1319–02a, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.	94.108

TABLE 1 OF § 94.5.—ASTM MATERIALS—Continued

Document No. and name	Part 94 reference
ASTM D 2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.	94.108
ASTM D 5186–99, Standard Test Method for Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography.	94.108
ASTM E 29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	94.2

(b) *ISO material.* Table 2 of § 94.5 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

Table 2 follows:

TABLE 2 OF § 94.5.—ISO MATERIALS

Document No. and name	40 CFR part 94 reference
ISO 8178–1, Reciprocating internal combustion engines—Exhaust emission measurement—Part 1: Test-bed measurement of gaseous and particulate exhaust emissions, 1996.	94.109

(c) *IMO material.* Table 3 of § 94.5 lists material from the International Maritime Organization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

Table 3 follows:

TABLE 3 OF § 94.5.—IMO MATERIALS

Document No. and name	40 CFR part 94 reference
Resolution 2—Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines, 1997.	94.2, 94.11, 94.108, 94.109, 94.204, 94.211, 94.1004.

5. Section 94.7 is amended by revising paragraph (d) to read as follows:

§ 94.7 General standards and requirements.

* * * * *

(d) Manufacturers shall ensure that all engines subject to the emission standards of this part are equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. Use good engineering judgment to locate the connection. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. Equivalent connections are allowed. Engine manufacturers may comply with this requirement by providing vessel manufacturers with clear instructions explaining how to meet this requirement, and noting in the instructions that failure to comply may subject the vessel manufacturer to federal penalties. Vessel manufacturers are required to comply with the engine manufacturer's instructions.

* * * * *

6. Section 94.8 is amended by revising paragraphs (a), (c), (d), (e), (f), and (g) to read as follows:

§ 94.8 Exhaust emission standards.

(a) The Tier 1 standards of paragraph (a)(1) of this section apply until replaced by the standards of paragraph (a)(2) of this section.

(1) *Tier 1 standards.* NO_X emissions from model year 2004 and later engines with displacement of 2.5 or more liters per cylinder may not exceed the following values:

(i) 17.0 g/kW-hr when maximum test speed is less than 130 rpm.

(ii) $45.0 \times N^{-0.20}$ when maximum test speed is at least 130 but less than 2000 rpm, where N is the maximum test speed of the engine in revolutions per minute.

(**Note:** Round speed-dependent standards to the nearest 0.1 g/kW-hr.)

(iii) 9.8 g/kW-hr when maximum test speed is 2000 rpm or more.

(2) *Tier 2 standards.* (i) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable Tier 2 exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size liters/cylinder, rated power	Category	Model year [1]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
disp. < 0.9 and power ≥ 37 kW	Category 1	2005	7.5	5.0	0.40
0.9 ≤ disp. < 1.2, all power levels	Category 1	2004	7.2	5.0	0.30
1.2 ≤ disp. < 2.5, all power levels	Category 1	2004	7.2	5.0	0.20
2.5 ≤ disp. < 5.0, all power levels	Category 1	2007	7.2	5.0	0.20

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)—Continued

Engine size liters/cylinder, rated power	Category	Model year [1]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
5.0 ≤ disp. < 15.0, all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤ disp. < 20.0 power, < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0, power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0, all power levels	Category 2	2007	9.8	5.0	0.50
25.0 ≤ disp. < 30.0, all power levels	Category 2	2007	11.0	5.0	0.50
disp. ≥ 30.0, all power levels	Category 3	2007	See paragraph (a)(2)(ii) of this section.		

[1] The model years listed indicate the model years for which the specified standards start.

(ii) EPA has not finalized Tier 2 standards for Category 3 engines. EPA will promulgate final Tier 2 standards for Category 3 engines on or before April 27, 2007.

* * * * *

(c) In lieu of the THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family. The ABT provisions of subpart D of this part do not apply for Category 3 engines.

(d)(1) Naturally aspirated engines subject to the standards of this section shall not discharge crankcase emissions into the ambient atmosphere.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements. This requirement applies only for engines subject to hydrocarbon standards (*e.g.*, THC standards, NMHC standards, or THC+NO_X standards).

(3) The crankcase requirements of this paragraph (d) do not apply for Tier 1 engines.

(e)(1) For Category 1 and Category 2 engines, exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed; or

(ii) 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106.

(2) [Reserved]

(f) The following define the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* (i) Category 1 and Category 2 engines may be designated ''Blue Sky Series'' engines by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS [G/KW–HR]

Rated brake power (kW)	THC+NO_X	PM
Power ≥ 37 kW, and displ. < 0.9	4.0	0.24
0.9 ≤ displ. < 1.2	4.0	0.18
1.2 ≤ displ. < 2.5	4.0	0.12
2.5 ≤ displ. < 5	5.0	0.12
5 ≤ displ. < 15	5.0	0.16
15 ≤ disp. < 20, and power < 3300 kW	5.2	0.30
15 ≤ disp. < 20, and power ≥ 3300 kW	5.9	0.30
20 ≤ disp. < 25	5.9	0.30
25 ≤ disp. < 30	6.6	0.30

(ii) Category 3 engines may be designated ''Blue Sky Series'' engines by meeting these voluntary standards that would apply to all certification and in-use testing:

(A) A NO_X standard of $9.0 \times N^{-0.20}$ where N = the maximum test speed of the engine in revolutions per minute (or 4.8 g/kW–hr for engines with maximum test speeds less than 130 rpm). (**Note:** Round speed-dependent standards to the nearest 0.1 g/kW–hr.)

(B) An HC standard of 0.4 g/kW–hr.

(C) A CO standard of 3.0 g/kW–hr.

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) Standards for alternative fuels. The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions for Category 1 and Category 2 engines:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

7. Section 94.9 is amended by revising paragraphs (a)(1), (b)(1) and (b)(2) to read as follows:

§ 94.9 Compliance with emission standards.

(a) * * *

(1) The minimum useful life is 10 years or 10,000 hours of operation for Category 1, 10 years or 20,000 hours of operation for Category 2, and 3 years or

10,000 hours of operation for Category 3.

* * * * *

(b) * * *

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in Subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 or Category 3 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before comparing any emission value with the standard, round it to the same number of significant figures contained in the applicable standard.

* * * * *

8. Section 94.10 is amended by revising paragraph (a) to read as follows:

§ 94.10 Warranty period.

(a)(1) Warranties imposed by § 94.1107 for Category 1 or Category 2 engines shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the useful life in years, whichever comes first.

(2) Warranties imposed by § 94.1107 for Category 3 engines shall apply for a period of operating hours equal to at least the full useful life in operating hours or a period of years equal to at least the full useful life in years, whichever comes first.

* * * * *

9. Section 94.11 is amended by adding paragraph (g) to read as follows:

§ 94.11 Requirements for rebuilding certified engines.

* * * * *

(g) For Category 3 engines, the owner and operator shall also comply with the recordkeeping requirements in the Annex VI Technical Code (incorporated by reference at § 94.5) regarding the Engine Book of Record Parameters.

10. Section 94.12 is amended by revising the introductory text and adding paragraph (f) to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions supercede the other provisions of this part. The provisions of this section do not apply for Category 3 engines.

* * * * *

(f) Manufacturers may submit test data collected using the Annex VI test procedures to show compliance with Tier 1 standards for model years before 2007. Note: Starting in 2007, EPA may approve a manufacturer's request to continue using alternate procedures under § 94.102(c), as long as the manufacturer satisfies EPA that the differences in testing will not affect NO_X emission rates.

Subpart B—[Amended]

11. Section 94.106 is amended by revising the section heading and introductory text to read as follows:

§ 94.106 Supplemental test procedures for Category 1 and Category 2 marine engines.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e)(1). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

* * * * *

12. Section 94.107 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 94.107 Determination of maximum test speed.

(a) *Overview.* This section specifies how to determine maximum test speed from a lug curve. This maximum test speed is used in §§ 94.105, 94.106, and § 94.109 (including the tolerances for engine speed specified in § 94.105).

* * * * *

(f) For Category 3 engines, manufacturers may choose to set the maximum test speed at the maximum in-use engine speed instead of the speed specified in § 94.107(d).

13. Section 94.108 is amended by revising paragraphs (a)(1), (b), and (d)(1) and adding paragraph (e) to read as follows:

§ 94.108 Test fuels.

(a) *Distillate diesel test fuel.* (1) The diesel fuels for testing Category 1 and Category 2 marine engines designed to operate on distillate diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–5 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure [1]	Value
Cetane	ASTM D 613–01	40–48
Distillation Range:		
Initial boiling point, °C	ASTM D 86–01	171–204
10% point, °C	ASTM D 86–01	204–238
50% point, °C	ASTM D 86–01	243–282
90% point, °C	ASTM D 86–01	293–332
End point, °C	ASTM D 86–01	321–366
Flashpoint, °C	ASTM D 93–02	54 minimum
Gravity, API	ASTM D 287–92	32–37
Hydrocarbon composition:		
Aromatics, volume percent	ASTM D 1319–02a or D 5186–99	10 minimum
Olefins and Saturates (paraffins and napththenes)	ASTM D 1319–02a	Remainder
Total Sulfur, weight percent	ASTM D 129–00 or D 2622–98	0.03—0.80

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS—Continued

Item	Procedure [1]	Value
Viscosity at 38 °C, centistokes	ASTM D 445–01	2.0–3.2

[1] All ASTM standards are incorporated by reference in § 94.5.

* * * * *

(b) *Other fuel types.* For Category 1 and Category 2 engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to distillate diesel fuel (*e.g.*, natural gas, methanol, or nondistillate diesel), and that are expected to use that type of fuel (or mixed fuel) in service:

(1) A commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

(2) [Reserved]

* * * * *

(d) *Correction for sulfur.* (1) Particulate emission measurements from Category 1 or Category 2 engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

* * * * *

(e) *Test fuel for Category 3 engines.* For testing Tier 1 engines, use test fuels meeting the specifications listed in the Annex VI Technical Code (incorporated by reference in § 94.5).

14. A new § 94.109 is added to read as follows:

§ 94.109 Test procedures for Category 3 marine engines.

(a) Gaseous emissions shall be measured using the test cycles and procedures specified by Section 5 of the Annex VI Technical Code (incorporated by reference in § 94.5), except as otherwise specified in this paragraph (a).

(1) The inlet air and exhaust restrictions shall be set at the average in-use levels.

(2) Measurements are valid only for sampling periods in which the temperature of the charge air entering the engine is within 3°C of the temperature that would occur in-use under ambient conditions (temperature, pressure, and humidity) identical to the test conditions. You may measure emissions within larger discrepancies, but you may not use those measurements to demonstrate compliance.

(3) Engine coolant and engine oil temperatures shall be equivalent to the temperatures that would occur in-use under ambient conditions identical to the test conditions.

(4) Exhaust flow rates shall be calculated using measured fuel flow rates.

(5) Standards used for calibration shall be traceable to NIST standards. (Other national standards may be used if they have been shown to be equivalent to NIST standards.)

(6) Certification tests may be performed at any representative pressure and humidity levels. Certification tests may be performed at any ambient air temperature from 13°C to 30°C and any charge air cooling water temperature from 17°C to 27°C. These limits apply instead of the limits specified in section 5.2.1 of the Annex VI Technical Code. Correct emissions for test conditions using the corrections specified in section 5.12.3 of the Annex VI Technical Code.

(7) Test cycles shall be denormalized based on the maximum test speed described in § 94.107.

(b) Analyzers meeting the specifications of either 40 CFR part 86, subpart N, or ISO 8178–1 (incorporated by reference in § 94.5) shall be used to measure THC and CO.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

Subpart C—[Amended]

15. Section 94.203 is amended by revising paragraph (d)(14) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) (i) For Category 1 and Category 2 engines, a statement that the all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(ii) [Reserved]

* * * * *

16. Section 94.204 is amended by adding paragraph (f) to read as follows:

§ 94.204 Designation of engine families.

* * * * *

(f) Category 3 engines shall be grouped into engine families based on the criteria specified in Section 4.3 of the Annex VI Technical Code (incorporated by reference in § 94.5), except as allowed in paragraphs (d) and (e) of this section.

17. Section 94.205 is amended by revising paragraph (b) and adding paragraphs (e) and (f) to read as follows:

§ 94.205 Prohibited controls, adjustable parameters.

* * * * *

(b)(1) Category 1 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(2) Category 2 and Category 3 marine engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the approved adjustable range.

* * * * *

(e) Tier 1 Category 3 marine engines shall be adjusted according to the manufacturer's specifications for testing.

(f) For Category 3 marine engines, manufacturers must specify in the maintenance instructions how to adjust the engines to achieve emission performance equivalent to the performance demonstrated under the certification test conditions. This must address all necessary adjustments, including those required to address differences in fuel quality or ambient temperatures. For example, equivalent emissions performance can be measured relative to optimal engine performance that could be achieved in the absence of emission standards (*i.e.*, the calibration that result in the lowest fuel consumption and/or maximum firing pressure). In this example, adjustments

that achieved the same percent reduction in NO_X emissions from the optimal calibration would be considered to be equivalent. Alternatively, if the engine uses injection timing retard and EGR to reduce emissions, then retarding timing the same number of degrees (relative to optimal engine performance) and using the same rate of EGR at the different conditions would be considered to be equivalent.

18. Section 94.209 is amended by adding introductory text to the section to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers.

The provisions of this section apply for Category 1 and Category 2 engines, but not for Category 3 engines.

* * * * *

19. Section 94.211 is amended by adding paragraphs (a)(3), (e)(2)(iii), (k) and (l) and revising paragraphs (h) introductory text, and (j)(2) introductory text to read as follows:

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) * * *

(3) For Category 3 engines, the manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that § 94.1004 requires that the emissions-related maintenance be performed as specified in the instructions (or equivalent).

* * * * *

(e) * * *

(2) * * *

(iii) The maintenance intervals listed in paragraphs (e)(3) and (e)(4) of this section do not apply for Category 3.

* * * * *

(h) For Category 1 and Category 2 engines, equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

* * * * *

(j) * * *

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. For Category 1 and Category 2 engines, the manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(k) For engines with rated power greater than 130 kW, the manufacturer must provide the ultimate purchaser with a Technical File meeting the specifications of section 2.4 of the AnnexVI Technical Code (incorporated by reference in § 94.5). The maintenance instructions required by this part to be provided by manufacturer may be included in this Technical File. The manufacturer must provide a copy of this Technical File to EPA upon request.

(l) Owners and operators of Category 3 engines shall transfer the maintenance instructions to subsequent owners and operators of the engine upon sale or transfer of the engine or vessel.

20. Section 94.214 is revised to read as follows:

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require. This requirement does not apply for Category 3 engines. Manufacturers of Category 3 engines, however, must allow EPA access to test engines and development engines to the extent necessary to determine that the engine family is in full compliance with the applicable requirements of this part.

21. Section 94.217 is amended by adding paragraph (f) to read as follows:

§ 94.217 Emission data engine selection.

* * * * *

(f) A single cylinder test engine may be used for certification of Tier 1 Category 3 engine families. If you use test data from a single cylinder test engine for certification, explain in your application how you have determined that such data show that the multiple cylinder production engines will comply with the applicable emission standards.

22. Section 94.218 is amended by revising paragraphs (c) and (d)(1) to read as follows:

§ 94.218 Deterioration factor determination.

* * * * *

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, round the factor to three places to the right of the decimal point.

(2) In the case of an additive exhaust emission deterioration factor, round the factor shall to at least two places to the right of the decimal point.

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors for Category 1 and Category 2 engines based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

* * * * *

23. Section 94.219 is amended by revising paragraph (a) to read as follows:

§ 94.219 Durability data engine selection.

(a) For Category 1 and Category 2 engines, the manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

* * * * *

Subpart D—[Amended]

24. Section 94.305 is amended by revising paragraph (a) to read as follows:

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, calculate THC+NO_X and PM emission credits (positive or negative) according to the equation in paragraph (b) of this section and round emissions to the nearest one-hundredth of a megagram (Mg). Use consistent units throughout the calculation.

* * * * *

Subpart E—[Amended]

24. Section 94.403 is amended by revising paragraph (a) to read as follows:

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects (or based on other information), that a specific emission-related defect

exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines, or 2 or more Category 3 engines or cylinders. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser. (Note: These limits apply to the occurrence of the same defect, and are not constrained by engine family or model year.)

* * * * *

Subpart F—[Amended]

25. Section 94.503 is amended by revising paragraphs (a) and (b) to read as follows:

§ 94.503 General requirements.

(a) For Tier 2 and later Category 1 and Category 2 engines, manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506. The production-line testing requirements of this part do not apply for other engines.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs for Category 1 and Category 2 engines, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

* * * * *

26. Section 94.505 is amended by revising paragraph (a) introductory text to read as follows:

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each Category 1 and Category 2 engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

* * * * *

27. Section 94.507 is amended by revising paragraph (a) to read as follows:

§ 94.507 Sequence of testing.

(a) If one or more Category 1 or Category 2 engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

* * * * *

28. Section 94.508 is amended by revising paragraphs (a), (b), (c), (d), and (e) introductory text to read as follows:

§ 94.508 Calculation and reporting of test results.

* * * * *

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. Round these results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) To calculate test results, sum the initial test results derived in paragraph (a) of this section for each test engine, divide by the number of tests conducted on the engine, and round to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(c) To calculate the final test results for each test engine, apply the appropriate deterioration factors, derived in the certification process for the engine family, to the test results described in paragraph (b) of this section; round to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(d) (1) If, subsequent to an initial failure of a Category 1 or Category 2 production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(2) [Reserved]

(e) Within 30 calendar days of the end of each quarter in which production line testing occurs, each manufacturer must submit to the Administrator a report which includes the following information:

* * * * *

29. Section 94.510 is amended by revising paragraph (b) to read as follows:

§ 94.510 Compliance with criteria for production line testing.

* * * * *

(b) A Category 1 or Category 2 engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

Subpart I—[Amended]

30. Section 94.801 is amended by revising paragraph (b) to read as follows:

§ 94.801 Applicability.

* * * * *

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States are set forth in U.S. Customs Service regulations (19 CFR chapter I).

Subpart J—[Amended]

§ 94.904 [Amended]

31. Section 94.904 is amended by removing paragraph (b)(7).

32. Section 94.906 is amended by revising the section heading and removing paragraph (d) to read as follows:

§ 94.906 Manufacturer-owned exemption, display exemption, and competition exemption.

* * * * *

33. Section 94.907 is amended by revising paragraph (d), introductory text, to read as follows:

§ 94.907 Engine dressing exemption.

* * * * *

(d) New Category 1 and Category 2 marine engines that meet all the following criteria are exempt under this section:

* * * * *

34. Subpart K, consisting of §§ 94.1001, 94.1002, 94.1003, and 94.1004, is added to read as follows:

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators

Sec.
94.1001 Applicability.
94.1002 Definitions.
94.1003 Production testing, in-use testing, and inspections.
94.1004 Maintenance, repair adjustment, and recordkeeping.

Subpart K—Requirements Applicable to Vessel Manufacturers, Owners, and Operators

§ 94.1001 Applicability.

The requirements of this subpart are applicable to manufacturers, owners, and operators of marine vessels that

contain Category 3 engines subject to the provisions of subpart A of this part, except as otherwise specified.

§ 94.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1003 Production testing, in-use testing, and inspections.

(a) [Reserved]

(b) [Reserved]

(c) Manufacturers, owners and operators must allow emission tests and inspections to be conducted and must provide reasonable assistance to perform such tests or inspections.

§ 94.1004 Maintenance, repair, adjustment, and recordkeeping.

(a) Unless otherwise approved by the Administrator, all owners and operators of Category 3 engines subject to the provisions of this part shall ensure that all emission-related maintenance is performed, as specified in the maintenance instructions provided by the certifying manufacturer in compliance with § 94.211.

(b) Unless otherwise approved by the Administrator, all maintenance, repair, adjustment, and alteration of engines subject to the provisions of this part performed by any owner, operator or other maintenance provider that is not covered by paragraph (a) of this section shall be performed, using good engineering judgment, in such a manner that the engine continues (after the maintenance, repair, adjustment or alteration) to meet the emission standards it was certified as meeting prior to the need for service. Adjustments are limited to the range specified by the engine manufacturer in the approved application for certification.

(c) An engine may not be adjusted or altered contrary to the requirements of § 94.11 or § 94.1004(b), except as allowed by § 94.1103(b)(2). If such an adjustment or alteration occurs, the engine must be returned to a configuration allowed by this part within two hours of operation. Each two-hour period during which there is noncompliance is a separate violation. The following provisions apply to adjustments or alterations made under § 94.1103(b)(2):

(1) In the case of an engine that is adjusted or altered under § 94.1103(b)(2)(i), there is no violation under this paragraph (c) for engine operation before completion of the repair or replacement procedure. The provisions of paragraph (c) introductory text apply to all operation following completion of the repair or replacement procedure.

(2) In the case of an engine that is adjusted or altered under § 94.1103(b)(2)(ii), there is no violation under this paragraph (c) if the engine operates for less than two hours following the conclusion of the emergency that prompted the adjustment or alteration before the emission-control system is restored to proper functioning. The provisions of paragraph (c) introductory text apply to all operation that occurs after this two-hour period.

(d) The owner and operator of the engine shall maintain on board the vessel records of all maintenance, repair, and adjustment that could reasonably affect the emission performance of any Category 3 engine subject to the provision of this part. Owners and operators shall also maintain, on board the vessel, records regarding certification, parameter adjustment, and fuels used. For engines that are automatically adjusted electronically, all adjustments must be logged automatically. Owners and operators shall make these records available to EPA upon request. These records must include the following:

(1) [Reserved]

(2) The Technical File, Record Book of Engine Parameters, and bunker delivery notes that are required by the Annex VI Technical Code (incorporated by reference in § 94.5).

(3) Specific descriptions of engine maintenance, repair, adjustment, and alteration (including rebuilding). The descriptions must include at least the date, time, and nature of the maintenance, repair, adjustment, or alteration and the position of the vessel when the maintenance, repair, adjustment, or alteration was made.

(4) Emission-related maintenance instructions provided by the manufacturer.

(e) For each marine vessel containing a Category 3 engine, the owner shall annually review the vessel's records and submit to EPA a signed statement certifying compliance during the preceding year with the requirements of this part that are applicable to owners and operators of such vessels. Alternately, if review of the vessel's records indicates that there has been one or more violations of the requirements of this part, the owner shall submit to EPA a signed statement specifying the noncompliance, including the nature of the noncompliance, the time of the noncompliance, and any efforts made to remedy the noncompliance. The statement of compliance (or noncompliance) required by this paragraph shall be signed by the executive with responsibility for marine activities of the owner. If the vessel is operated by a different business entity than the vessel owner, the reporting requirements of this paragraph (e) apply to both the owner and the operator. Compliance with these review and certification requirements by either the vessel owner or the vessel operator with respect to a compliance statement will be considered compliance with these requirements by both of these parties for that compliance statement. The executive(s) may authorize a captain or other primary operator to conduct this review and submit the certification, provided that the certification statement is accompanied by written authorization for that individual to submit such statements. The Administrator may waive the requirements of this paragraph when equivalent assurance of compliance is otherwise available.

Subpart L—[Amended]

35. Section 94.1103 is amended by adding paragraphs (a)(2)(v), (a)(2)(vi), and (a)(7) and by revising paragraph (a)(3)(i) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(2) * * *

(v) For an owner or operator of a vessel using a Category 3 engine to refuse to allow the in-use testing described in § 94.1003 to be performed.

(vi) For a manufacturer, owner or operator of a Category 3 engine to fail to provide maintenance instructions as required by § 94.211.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator (except as allowed by §§ 94.1003 and 94.1004).

* * * * *

(7)(i) For an owner or operator of a vessel using a Category 3 engine to fail or refuse to ensure that an engine is properly adjusted as set forth in § 94.1004.

(ii) For an owner or operator of a vessel using a Category 3 to fail to maintain or repair an engine as set forth in § 94.1004.

(iii) For an owner or operator of a vessel using a Category 3 engine to operate an engine in violation of the requirements of § 94.1004(c).

(iv) For an owner or operator of a vessel using a Category 3 engine to fail

to comply with any applicable provision in this part for recordkeeping, reporting, or submission of information to EPA, including the annual certification requirements of § 94.1004.

* * * * *

36. Section 94.1106 is amended by adding introductory text, revising paragraphs (a) and (c)(1), and adding paragraph (d) to read as follows:

§ 94.1106 Penalties.

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation. The maximum penalty values listed in paragraphs (a) and (c) of this section are shown for calendar year 2002. As described in paragraph (d) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), (a)(6), or (a)(7)(iv) or a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or § 94.1103(a)(7) is subject to a civil penalty of not more than $31,500 for each violation.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or § 94.1103(a)(7) (i), (ii), or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more than $3,150 for each violation.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(3)(iii), (a)(4), or (a)(5), (a)(7) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) or (a)(7)(iv) constitutes a separate offense.

(5) Each two hour period of a violation with respect to § 94.1103(a)(7)(iii) constitutes a separate offense. A violation of § 94.1103(a)(7)(iii) lasting less than two hours constitutes a single offense.

* * * * *

(c) *Administrative assessment of certain penalties.* (1) Administrative penalty authority. Subject to 42 U.S.C. 7524(c), in lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $250,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

* * * * *

(d) The maximum penalty values listed in paragraphs (a) and (c) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based.

[FR Doc. 03–3065 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
February 28, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 93

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No.: FAA–2002–13235; Amendment Nos. 91–273 and 93–82]

RIN 2120–AH57

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action codifies current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for Niagara Falls by the Canadian government. The intended effect of this action is to prevent unsafe congestion of aircraft in this popular sightseeing area. The FAA is also adopting a number of editorial changes to parts 91 and 93 of Title 14, Code of Federal Regulations.

DATES: Effective on March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Terry Brown or Jan Glivings, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

(1) Using the docket number of this rulemaking to search the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2)Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *9–AWA–SBREFA@faa.gov.*

Background

On September 4, 2002, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls and to make editorial changes to parts 91 and 93 of Title 14, CFR (67 FR 56740). See the preamble to the NPRM for a discussion of the following:

- Canadian flight restrictions in the area,
- Complimentary U.S. temporary flight restriction,
- The public meeting we sponsored in 1993, and
- The specifics of the proposed rule.

The background material in the NPRM also contains the basis and rationale for this final rule and, except where we have specifically expanded on the background elsewhere in this preamble, provides the justification for this final rule.

The comment period for the NPRM was open for 45 days and closed on October 21, 2002. In response to the NPRM, we received a letter containing comments from the Aircraft Owners and Pilots Association (AOPA), which is discussed below.

Discussion of Comments

In a letter dated October 18, 2002, the AOPA concurs with codifying the current U.S. temporary flight restriction in the vicinity of Niagara Falls to prevent congestion and reduce the risk of collision by sightseeing aircraft. However, the AOPA is opposed to parts of the NPRM that go beyond a simple codification of the existing temporary flight restriction. The commenter believes that certain items in the proposed regulations are advisory in nature and should not be made mandatory. The commenter identified the following parts of proposed § 93.71 as those that should remain recommendations:

- Paragraph (e)(1)—Fly a clockwise pattern,
- Paragraph (e)(2)—Do not proceed north of the Rainbow Bridge,
- Paragraph (e)(3)—Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern,
- Paragraph (e)(6)—Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL,
- Paragraph (e)(7)—Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport,
- Paragraph (f)—These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft, and
- Paragraph (g)—Flight following, to and from the area, is available through Buffalo Approach.

The commenter asserts that including these proposed provisions in the final rule is unnecessary and inappropriate and mandating them would likely create compliance and enforcement problems. Further, there is no evidence that safety problems have occurred as a result of the procedures being recommended rather than mandated.

The FAA does not agree with the commenter that the provisions in § 93.71(e)–(f) should be advisory. These provisions establish the rules of the road for the airspace above Niagara Falls. While these provisions have been advisory under the temporary flight restriction, this rulemaking is designed to make these advisory procedures mandatory to ensure consistency with Canadian regulations and to safely manage the airspace. In addition, these provisions provide requirements that will not be available once the temporary flight restriction is withdrawn. If we were to allow these procedures to remain advisory, the possibility would exist that someone could operate contrary to all of these procedures without any repercussion, while the majority of pilots in the area would be operating in accordance with them. Such a situation could cause a significant safety problem in this airspace.

We also do not agree with the commenter's characterization of proposed § 93.71(g) as a requirement. We intend this paragraph to simply provide information. For this reason, we are not making any changes to it in this final rule.

Section-by-Section Analysis of the Final Rule

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, NY

§ 93.71 General operating procedures

The FAA is adopting a new subpart E to 14 CFR part 93 (consisting of § 93.71)

that codifies the current temporary flight restrictions in the vicinity of Niagara Falls. This final rule complements and supports flight management procedures established by Transport Canada for Canadian airspace in the vicinity of Niagara Falls to prevent unsafe congestion of sightseeing and other aircraft. Final § 93.71(a) establishes flight restrictions below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29″ N., longitude 79°03′30″ W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

Final § 93.71(b) prohibits flight in the area described in final paragraph (a) except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

Final § 93.71(c) requires pilots to check with Transport Canada for flight restrictions in Canadian airspace. It also advises pilots that commercial air tour operations approved by Transport Canada are conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

Final § 93.71(d) establishes the minimum altitude for VFR flight over the Scenic Falls area as 3,500 feet MSL.

Final § 93.71(e) requires pilots to comply with the following procedures when conducting flight over the area described in final § 93.71(a):

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

Final § 93.71(f) tells pilots these procedures do not relieve them from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

Final § 93.71(g) advises pilots that flight following, to and from the area, is available through Buffalo Approach.

Editorial Changes to Parts 91 and 93

The FAA is also adopting a number of editorial changes to 14 CFR parts 91 and 93. These changes include the following:

- Change the title of part 93 from ''Special Air Traffic Rules and Airport Traffic Patterns'' to ''Special Air Traffic Rules.'' This title better describes the intent of part 93 and the activities it addresses.
- Change § 93.1 to reflect the deletion of the term ''airport traffic area'' and for the purposes of brevity and clarity. On December 17, 1991, the FAA published a final rule (56 FR 65638) that reclassified various airspace designations and deleted the term ''airport traffic area.'' We intended these changes to apply to all similarly designated airspace areas. However, we have not adopted corresponding changes to part 93 until now.
- Change § 93.51 by deleting the phrase ''and traffic patterns'' to be consistent with the change to the title of part 93 described above.
- Divide § 93.81, which contains the special air traffic rule for the Valparaiso, Florida, Terminal Area, into two sections, 93.80 and 93.81, with minor editorial changes to new § 93.80, Applicability.
- Make a minor editorial change to § 93.117, which describes the applicability of the special air traffic rule for the Lorain County (Ohio) Regional Airport.
- Divide existing § 93.151, which describes the applicability of the special air traffic rule for the Ketchikan (Alaska) International Airport, into two sections, 93.151 and 93.152, with minor editorial changes to § 93.151.
- Change the alphabetical listing in section 4 of Appendix D to part 91, change the title of subpart T, and change §§ 93.251 and 93.253 to reflect the renaming of Ronald Reagan Washington National Airport.

We do not intend these editorial changes to change the substance of parts 91 or 93.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the

private sector. These analyses, available in the docket, are summarized below.

Economic Assessment

This final rule codifies the current temporary flight restriction for those aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for the Falls by Transport Canada. Additionally, this action makes a number of editorial changes to 14 CFR parts 91 and 93.

As a rule, the FAA does a benefit-cost analysis when this agency makes a temporary flight restriction permanent by rulemaking. However, this temporary flight restriction has been in effect for almost eight years. This length of time makes it difficult to obtain data to estimate baseline costs before the imposition of the temporary flight restriction. The FAA does not believe that the temporary flight restriction imposed significant costs on aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY, and the FAA does not believe this rulemaking will impose significant costs on those operators. We received no comments in response to the NPRM concerning the costs imposed by this rulemaking.

Regarding benefits, the FAA is aware of the mid-air collision in the vicinity of Niagara Falls before the issuance of the temporary flight restriction and before the flight management procedures established by Transport Canada. Since the issuance of the temporary flight restriction and Canadian flight management procedures, there have been no mid-air collisions. The FAA believes that the flight management procedures established in the temporary flight restriction and by Transport Canada are responsible for this improvement in aviation safety. The FAA is making the temporary flight restriction permanent because we believe that there are positive aviation safety benefits from imposing these flight restrictions on aircraft operating in U.S. airspace in the vicinity of Niagara Falls. We did not receive any public comments regarding these benefit findings in response to the NPRM.

The FAA finds that the safety benefits accruing to this rulemaking justify the costs imposed. Therefore, the FAA finds this final rule to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this action imposes little costs on any small entities subject to this rule. Any costs of complying with the final rule are already borne by those complying with the existing flight restrictions for the past eight years. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. We did not receive any public comments regarding this cost finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking to be minimal and has determined that it will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend section 4 of Appendix D to part 91 by removing the words ''Washington National Airport'' and adding in their place the words ''Ronald Reagan Washington National Airport'' in the alphabetical list of cities and airports.

PART 93—SPECIAL AIR TRAFFIC RULES

3. The authority citation for 14 CFR part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. Amend part 93 by revising the title to read as set forth above.

5. Revise § 93.1 to read as follows:

§ 93.1 Applicability.

This part prescribes special air traffic rules for operating aircraft in certain areas described in this part, unless otherwise authorized by air traffic control.

6. Revise § 93.51 to read as follows:

§ 93.51 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Anchorage, Alaska, Terminal Area.

7. Amend part 93 by adding Subpart E consisting of § 93.71 to read as follows:

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, New York

§ 93.71 General operating procedures.

(a) Flight restrictions are in effect below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29″ N., longitude 79°03′30″ W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

(b) No flight is authorized below 3,500 feet MSL in the area described in paragraph (a) of this section, except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

(c) Check with Transport Canada for flight restrictions in Canadian airspace. Commercial air tour operations approved by Transport Canada will be conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

(d) The minimum altitude for VFR flight over the Scenic Falls area is 3,500 feet MSL.

(e) Comply with the following procedures when conducting flight over the area described in paragraph (a) of this section:

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

(f) These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

(g) Flight following, to and from the area, is available through Buffalo Approach.

8. Add new § 93.80 to read as follows:

§ 93.80 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Valparaiso, Florida, Terminal Area.

§ 93.81 [Amended]

9. Amend § 93.81 by removing paragraph (a); removing the paragraph designation of paragraph (b); and redesignating paragraphs (b)(1), (2), (2)(i), (2)(ii), and (2)(iii) as (a), (b), (b)(1), (b)(2), and (b)(3) respectively.

10. Revise § 93.117 to read as follows:

§ 93.117 Applicability.

This subpart prescribes a special air traffic rule for aircraft operating at the Lorain County Regional Airport, Lorain County, Ohio.

11. Revise § 93.151 to read as follows:

§ 93.151 Applicability.

This subpart prescribes a special air traffic rule for aircraft conducting VFR operations in the vicinity of the Ketchikan International Airport or Ketchikan Harbor, Alaska.

12. Add new § 93.152 to read as follows:

§ 93.152 Description of area.

Within that airspace below 3,000 feet MSL within the lateral boundary of the surface area of the Ketchikan Class E airspace regardless of whether that airspace is in effect.

Subpart T to Part 93 [Amended]

13. In the heading and text of subpart T, remove the words ''Washington National Airport'' and add, in their place, the words ''Ronald Reagan Washington National Airport''.

Issued in Washington, DC on February 19, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–4638 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
February 28, 2003

Part IV

Department of Transportation

Federal Transit Administration

49 CFR Part 661

Buy America Requirements; Amendment to Certification Procedures; Final and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[FTA Docket No. FTA–98–4454]

RIN 2132–AA62

Buy America Requirements; Amendment to Certification Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of the Buy America statute which allows bidders or offerors the opportunity to correct inadvertent or clerical errors in their Buy America certifications after bid opening.

EFFECTIVE DATE: April 29, 2003.

ADDRESSES: Electronic Access: Internet users can 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 modem and suitable communication software from the Government Printing Office's electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s Home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www/access.gpo.gov/nara.* Electronic access to this final rule and other Buy America guidance material is located at *http://www.fta.dot.gov/library/legal/buyamer/.*

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, Office of the Chief Counsel, FTA, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3020(b) of Transportation Equity Act for the Twenty-First Century created a limited exception to the certification requirements, found at 49 CFR 661.13(b), that require rejection of a bid that is not accompanied by a completed Buy America certificate. To implement section 3020(b), the Federal Transit Administration (FTA) proposed an amendment to 49 CFR 661.13(b) which would provide bidders or offerors an opportunity to correct certifications of noncompliance or incomplete certifications that are the result of an inadvertent or clerical error. 64 FR 8051 (Feb. 18, 1999). FTA proposed that a bidder or offeror claiming inadvertent or clerical error submit to FTA, within 10 days of bid opening, an explanation of the circumstances surrounding the flawed certification and an affidavit stating that the submission resulted from an inadvertent or clerical error.

The proposed rule follows:

Sec. 661.13 Grantee responsibility.

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with Sec. 661.6 or Sec. 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate), may submit to the FTA Chief Counsel within ten (10) days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification of noncompliance, and an affidavit, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(2) The FTA Chief Counsel may request additional information from the bidder or manufacturer, if necessary. The Chief Counsel will endeavor to make a determination within ten (10) days of receipt of the bidder's or manufacturer's submission. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in Sec. 661.15(m).

II. Discussion of Comments

FTA received eight comments to this NPRM, four in favor, three against, and one which advocated a strict reading of the statute: three transit agencies and the American Public Transportation Association (APTA) supported the proposed change; one transit agency and two manufacturers were against the changes; and another manufacturer commented on a narrow reading of the statute. The comments are available online from the Docket Management System, as described above, by searching for Docket No. FTA–98–4454.

The four commenters who supported the amendment offered a few suggestions for the final rule. One suggested that any claim for correction should be made as soon as it is discovered, but certainly within 10 days. Another argued that ten days is too long. FTA believes that ten days is an appropriate amount of time to allow a proper submission without overly burdening the grantee by delaying the procurement indefinitely. FTA agrees that submissions should be made as soon as they are discovered; however, in order to enforce this regulation and make it practicable, we have chosen 10 days as the outside time limit, and hope that petitioners will submit their requests for change as soon as possible, but not beyond ten days. It should be noted that this is ten calendar days, not ten business days. Another comment suggested that petitions be submitted to the regional office. In order to ensure uniformity of application, FTA believes that they should be submitted to headquarters. Two commenters said that the grantees' role should be limited to providing background information. FTA concurs with this position and will request information and assistance from our grantees when necessary; however, the grantee will have no official role in the implementation of this part of the regulation. Three commenters suggested that documentation evidencing intent should be required, such as information about where the product will be manufactured, details of the bidders selection process, invoices or other working documents. FTA concurs with these suggestions.

Another commenter suggested that the petition should be sent to all other bidders so that they may comment. FTA believes that this would unduly lengthen the process without availing it of pertinent information or fulfilling the goal of the statute. FTA does not want to open up the fact of a certification correction for debate among interested but uninformed parties. One commenter who supports the amendment also requested that FTA make a change to the rule that would allow parties to change their certification under changed circumstances when the materials are no longer available in the U.S. This change goes beyond the scope of the statute.

One commenter argued that the amendment would allow non-responsive bidders to become the low responsive bidder and therefore, create unfair competition. This is not correct. A bidder who certifies non-compliance is not necessarily non-responsive. Further, the final rule clearly states that petitions to correct are prohibited where the bidder or offeror has certified to both compliance and non-compliance, or failed to certify to either. Another commenter suggests that there is a huge potential for abuse where a transit agency has doubts about a certification of compliance, the bidder could claim inadvertent error. This abuse will be

avoided because an application for change will only be permitted where the bidder certified non-compliance when they intended to certify compliance. Another commenter argued for a very strict reading of the rule, including that only bidders who certify non-compliance could change their certifications, and only date, company name, and title of the official are subject to correction. This commenter also suggests that the standard should be clear and convincing and that at least two employees should be required to testify in support of the assertion of clerical error. The statute narrowly points to incomplete certificates or incorrect certificates of non-compliance. Therefore, it is FTA's position that the rule should apply accordingly: a bidder who fails to properly fill out his certificate (either certificate of compliance or non-compliance) may petition to complete that certificate to fill in the name, date, or title, but not the signature. A bidder who submits a certificate of non-compliance but meant to certify compliance may petition to switch to compliance. FTA made changes to the final rule to clarify this point, please see the discussion below.

III. Final Rule Amendments and Application

The comments against the amendment indicate that the NPRM was not clear. For that reason, FTA has made a few changes intended to clarify the rule. The final rule explicitly states that a bidder may not request approval of a correction of a certificate when that party fails to sign the certificate, files a certification of both compliance and non-compliance, or files neither certificate. The rule does not allow anyone to change a certificate wrongly filed for a reason other than clerical or inadvertent error. These changes allow correction of a certification when there has been a clerical or inadvertent error, as Congress mandated, while prohibiting situations where the bidder would gain a competitive advantage over any other bidders.

FTA has also added a reference to 28 U.S.C. 1746, which allows a party submitting an affidavit or sworn statement to the government to do so in an abbreviated form, without a notary, when the language from the statute is used. Specifically, it provides that,

> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Id. This change should ease the burden on the petitioning party and remain consistent with other federally required submissions. FTA has also eliminated the statement that ''FTA will endeavor to make a determination within ten days,'' because while that is a true statement, it is not a requirement, and thus does not belong in the regulation.

FTA has added a provision that evidence illustrating original intent must be supplied with the petition. The bidder or offeror will submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. FTA has also added a provision clearly stating that ignorance of the law is not considered an inadvertent or clerical error. When a bidder certifies wrongly because they do not understand the law, that bidder is bound by its certification and cannot request that it be changed.

It should be noted that while there are references to bidders and offerors in the rule, FTA only refers to bid opening, and not best and final offer (BAFO), in the case of a request for proposals (RFP). This was done because there are times when awards are made after receipt of proposals, but before BAFO. It is FTA's position that certifications submitted with a bid are final, and may not be changed except as described in this rule amendment, while certifications submitted as part of the negotiation process of an RFP may be superseded by subsequent certifications, with the final valid certification being the last one submitted before award. Therefore, this provision applies to RFPs in the same fashion it applies to sealed bids—a bidder or offeror may petition to correct the controlling certification.

IV. Regulatory Impacts

Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation. Because this rule merely allows the correction of inadvertent or clerical errors in Buy America certifications, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because, based on its past experience with handling inquiries regarding inadvertent or clerical errors, FTA is anticipating only a very small number of requests for correction of Buy America certifications.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

V. Amendment of 49 CFR Part 661

Accordingly, for the reasons described in the preamble, part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 661—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17, sec. 1048, Pub. L. 102–240, and sec. 3020(b), Pub. L. 105–178); 49 CFR 1.51.

2. By revising § 661.13(b) to read as follows:

§ 661.13 Grantee responsibility

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of this part an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(2) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(3) Certification based on ignorance of the proper application of the Buy America requirements is not an inadvertent or clerical error.

* * * * *

Issued on: February 21, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–4553 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–99–5709]

RIN 2132–AA68

Buy America Requirements; Permanent Waiver for Microcomputers

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This document withdraws the Federal Transit Administration's (FTA) October 8, 1999, advanced notice of proposed rulemaking (ANPRM) in which it sought public comment on whether the permanent waiver of the Buy America requirements for microcomputers should be retained, revoked, or modified. Based on a review of the comments to the ANPRM, FTA has concluded that a change is not warranted. Accordingly, FTA hereby withdraws the rulemaking.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, Office of Chief Counsel, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street, SW., Washington, DC 20590, 202–366–1936 (telephone) or 202–366–3809 (fax).

ADDRESSES: All documents pertaining to this regulatory action, including the comments to the ANPRM, may be viewed and copied at the Docket Management Facility, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001 between 10 a.m. and 5 p.m., E.S.T., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, are available on the World Wide Web at *http://dms.dot.gov.* To read the comments on the Internet, take the following steps: Go to the Docket Management System (''DMS'') Web page of the Department of Transportation (*http://dms.dot.gov*). On that page, click on ''search.'' On the next page (*http://dms.dot.gov/search*), type in the four-digit docket number. The docket number for this rulemaking is 5709. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Electronic access to this proposed rule and other Buy America guidance material is located at *http://www.fta.dot.gov/library/legal/buyamer/.*

SUPPLEMENTARY INFORMATION:

I. Background

FTA's Buy America regulations, which can be found at 49 CFR part 661, apply to all federally-assisted procurements using funds authorized by the Federal transit laws, 49 U.S.C. Chapter 53. Under those regulations, all manufactured products procured for projects funded under the Federal transit laws must be manufactured in the United States.

In 1985, in response to a request from the American Association of State Highway and Transportation Officials, FTA solicited public comment and subsequently amended its Buy America rule to grant a one-year waiver of the requirements for the purchase of microcomputers. 50 FR 1156 (Jan. 9, 1985). In 1986, FTA granted a permanent waiver for microcomputer equipment of foreign origin and software of foreign origin. 51 FR 36126 (Oct. 8, 1986). FTA noted that many product components were still made and assembled abroad, and it would be difficult to determine when, if ever, microcomputer manufacturing would be relocated to the United States. The definition for Microcomputers follows:

> A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip.
>
> The same source defines computer system as: A functional unit consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the date necessary for the execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

50 FR 18760 (May 2, 1985).

FTA received a request from Prima Facie, Inc. (petitioner) to re-examine the permanent waiver for microcomputers. Prima Facie requested that FTA determine whether the basis for the waiver still existed, and if not, whether it would be appropriate for FTA to revoke the general waiver. In addition, petitioner asked that FTA seek comment on whether the waiver should be modified to include only certain types of microcomputer equipment and whether the inclusion of a microcomputer in a manufactured product should result in the entire product being considered a microcomputer.

In response, FTA issued an ANPRM, which can be found at 64 FR 54855 (Oct. 8, 1999). FTA invited public comment on the issues raised by petitioner.

II. Summary of Comments

FTA received nine written comments in response to its ANPRM. There were three responses from transit authorities; one from the American Public Transit Association (APTA); four from private companies, including the transportation systems and software industries; and one from a professional engineer.

A majority of the commenters, six of the nine, supported retention of the microcomputer waiver. They overwhelmingly emphasized that the waiver should remain in place because microcomputer equipment is still manufactured primarily in non-U.S. markets. They explained that while the technology marketplace has changed over the last fifteen years, there does not appear to have been a change in manufacturing location. According to the commenters, the situation that necessitated the regulation—*i.e.*, the lack of microprocessor suppliers in the U.S.—is still present. They explained that the majority of microchips and other necessary components are still manufactured overseas and unavailable from U.S. sources.

Two commenters also addressed the original intent of the waiver. They explained that with the waiver revoked and only foreign sources available, buyers would be forced to request individual waivers from FTA for each related procurement. This, in turn, would generate a steady stream of waiver requests from grantees. The 1986 regulation was promulgated to prevent such a burden on our grantees.

Of those commenters in favor of the waiver, two did indicate that some modifications of the waiver might be warranted. One commenter noted that there is ''some confusion about the scope of the waiver,'' further stating that it is unclear whether the waiver applies to final manufactured products which contain a microprocessor as only an incidental part. Another commenter advocated a reevaluation of the definition of ''minicomputer.'' The commenter explained that the 1986 definition of minicomputer was intended to facilitate the easier procurement of desktop computers. Today, however, that definition has become inadequate because it does not address the many modern procurements that are filled with microchips and control chips (*e.g.*, fare collection equipment, bus destination signs).

Of the nine responses to the ANPRM, three commenters were opposed to the waiver as it currently exists. Those comments came from the petitioner, a software company, and a professional engineer. All three argued that the current waiver is out-of-date. Petitioner explained that the waiver is out-of-date because the non-availability problems of 1985–86 no longer exist. Petitioner believes that if there is a permanent waiver, it should be extremely limited in scope, and not be extended to equipment simply because the equipment contains a microprocessor.

Another commenter, the software company, requested that ''software'' not be included in the waiver because the term is far too broad, and its inclusion does not support the original intent of the Buy America requirement. The waiver was intended to support American software businesses, which were few in number in the technology marketplace of 1985–86. Today, according to the company, there are several American software companies that develop and sell the software needed by transit properties and at a price affordable to transit properties, even smaller ones. As a result, the waiver, in effect, ''opens the U.S. applications software market to competition from some very large and well-established foreign firms who market enterprise wide, fully integrated software packages.''

Finally, the professional engineer agreed with petitioner's position but raised several other issues. He suggested that several additional topics should be opened up for comment, such as the interplay between public safety and microcomputers, the replacement and maintenance problems that arise when components come from foreign sources, the negative economic consequences of a blanket waiver, and the problem of obsolescence in the domestic market with regards to microcomputers.

III. Analysis

At petitioner's request, FTA issued this ANPRM and opened the record. Based on the record developed from this ANPRM, FTA has determined that the permanent waiver for microcomputers should not be revised.

FTA received only nine comments, one of which came from petitioner. That is a particularly small number of comments, especially for an issue that has such broad implications. In addition, the three responses in favor of revoking the waiver, as a whole, did not provide a sufficiently substantive discussion of petitioner's questions. While some of the comments mention or address some of petitioner's issues, the comments did not provide thorough discussions of petitioner's four questions.

Moreover, the majority of comments did not support petitioner's position; specifically, only two commenters shared petitioner's position. Most of the commenters who support the current waiver strongly agreed that the U.S. technology marketplace has not changed enough to warrant a change. Notably, APTA, which consists of over 1,250 member organizations, took that position. Based on the responses from its members, APTA wrote that ''it would seem that the U.S. marketplace has not changed that significantly since 1986.'' If this is, in fact, the case (*i.e.*, that the technology marketplace has not changed), then there is no basis to alter the existing rule. Altering the rule would only create the problems discussed by other commenters, for example, generating a steady stream of waiver requests to FTA, decreasing choices available to transit systems, and increasing costs for transit systems.

Finally, the absence of responses from the U.S. microprocessor industry is notable. Presumably, that industry would have emphatically responded in support of the revocation of the waiver. The waiver greatly impacts their industry, as it opens them up to a great deal of foreign competition, at least with respect to government transit contracts. However, as FTA lacks information from the U.S. microprocessor industry, FTA is left with little basis upon which to support a change in the existing rule.

Given the small number of responses, the lack of support of the public, and the lack of substantive grounding, FTA has decided to withdraw the ANPRM.

IV. Conclusion

FTA will not revoke or modify the microcomputer waiver as it is set forth in Appendix A of 49 CFR 661.7. However, it should be noted that FTA does not apply the waiver to an entire product because it contains a microcomputer. The parameters of the waiver as it currently exists are that if the end product is itself a microcomputer or software as defined above, Buy America is waived. If, however, the end product contains a microcomputer (*e.g.*, a farecard system), that microcomputer is exempt from the requirements of Buy America, but the rest of the end product must be in compliance. Due to the small number of responses to the ANPRM, the lack of public support for the proposed change, and the lack of substantive arguments to justify the change, FTA has concluded that a change is not warranted at this time.

Issued on: February 21, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–4552 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Friday,
February 28, 2003

Part V

Department of the Treasury

31 CFR Part 50

Departmental Offices; Terrorism Risk Insurance Program; Interim Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA96

Departmental Offices; Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This interim final rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, this interim final rule incorporates interim guidance previously issued by Treasury concerning these definitions. However, the preamble indicates those areas in which Treasury has modified the interim guidance. This interim final rule is the first of a series of regulations Treasury will issue to implement the Program.

DATES: This interim rule is effective February 28, 2003. Written comments on this interim final rule may be submitted to the Treasury Department on or before March 31, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* Please include your name, affiliation, address, e-mail address and telephone number in your comment. All comments should be captioned with ''February 28, 2003 TRIA Comments.'' Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730 or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of ''insurer''(well over 2,000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must ''make available'' terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the ''make available'' requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal government's involvement prior to sunset of the Program. An insurer's deductible is based on ''direct earned premiums'' over a statutory Transition Period and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that have been covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time sensitive requirements of the Act prior to the issuance of these and future regulations, Treasury issued interim guidance in three separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip*, and published each notice in the **Federal Register**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002 and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer ''make

available'' terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the ''direct earned premium'' on lines of property and casualty insurance to enable insurers to calculate their ''insurer deductible'' and enable insurers to price and disclose their premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II further addressed the statutory categories of ''insurers'' that are required to participate in the Program, including their ''affiliates''; provided clarification on the scope of ''insured loss'' covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or federally approved insurers to calculate their insurer deductible for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term ''insured loss'' under the Act.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations. Treasury now is issuing an interim final rule with request for comment. The interim final rule addresses certain general Program provisions and Program definitions. Treasury is also issuing a companion proposed rule with request for comment.

II. Analysis of the Interim Final Rule

The interim final rule establishes a new Part 50 in Title 31 of the Code of Federal Regulations, 31 CFR Part 50. Part 50 eventually will include other regulations deemed necessary by Treasury to implement the Program. Subpart A of new Part 50 contains certain general provisions and definitions of Program terms.

Some of the definitions are taken virtually verbatim from the Act because they do not need further clarification and are included in the interim final regulations primarily for ease of reference. In addition, the interim final rule generally incorporates the interim guidance provided previously by Treasury as it pertains to Program terms, for example, the terms ''insurer,'' ''affiliate'', ''property and casualty insurance'' and ''direct earned premium.'' In several areas, the interim final regulation makes clarifying modifications to, or supplements, the interim guidance. For example, the interim final rule clarifies and emphasizes that the Program covers only commercial lines of property and casualty insurance, subject to the inclusions and exclusions of certain lines of insurance as set forth in the definition of property and casualty insurance in section 102(12) of the Act. The Program does not cover personal lines of property and casualty insurance, even if the latter are reported by an insurer on the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

In implementing the Program, Treasury has been guided by several goals. First, we strive to implement the Act in a transparent and effective manner that, for example, treats comparably those insurers required to participate in the Program and that provides necessary information to policyholders in a useful and efficient manner. Second, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury is closely coordinating with the NAIC in implementing definitions and other aspects of the Program. Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources and mechanisms for terrorism risk insurance coverage when the Program expires.

Key Program definitions contained in the interim final regulation are analyzed below.

A. What is an ''Act of Terrorism'' Under the Program?

The Program definition of ''act of terrorism'' in the interim final rule is the same definition that is contained in section 102(1) of the Act. Section 106(a)(2) of the Act provides that the Act's definition is the exclusive definition of the term ''act of terrorism'' for purposes of compensation for insured losses under the Act. The Act's definition requires a certification by the Treasury Secretary, in concurrence with the Secretary of State and the Attorney General of the United States, that an act is an act of terrorism within the statutory parameters. These parameters include an act that is violent or dangerous to human life, property or infrastructure; that has resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or if on the premises of a U.S. mission; and that has been committed by individual(s) on behalf of any foreign person or foreign interest, as part of an effort to coerce the U.S. civilian population or to influence the policy or affect the conduct of the U.S. government by coercion.

Thus, for example, acts of domestic civil disturbance would not be covered by the Act's definition of ''act of terrorism'' or therefore, by the Program. As in the Act, the interim final rule provides that the Secretary's determination or certification with regard to an act is final and is not subject to judicial review. An act of terrorism must meet a $5,000,000 de minimis aggregate loss requirement before it may be certified. The Act also provides that an act is not certifiable if committed as part of a course of war declared by Congress, except with respect to workers compensation coverage.

B. What Entities Must Participate in the Program (''Affiliate'', ''Control'', ''Insurer'')?

1. Mandatory Participation of Insurers

The general provisions of the interim final rule incorporate the Act's requirement in section 103(a)(3) that each entity meeting the definition of ''insurer'' under the Act must participate in the Program.

2. ''Insurer''

The interim final rule incorporates the statutory definition of ''insurer'' and generally incorporates the guidance set forth in Interim Guidance II concerning

the categories of insurer and the definition of affiliate. To participate in the Program, an entity, including an affiliate of an insurer, must itself meet all of the requirements of section 102(6)(A), (B) and, as the Treasury may prescribe, (C). This means that to be an insurer, an entity must (1) fall within one of the categories in section 102(6)(A) described below, and (2) must receive direct earned premiums as required by section 102(6)(B) and (3) must meet any additional criteria established by Treasury pursuant to section 102(6)(C).

a. Must Fall Within a Category of Insurers in Section 102(6)(A)

First, an insurer must fall within at least one of the following several categories set forth in section 102(6)(A):

(i) Licensed or admitted to engage in the business of providing primary or excess insurance in any State (''State'' includes the District of Columbia and territories of the United States);

(ii) Not so licensed or admitted, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the National Association of Insurance Commissioners;

(iii) Approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy or aviation activity; or

(iv) A State residual market insurance entity or State workers' compensation fund.

Consistent with Interim Guidance II, the interim final rule provides that an entity that falls within two categories will be considered by Treasury to fall within the first category it meets under section 102(6)(A)(i)–(v). Therefore, if an entity is a federally approved insurer under section 102(6)(A)(iii) and is licensed or admitted in any State, it will be treated under the Program as a State licensed or admitted insurer under section 102(6)(A)(i).

In each of the categories of insurer in section 102(6)(A)(i)–(iv), the insurer has a pre-existing State or NAIC regulatory framework, or has a *relationship* with a Federal or State program. In developing this interim final rule, Treasury considers such a nexus between an insurer and a Federal or State program or regulatory authority to be extremely important to the effective and efficient administration of the Program. A pre-existing nexus between an insurer and a regulatory structure, for example, assists Treasury in ensuring the financial integrity of participating entities, in obtaining necessary data to implement and evaluate the Program and in carrying out Treasury's surcharge and recoupment, audit and enforcement responsibilities under the Act. Treasury's emphasis on such a nexus is also in accord with the temporary nature of the Program and other aspects of the Program's statutory structure.

''State Licensed or Admitted''

Insurers under clause (i) of section 102(6)(A) include all entities that are licensed or admitted by a State's insurance regulatory authority. This group of insurers includes captive insurers, risk retention groups, and farm and county mutuals, if such entities are State licensed or admitted. The Program treats all State licensed or approved insurers consistently in accord with the plain language of section 102(6)(A)(i). This treatment also furthers other statutory objectives such as ensuring that policyholders have widespread access to the terrorism risk insurance benefits of Program, and spreading potential costs of the Program associated with any federal loss-sharing payments. (For example, see the cost spreading provisions in connection with recoupment as required by section 103(e)(7) and in connection with surcharges as required by section 103(e)(8) to be applied to all commercial property and casualty policyholders).

Other Categories of Insurers

The NAIC has established criteria for approval of eligible surplus line carriers for listing on the NAIC's Quarterly Listing of Alien Insurers. Federally approved insurers under section 102(6)(A)(iii) are addressed in detail below. Treasury intends to issue additional regulations to apply the provisions of the Act to insurers in clause (iv) of State residual market insurance entities and State workers' compensation funds pursuant to section 103(d).

As described above, all State licensed or admitted captive insurers are insurers within the Program under section 102(6)(A)(i). Treasury may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of the Act to ''other classes or types of captive insurers and other self insurance arrangements'' pursuant to section 103(f) of the Act, but only if such an application is determined before the occurrence of an act of terrorism and all of the provisions of the Act are applied comparably to such entities. Treasury has engaged in consultations, but has not yet made a decision regarding the participation in the Program of captives and other self insurance arrangements that do not fall into other categories in clauses (i)–(iv).

b. Must Receive Direct Earned Premiums As Required by Section 102(6)(B)

The second criteria an entity must meet to be an insurer for purposes of the Program is prescribed by section 102(6)(B). In addition to falling within a category in section 102(6)(A), to be an ''insurer'' under the Act, an entity must receive ''direct earned premiums'' (as defined) on any type of commercial property and casualty insurance (as defined). The key aspect of this requirement in the statutory definition of insurer is the Act's specification of a direct measure of premium income as opposed, for example, to a net measure of premium income which accounts for reinsurance. Although the legislative history and design of the Act envision reinsurance arrangements as an important component of capacity within the insurance market, the Act excludes reinsurance from the Program. (Section 103(g) of the Act provides that the Act does not limit or prevent ''insurers'' from obtaining reinsurance coverage for ''insurer deductibles'' or ''insured losses'' retained by insurers.) Therefore, consistent with the Act and Treasury's Interim Guidance II, the interim final rule provides that, if an entity does not receive direct earned premiums as required by section 102(6)(B), and subject to statutory exceptions, then the entity is not an ''insurer'' under the Act. In that regard, Section 102(6)(B) excepts State residual market insurance entities from the direct earned premium requirement.

c. Must Meet Additional Criteria Prescribed by Treasury Under Section 102(6)(C).

In addition to the requirements of section 102(6)(A) and (B) described above, section 102(6)(C) of the Act requires that an insurer also meet ''any other criteria that the Secretary of the Treasury may reasonably prescribe.'' The interim final rule does not prescribe additional criteria under section 106(C). Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits public comment on whether the Secretary should prescribe other criteria for certain insurers pursuant to the authority provided by section 102(6)(C) and, if so, what criteria Treasury should prescribe. In this regard, in the notice of proposed rulemaking Treasury solicits comment on appropriate criteria to prevent participation in the Program by newly formed insurance companies deemed by Treasury to be established for the purpose of evading the insurer deductible requirements of the Act and the Program. As stated in the notice of proposed rulemaking, Treasury's objectives are to encourage new sources of capital in the market for terrorism

risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed, is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Also in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C). One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. In addition, in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on criteria that Treasury should propose and prescribe under section 102(6)(C) to ensure that payments under the Program do not benefit entities with connections to terrorist organizations.

d. ''Federally Approved'' Insurer.

If an entity does not fall within section 102(6)(A)(i) or (ii), but is approved or accepted by a Federal agency to offer property and casualty insurance in connection with maritime, energy or aviation activities; receives direct earned premiums for any type of commercial property and casualty insurance as required by 102(6)(B), and, if prescribed, meets any criteria established by Treasury under 102(6)(C), then, such an entity is considered by Treasury to be a federally approved ''insurer'' under section 102(6)(A)(iii).

As reflected in Interim Guidance II, this interim final rule provides that the scope of insurance coverage (insured losses) under the Program for federally approved insurers under section 102(6)(A)(iii) is only to the extent of federal approval of the commercial property and casualty insurance coverage approved by the Federal Agency in connection with maritime, energy or aviation activity. Insured losses under other insurance coverage that may be offered by a federally approved insurer under section 102(6)(A)(iii) is not covered by the Program. This treatment of federally approved insurers is in accord with the statutory language of the Act in section 102(6)(A)(iii) (''*approved for the purpose of* offering property and casualty insurance by a Federal agency *in connection with* maritime, energy or aviation activity''). This treatment is also in accord with Treasury's consideration of a pre-existing nexus (for example, the nexus of State-licensing or NAIC approval for listing on the Quarterly Listing of Alien Insurers) as very important to the effective and efficient administration of the Program. This nexus is considered by Treasury to be an important aid in ensuring financial integrity of participants in the Program, in obtaining data, and in connection with recoupment, audit and enforcement responsibilities, among others. In addition, this treatment is consistent with the temporary nature and other statutory structure of the Program. Treasury recognizes that it is possible to interpret section 102(6)(A)(iii) more broadly, but for reasons stated above has determined that the narrower reading is not only in accord with the statutory language but serves other important purposes in the administration of the Program.

Examples of federally approved insurers under section 102(6)(A)(iii) are those insurers that do not fall within section 102(6)(A)(i) or (ii), and are approved or accepted by a Federal agency under the following federal programs and statutes:

- Approval of Underwriters for Marine Hull Insurance (Maritime Administration, U.S. Department of Transportation).
- Aircraft Accident Liability Insurance (U.S. Department of Transportation).
- Oil Spill Financial Responsibility for Offshore Facilities (Minerals Management Service, U.S. Department of the Interior).
- Oil Spill Financial Responsibility for Vessels (United States Coast Guard, U.S. Department of Transportation).
- Longshoremen's and Harbor Workers' Compensation Act (Employment Standards Administration, U.S. Department of Labor).
- Price Anderson Act (Nuclear Regulatory Commission, U.S. Department of Energy).

The above list of Federal insurance programs contains an addition to the list contained in Interim Guidance II through the express inclusion of insurers approved or accepted under the Price Anderson Act. This list is provided as a starting reference point and is not exclusive. Any entity that is approved or accepted by a U.S. agency to offer commercial property and casualty insurance in connection with maritime, energy or aviation activities by a program that is not listed above is particularly encouraged to advise the designated Treasury contacts provided by this rule with the name of the program and the name of the Federal agency that approved or accepted them.

Treasury is not prescribing additional criteria under section 102(6)(C) in the interim final rule for federally approved insurers, but solicits comments elsewhere in this separate part of the **Federal Register** on whether and what additional criteria should be prescribed for federally approved insurer.

3. ''Affiliates''

The definition of ''insurer'' in section 102(6) includes ''any affiliate thereof.'' Section 102(2) of the Act defines ''affiliate'' to mean ''with respect to any insurer, any entity that controls, is controlled by or is under common control *with* the insurer'' (emphasis supplied). Any affiliate that does not meet the definition of insurer, for example, it does not fall into any of the categories in section 102(6)(A) or does not receive direct earned premiums for commercial property and casualty insurance as required by section 102(6)(B), is not an ''insurer'' for purposes of the Program. Consistent with Interim Guidance II, and the definition of ''control'' discussed below, Treasury will treat the parent company, and all affiliates that meet the requirements of ''insurer'' in section 102(6)(A), (B) and (C), collectively as one ''insurer'' for purposes of calculating the direct earned premiums on which the insurer deductible is based under the Program. This consolidated treatment is also in accord with the Conference Report to accompany the Act, which states, in the explanation of section 102 of the Act, that ''the terms 'affiliate' and 'control' are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums.'' H.R. Conf. Rep. No. 107–779 (2002).

For example, if an insurance company is licensed or admitted to engage in the

business of providing primary or excess insurance in a State and receives direct earned premiums as required in section 102(6)(B), and three out of four of its affiliate insurance companies also are State licensed and meet the requirements of section 102(6)(B) and (C), then the parent company and the three affiliates that meet the definition of ''insurer'' are, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and calculating insurer deductibles under the Program. The affiliate that does not fall within one of the categories in section 102(6)(A) or fails to meet all the requirements to be an ''insurer'' under section 102(6) is not included in the Program.

As discussed previously in Interim Guidance II, if an entity is ''under common control with the insurer,'' and that entity meets the requirements to be an ''insurer'' in section 102(6)(A)–(C), Treasury will consider that entity collectively with the other insurer (its affiliate) as one ''insurer'' for the Program purposes of consolidating direct earned premiums and calculating the insurer deductible. For example, assume that two insurance companies are licensed to engage in the business of providing primary or excess insurance in any State (either in one State or in separate States) and both receive direct earned premiums as required by section 102(6)(B). Each company, would meet the definition of ''insurer.'' Assume additionally that the common parent of the two companies does not fall into any of the categories in section 102(6)(A). Treasury will consider the two affiliated companies to be, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and their insurer deductible under the Program, but their parent company is not an insurer and not included in the Program.

4. ''Control''

Related to the definition of insurer and affiliate is the definition of ''control'' in section 102(3)(A)–(C) of the Act. The definition and determination of ''control'' for purposes of the Program is used by Treasury to calculate the insurer deductible on a consolidated basis for an insurer ''including any affiliate thereof''(see discussion of affiliate above). Under the Act, an entity is in control of another entity if the statutory definition is met under section 102(3)(A) *or* (B), *or* if Treasury makes a determination under (C) that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity. Each category of control for purposes of the Program is described below with examples.

a. ''Owns, Controls or has the Power to Vote'' 25 Percent of Voting Securities.

Section 102(3)(A) provides that an entity has ''control'' over another if the entity directly or indirectly or acting through 1 or more other persons owns, controls or has power to vote, 25 percent or more of any class of voting securities of the other entity. For example, if Insurer X owns, or has the power to vote, 25 percent or more of any class of voting securities of Insurer Y, then Insurer X is in control of Insurer Y under section 102(3)(A). This control relationship means, among other things, that Treasury will consolidate the direct earned premiums of these two insurers *under Insurer X* for purposes of calculating the insurer deductible and evaluating a claim for federal payment.

Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits comments on whether the definition of control contained in the interim final rule should be supplemented by proposing a rule to address situations in which a corporate insurance structure may contain multiple insurers that own, control or have the power to vote more than 25 percent of the voting shares of another insurer. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering consolidating direct earned premiums for purposes of calculating the insurer deductible on a pro rata basis among the multiple controlling owners. For example, if Insurer Y owns 40 percent of the voting shares of Insurer Z and Insurer X owns 30 percent of the voting shares of Insurer Z, then a pro rata allocation of premium income and insured loss under the Program would be, respectively, 57 percent and 43 percent.

b. Controls Election of Majority of Directors or Trustees.

Pursuant to section 102(3)(B), an entity also is in control over another entity for purposes of the Program if the entity controls in any manner the election of a majority of the directors or trustees of the other entity. For example, even if Insurer A does not own or have the power to vote 25 percent or more of any class of voting securities of Insurer B, if Insurer A controls in any manner the election of a majority of the directors or trustees of Insurer B, then Insurer A ''controls'' Insurer B under the Act. This means that, for purposes of the Program, Treasury will consolidate the direct earned premiums of these two insurers under Insurer A in calculating the insurer deductible and evaluating a claim for federal payment.

c. Control Determination by Treasury under Section 102(3)(C).

If no control relationship exists on the basis of either section 102(3)(A) or (B), Treasury has authority, under section 102(3)(C), to determine, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. To provide further guidance for purposes of a control determination under this subsection (C), the interim final rule establishes several rebuttable presumptions. The first rebuttal presumption under section 102(3)(C) is that an entity is in control of another entity for purposes of the Program (including consolidation of direct earned premiums in calculating the insurer deductible) if a State has determined that a control relationship exists between the two entities. If a State has made such a control determination with regard to two insurers, and the affected insurers wish to rebut the presumption established in this interim final rule, then the insurers may request an informal hearing (*e.g.* exchange of documents) in which they will be given an opportunity by Treasury to present and support their position that no control relationship exists, prior to a final determination by Treasury.

The second rebuttable presumption Treasury is establishing is that an insurer exercises directly or indirectly a controlling influence over the management or policies of another insurer under section 102(3)(C) if 25 percent or more of capital of a stock insurer, policyholder surplus of a mutual insurer, or corporate capital of other entities qualifying as insurers is provided by another insurer, even in the absence of voting shares or of control of the election of a majority of the directors or trustees of the other insurer. The third rebuttable presumption is that an insurer exercises directly or indirectly a controlling influence over the management or policies of a syndicate insurer if, at any time during the Program Year, the insurer supplies 25 percent or more of the underwriting capacity for that year to the other insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters.

If the affected insurers wish to rebut the presumptions described above and established by this interim final rule, then such insurers may request a hearing in which they will be given an opportunity to rebut the presumption of control by presenting and supporting

their position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentation.

Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits comment on a pro rata allocation method for control determinations under section 102(3)(C) of the Act, similar to the pro rata method under consideration for controlling insurers under section 102(3)(A), in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. The pro rata approach under consideration by Treasury would treat each insurer on a standalone basis for Program purposes such as calculation of direct earned premiums and the insurer deductible if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

At a later date, Treasury will be issuing claims procedures. In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Elsewhere in this separate part of the **Federal Register**, Treasury solicits comments on various means to ensure the prompt distribution of the federal payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

C. What is the Scope of Insurance Coverage Under the Program? (''Insured Loss'', ''Property and Casualty Insurance'', ''Direct Earned Premium'' and Insurer Deductible'')

1. ''Insured Loss''

The definition of ''insured loss'' in the interim final rule incorporates the statutory definition in section 102(5) supplemented by the guidance concerning scope of the term ''insured loss'' that is contained in Interim Guidance II and Interim Guidance III. Section 102(5) of the Act defines insured loss to mean any loss resulting from a certified ''act of terrorism'' covered by primary or excess ''property and casualty insurance,'' that is issued by an ''insurer,'' if such loss:

- ''Occurs within the United States,'' or
- Occurs to an ''air carrier''; a U.S. flag vessel or a vessel ''based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, regardless of where the loss occurs,'' or
- Occurs ''at the premises of any United States mission.''

In general, if the property and casualty insurance coverage is provided within the geographic and other statutory parameters of the definition of ''insured loss'' in the Act as described above, and is provided by an ''insurer'' as defined in section 102(6) of the Act (whether or not the insurer is non-U.S. based or owned), then such losses will be covered by the Program, subject to the conditions for payment and other requirements of the Act. However, if insurance coverage is provided by an entity that is not an ''insurer'' under the Act, then, even if a loss occurs within the United States, or otherwise meets the definitional parameters of ''insured loss,'' *e.g.* occurs to an air carrier or vessel or mission as defined in the Act, the loss would not be covered by the Program. In addition, if insurance is provided by a U.S. insurer, but the loss does not fall within the definition of ''insured loss,'' for example, it occurs on foreign soil and not to a U.S. mission or covered air carrier or vessel, then the loss would not be covered by the Program. Section 102(5)(A) provides that ''insured losses'' means *any* loss resulting from a certified act of terrorism and covered by primary or excess property and casualty insurance issued by an insurer if such loss occurs *within* the United States.

As described in Interim Guidance III, insured losses under section 102(5)(B) are only those losses that are *incurred* by covered air carriers or vessels, if the insured loss occurs beyond the geographic boundaries of the United States as described in Section 102(5)(A). Losses that are incurred by covered air carriers or vessels would include losses covered by insurance coverage provided to those entities (for example, property insurance coverage and liability coverage). Not included under section 102(5)(B) are losses that are not incurred by covered air carriers or vessels, such as losses covered by third party insurance contracts that are separate from the insurance coverage provided to covered air carriers or vessels.

2. ''Property and Casualty Insurance''

Section 102(12) of the Act defines ''property and casualty insurance'' to mean commercial lines of property and casualty insurance. The statutory definition expressly *includes* ''excess insurance, workers compensation insurance and surety insurance.'' In addition, the Act specifically *excludes* (i) federal crop insurance issued or reinsured under the Federal Crop Insurance Act or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance as defined in the Homeowners Protection Act of 1998 or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968; and (vii) reinsurance or retrocessional reinsurance.

Insurance is generally regulated by State law in the United States. There is no uniform or consistent definition of ''commercial property and casualty insurance'' among the States. In some States, a line of insurance may be considered commercial and in other States the same line of insurance is considered personal. However, as Program administrator, Treasury must designate types or lines of commercial property and casualty insurance on which direct earned premiums and insurer deductibles are to be calculated and for which federal payments will be made for ''insured losses'' under the Program. Direct earned premiums received by insurers for commercial property and casualty insurance under the Program are the basis for the Program's statutory reinsurance structure, for other terms and for federal payments. In developing a definition of property and casualty insurance for purposes of administrating and implementing the Program, Treasury considered the statutory definition, the Program structure, and effective administration of the Program. In this regard, Treasury also consulted with the NAIC and others regarding State law and premium reports filed with the NAIC.

The interim final rule defines the scope of commercial property and casualty insurance for purposes of the Program to include commercial property and casualty insurance, including those lines of insurance expressly included in section 102(12) of the Act and excluding

those lines of insurance expressly excluded by the same statutory definition. Treasury's interim final rule incorporates the suggested guidance in Interim Guidance I that commercial lines within the following lines of insurance coverage that are reported on the NAIC Annual Statement of the Exhibit of Premiums and Losses—commonly known as Statutory Page 14 are included in the Program: Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery.

The interim final rule also clarifies that premium information on such lines of Statutory Page 14 should only be included in calculating an insurer's direct earned premium and insurer deductible to the extent that coverage is provided for commercial property and casualty exposures. In other words, personal insurance that is reported on the specified covered lines of Statutory Page 14 should be excluded from an insurer's calculation of its direct earned premium and insurer deductible. In making that determination for purposes of the Program, insurers may consider insurance coverage primarily designed to cover personal, family or household purposes to be personal insurance and, therefore, not covered by the Program. Personal insurance policies that include incidental coverage for commercial purposes would be considered to be primarily personal policies. For purposes of the Program, as reflected in this interim final rule, Treasury considers incidental commercial coverage to exist where less than 25 percent of total premium is attributable to commercial coverage.

In contrast, commercial property and casualty insurance generally is designed to cover the commercial interests of business, civic, not-for-profit or governmental entities, or other similar individuals, organizations, or professional practices. In cases where an insurance policy covers both commercial and personal exposures, and is not primarily a personal policy, insurers should allocate the proportion of risk between commercial and personal components in determining what portion of the policy falls under the Program. In suggesting this allocation, Treasury is not establishing a new reporting requirement at this time, but is suggesting a method by which insurers may calculate their deductibles and for Treasury to verify any claims under the Program.

Insurers that do not report premiums to the NAIC on Statutory Page 14 may use the guidance provided above as an analogy or reference point in determining whether and what lines of their commercial property and casualty insurance are included in the Program and in calculating their direct earned premium and insurer deductible. In this regard, as discussed earlier, the insurance coverage of federally approved insurers within the Program covers only those lines for which the insurer has received federal approval.

3. ''Direct Earned Premium''

Section 102(4) of the Act defines direct earned premium as a ''direct earned premium for property and casualty insurance issued by any insurer for insurance against'' insured losses as defined in section 102(5). As discussed below, the term ''insurer deductible'' is based on direct earned premiums received by insurers during specified time periods. Interim Guidance I and II, provided guidance to concerning the term ''direct earned premium'' in relation to the terms ''insurer deductible'', ''insured loss'' and ''property and casualty insurance''. The interim final rule reflects this previous guidance but contains further clarifications and supplementary guidance. For insurers that report premiums to the NAIC on Statutory Page 14, ''direct earned premium'' is the information reported on column 2 for the lines of commercial property and casualty insurance referenced above, with the specified adjustments to remove personal insurance coverage. This interpretation of direct earned premium information is consistent with scope of ''insured loss'' as defined in the Act and will be used by Treasury to calculate the insurer deductible for these insurers.

Other insurers that are required to participate in the Program but that do not report on Statutory Page 14 may use the discussion above with reference to Statutory Page 14 as an analogy in developing a comparable means by which they may calculate their direct earned premiums. Treasury will use similar premium information (compiled by these entities or their State regulators) to calculate an insurer's deductible. For county or town mutual insurers that do not report to the NAIC, for purposes of calculating direct earned premium, data that is reported to their State regulator or maintained by the insurer should be adjusted to: (1) Reflect an appropriate breakdown between commercial and personal risks as outlined above; and (2) if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium. In addition, such entities should also consider other types of payments that compensate an insurer for the risk of loss (for example, assessments, contributions, or other similar concepts) as being equivalent to premium income for purposes of the Program.

Eligible surplus line carrier insurers may determine the scope of insurance coverage and their insurer deductible under the Program for policies that are in-force as of the date of enactment or that are entered into prior to January 1, 2003, with reference to the geographic scope in the definition of ''insured loss,'' and with reference to the covered commercial property and casualty lines of insurance described above. For policies issued by eligible surplus line carriers after January 1, 2003, as stated in Interim Guidance II, the premium for insurance coverage within the geographic scope of ''insured loss'' must be priced separately by eligible surplus line carrier insurers.

In calculating the appropriate measure of direct earned premium to determine the deductible for Program Year 1, eligible surplus line carriers may use and rely on the same allocation methodologies contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage within the geographic scope of ''insured loss'' and all other coverage to estimate the appropriate percentage of premium income for such policies that applies to such risks.

Similarly, consistent with the scope of insurance coverage under the Program and other limitations that apply to federally approved insurers, such insurers should a use methodology similar to that used by eligible surplus line carriers in calculating the appropriate measure of their direct earned premium.

4. ''Insurer Deductible''

The Act defines an ''Insurer Deductible'' in Section 102(7) for the various ''Program Years'' and other periods covered by the Program. For example, Section 102(7)(B) defines the insurer deductible for Program Year 1 (January 1, 2003 through December 31, 2003) as ''the value of an insurer's direct

earned premiums over the calendar year immediately preceding Program Year 1 multiplied by 7 percent''. A State licensed or admitted insurer may estimate its insurer deductible by multiplying the applicable percentage (listed in the Act for each of the Program Years) by the direct earned premium information for commercial lines of property and casualty insurance reported on Statutory Page 14 with the appropriate adjustments as described above. Other entities should follow a similar methodology based the definitions of ''insured loss,'' ''property and casualty insurance,'' and ''direct earned premium.''

Section 102(7)(E) provides Treasury with authority to determine the appropriate methodology for measuring the direct earned premium if an insurer has not had a full year of operations during the calendar year immediately preceding the Program Year.

Because new companies have only had limited business operations, it is likely that their premium income will be somewhat volatile. Such volatility could persist throughout the life of the three-year Program. Thus, to treat these newly formed insurers in a manner that is consistent with other insurers under the Program and to prevent newly formed insurers from having the unfair advantage of lower relative deductibles, this interim final rule specifies that the deductible measure for new companies formed after the date of enactment (November 26) will be based on contemporaneous data for direct earned premium that corresponds to the current Program Year. If a newly formed insurer does not have a full year of operations within a particular Program year, this interim final rule provides that an insurer's direct earned premium for Program year will be annualized to determine an insurer's deductible.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for federal payment contained in the Act applied immediately to those entities that come within the Act's definition of ''insurer.'' In the near term, Treasury will be issuing additional regulations to implement the Program. This interim final regulation provides critical information concerning the definitions of Program terms that lays the groundwork for Treasury's implementation of the Program. No one can predict if, or when, an act of terrorism may occur. There is an urgent need for Treasury, as Program administrator, to lay the groundwork for Program implementation through interim final regulations to provide clarity and certainty concerning which entities are required to participate in the Program; the scope and conditions of Program coverage; and other implementation issues that immediately affect insurers, their policyholders, State regulators and other interested parties. This includes the need to supplement, or modify as necessary, previously issued interim guidance.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR Subtitle A is amended by adding Part 50 to read as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

Subpart A—General Provisions

Sec.

50.1 Authority, purpose and scope.
50.4 Mandatory participation in Program.
50.5 Definitions.
50.6 Rules of construction for dates.
50.7 Special rules for Interim Guidance safe harbors.

Subpart B—Disclosures as Conditions for Federal Payment [Reserved]

Subpart C—Mandatory Availability [Reserved]

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds [Reserved]

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures [Reserved]

Subpart G—Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H—Recoupment and Surcharge Procedures [Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

Subpart A—General Provisions

§ 50.1 Authority, purpose and scope.

(a) *Authority.* This Part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Pub. L. 107–297, 116 Stat. 2322.

(b) *Purpose.* This Part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This Part applies to insurers subject to the Act and their policyholders.

§ 50.4 Mandatory participation in Program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.5 Definitions.

For purposes of this Part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002.

(b) *Act of terrorism.* (1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals acting on

behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) property and casualty losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2) For purposes of paragraph (c)(1) of this section, an insurer has *control* over another insurer for purposes of the Program if:

(i) An insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(ii) An insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(iii) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(3) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, the following rebuttable presumptions will apply:

(i) If a State has determined that an insurer controls another insurer, there is a rebuttable presumption that the insurer that is determined by the State to control another insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section; and

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(iii) of this section.

(iii) If an insurer, at anytime during a Program Year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(iii) of this section.

(4) An insurer deemed to be in a control relationship pursuant to paragraph (c)(2)(iii) of this section as a result of the rebuttable presumption in paragraph (c)(3)(i), (ii) or (iii) of this section may request a hearing in which the insurer will be given an opportunity to rebut the presumption of control by presenting and supporting its position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentations.

(d) *Direct earned premium* means the direct earned premium(s) received by an insurer for commercial property and casualty insurance issued by the insurer against insured losses under the Program.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance).

(i) Premium information as reported to the NAIC is included in the calculation of direct earned premiums for purposes of the Program only for commercial property and casualty coverage issued by the insurer.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures) are excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums are excluded from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures and is not primarily a personal insurance policy, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any State (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (d)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its State regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (d)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definitions of insured loss and property and casualty insurance by allocating the appropriate portion of premium income that falls within the definition of insured loss. The same allocation methodologies contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage within the definition of insured loss and all other coverage to ascertain the appropriate percentage of premium income to be included in direct earned premium may be used; and

(ii) For policies issued after January 1, 2003, premium for insured losses covered by property and casualty insurance under the Program must be priced separately by such eligible surplus line carrier insurers.

(4) *Federally approved insurers.* A federally approved insurer under section 102(6)(A)(iii) of the Act should use a methodology similar to that

specified for eligible surplus line carrier insurers in paragraph (d)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.* to the extent of federal approval of commercial property and casualty insurance in connection with maritime, energy or aviation activities).

(e) *Insured loss.* (1) The term *insured loss* means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or

(iii) Occurs at the premises of any United States mission.

(2)(i) A loss that occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel, or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, is not an insured loss under section 102(5)(B) of the Act unless it is incurred by the air carrier or vessel outside the United States.

(ii) An insured loss to an air carrier or vessel outside the United States under section 102(5)(B) of the Act does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel.

(f) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State (including, but not limited to, State licensed captive insurance companies, State licensed or admitted risk retention groups, and State licensed or admitted farm and county mutuals);

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any State, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor to the NAIC;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such federal approval of commercial property and casualty insurance coverage offered by the insurer in connection with maritime, energy or aviation activity;

(D) It is a State residual market insurance entity or State workers' compensation fund; or

(E) As determined by the Secretary, it falls within any other class or type of captive insurer or other self-insurance arrangement by a municipality or other entity, to the extent provided in Treasury regulations issued under section 103(f) of the Act.

(ii) If an entity falls within more than one category described in paragraph (f)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the Program;

(2) The entity must receive direct earned premiums for any type of commercial property and casualty insurance coverage, except in the case of:

(i) State residual market insurance entities and State workers' compensation funds, to the extent provided in Treasury regulations; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities, if such entities are included in the Program by Treasury under regulations in this Part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(g) *Insurer deductible* means:

(1) For an insurer that was in existence on November 26, 2002 and has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent; and

(2) For an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year. If the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized to determine the insurer deductible.

(h) *NAIC* means the National Association of Insurance Commissioners.

(i) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(j) *Program* means the Terrorism Risk Insurance Program established by the Act.

(k) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), and Program Year 3 (January 1, 2005 through December 31, 2005).

(l) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance. Property and casualty insurance:

(1) Includes commercial lines within the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or Multiple Peril Crop insurance reported on Line 2.2 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1988 (12 U.S.C. 4901)) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*); or

(vii) Reinsurance or retrocessional reinsurance.

(m) *Secretary* means the Secretary of the Treasury.

(n) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(o) *Treasury* means the United States Department of the Treasury.

(p) *United States* means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

§ 50.6 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.7 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from the Department of the Treasury at *http://www.treasury.gov/trip:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002); and

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003).

Subpart B—Disclosures as Conditions for Federal Payment [Reserved]

Subpart C—Mandatory Availability [Reserved]

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds [Reserved]

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures [Reserved]

Subpart G—Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H—Recoupment and Surcharge Procedures [Reserved]

Dated: February 25, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–4831 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA96

Departmental Offices; Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002. That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This proposed rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, the proposed rule incorporates interim guidance previously issued by Treasury concerning these definitions, but with some modifications. This proposed rule, together with the interim final rule published elsewhere in this separate part of the **Federal Register**, are the first in a series of regulations Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before March 31, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* All comments should be captioned with ''February 28, 2003 TRIA Comments.'' Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

Published elsewhere in this separate part of the **Federal Register** is an interim final rule establishing 31 CFR Part 50, which will comprise Treasury's regulations implementing the Terrorism Risk Insurance Act of 2002 (the Act). The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

In addition, Treasury specifically solicits public comment on whether the Secretary should prescribe criteria for certain insurers pursuant to the authority provided to Treasury in section 102(6)(C) and, if so, what criteria Treasury should prescribe. First, Treasury solicits comment on appropriate criteria to prevent participation in the Program by newly formed insurance companies deemed by Treasury to be established for the purpose of evading the insurer deductible requirements of the Act and the Program. In this regard, Treasury's objectives are to encourage new sources of capital in the market for terrorism risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed under section 102(6)(C), is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Second, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C) of the Act. One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. Third, Treasury solicits comment on appropriate additional criteria that should be proposed pursuant to section 102(6)(C) to ensure that federal payments made under the Program do not benefit entities with connections to terrorist organizations.

In addition to comments concerning possible additional criteria under section 102(6)(C), Treasury is soliciting comments on whether the definition of control contained in the interim final rule should be supplemented by proposing a rule to address situations in which a corporate insurance structure may contain multiple insurers that own, control or have the power to vote more than 25 percent of the voting shares of another insurer. See Section 102(3)(A) of the Act. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering and solicits comment on consolidating direct earned premiums for purposes of calculating the insurer deductible on a pro rata basis among the multiple controlling owners. For example, if Insurer Y owns 40 percent of the voting shares of Insurer Z and Insurer X owns 30 percent of the voting shares of Insurer Z, then a pro rata allocation of premium income and insured loss under the Program would be, respectively, 57 percent and 43 percent.

Treasury also is considering and solicits comment on a similar pro rata allocation method for control determinations under section 102(3)(C) of the Act in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. If proposed as considered, this pro rata approach would treat each insurer on a standalone basis for purposes of section 102(3)(C) of the Act if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Treasury solicits comments on various means to ensure the prompt and equitable distribution of the federal

payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

II. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Although the Act affects small insurers, the proposed rule also gives insurers flexibility in calculating their direct earned premium for policies that have both commercial and personal exposures, and it provides a safe harbor to exclude policies that have incidental coverage for commercial purposes. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule the interim final rule adding part 50 to 31 CFR subtitle A, as follows:

[The part title and text of proposed Part 50 is the same as the part title and text of Part 50 in the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**.]

Dated: February 25, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–4832 Filed 2–27–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
February 28, 2003

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Reduced Vertical Separation Minimum in Domestic United States Airspace; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 03–04]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is supplementing the Notice of Proposed Rulemaking (NPRM) on Reduced Vertical Separation Minimum in Domestic United States Airspace (DRVSM) that was published in the **Federal Register** on May 10, 2002 (67 FR 31920). The FAA is adding a proposal to implement Reduced Vertical Separation Minimum (RVSM) between flight levels (FL) 290–410 in Atlantic High and Gulf of Mexico High Offshore airspace and in the San Juan Flight Information Region (FIR). This addition to the proposal better defines RVSM airspace off the eastern and southern coasts of the United States (U.S.) and harmonizes RVSM operations off the east coast of the U.S. between adjoining airspaces in the domestic U.S., Atlantic High Offshore, and the New York Oceanic FIR. The FAA also proposes to remove the proposed option that would have permitted part 91 turbo-propeller aircraft to operate in DRVSM airspace with a single RVSM compliant altimeter.

DATES: Comments must be submitted on or before April 14, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12261 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA (we) received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Swain, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 385–4576.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, please include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of documents related to this or any rulemaking through the Internet by taking the following steps:

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

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

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 5, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

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

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

Summary of the NPRM Published on May 10, 2002

The NPRM published on May 10, 2002, proposed to implement Reduced Vertical Separation Minimum (RVSM) between flight levels 290–410 over the contiguous U.S. and Alaska and the portion of the Gulf of Mexico where the FAA provides air traffic services. RVSM allows 1,000 feet of vertical separation between aircraft operating between FL 290–410. The FAA would only apply reduced vertical separation minimum between aircraft that meet stringent altimeter and auto-pilot performance requirements. We proposed the action to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility and to provide the potential for enhanced airspace capacity.

Summary of Proposed Changes to the NPRM

We are proposing some changes to the NPRM. First, we propose to add Gulf of Mexico High and Atlantic High Offshore Airspace to the list of potential RVSM airspace published in part 91, Appendix G, section 8 (Airspace Designation). Second, in response to a comment made by the Air Transport Association, in the same timeframe as domestic U.S. implementation, we propose to implement RVSM between FL 290–410

in the San Juan FIR and in the airspace corridor between Florida and the San Juan FIR. Third, we propose to remove the proposal that would have allowed part 91 turbo-propeller aircraft to operate in RVSM airspace with a single RVSM compliant altimeter. The part 91 proposal received opposition from pilot organizations and civil aviation authorities of other countries, including countries with airspace adjoining the U.S.

Proposal To List Atlantic High and Gulf of Mexico High Offshore Airspace

Listing these airspaces would better define the offshore and oceanic airspaces off the eastern and southern coasts of the U.S. where we propose to implement RVSM. Certain airspace beyond 12 miles of the eastern and southern coasts of the U.S. is designated in FAA Order 7400.9 (Airspace Designations and Reporting Points) as Atlantic High and Gulf of Mexico High Offshore Airspace. This area includes airspace between Florida and the San Juan FIR. FAA Order 7400.9 contains a complete description of the horizontal boundaries of this airspace. We have published a chart showing the boundaries of Offshore and Oceanic airspace off the eastern and southern coasts of the U.S. in the docket at *http://dms.dot.gov,* docket number FAA–2002–12261.

Listing Atlantic and Gulf of Mexico High Offshore Airspace in part 91, Appendix G, with oceanic airspace completes the list of airspace off the eastern and southern coasts of the U.S. where we may implement RVSM.

Proposal To Add the Airspace Between Florida and Puerto Rico and the San Juan FIR to the Implementation Plan

The NPRM that we published on May 10, 2002, proposed to implement RVSM in Miami Oceanic FIR airspace over the Gulf of Mexico. In comments on the NPRM, the Air Transport Association (ATA) suggested including ''* * *the San Juan and Miami FIR's in their entirety * * *'' in the list of airspace where RVSM is proposed to be implemented. We believe that this proposal has merit and can be accomplished by listing Atlantic High Offshore Airspace and the San Juan FIR in part 91, Appendix G, section 8 (Airspace Designation). As noted previously, Atlantic High Offshore Airspace includes a corridor of airspace between Florida and the San Juan FIR. This corridor is bounded in the north by RVSM airspace in the New York Oceanic FIR and in the south by the Havana, Santa Domingo and Port-au-Prince FIR's.

A primary objective of this action is to implement RVSM in the airspaces discussed above at the same time that we implemented it in the domestic U.S. We believe that this will have the following benefits:

(1) It harmonizes RVSM operations between RVSM airspace implemented in 2001 in the New York Oceanic FIR and RVSM airspace proposed over the State of Florida as part of the domestic U.S. RVSM proposal.

(2) It harmonizes RVSM operations for traffic operating north and south between the San Juan and New York Oceanic FIR.

(3) It reduces the complexity of operations and improves safety by providing a common vertical separation standard and flight level orientation scheme for the New York Oceanic FIR, Atlantic High Offshore Airspace, the San Juan FIR and the domestic U.S.

(4) It improves the flow of traffic between Florida and the San Juan FIR by making six more flight levels available.

(5) It provides the potential for harmonizing RVSM operations with the Air Traffic Service Providers in the Caribbean when RVSM is implemented in that area.

(6) It makes all the benefits of RVSM cited in the NPRM available in these airspaces. This benefit includes increased controller flexibility, reduction of controller workload, and enhanced flexibility to enable aircraft to cross intersecting routes.

Effect on Operators

We do not believe that this proposal would require a significant number of operators that had not already obtained or planned to obtain RVSM authority to do so. We have examined the aircraft types and operators that fly in the San Juan FIR and in the airspace between Puerto Rico and Miami. We have found that all of the flights operating between FL 290–410 in the airspace are flown to or from destinations in the U.S., Canada and Europe.

To operate on the routes to or from airports in the U.S. northeast, mid-Atlantic and Canada, operators have already been required to obtain RVSM approval to fly through RVSM airspace in the New York Oceanic FIR. To operate to or from airports in Europe, operators have already been required to obtain RVSM approval to operate in RVSM airspace in the North Atlantic and Europe. In addition, the NPRM proposed to implement RVSM in domestic U.S. airspace. Aircraft operating to or from destinations in the domestic U.S. would be required by that proposal to comply with RVSM standards.

We believe this proposal has a minimal financial impact on U.S. operators, as it would not affect any beyond those identified in the NPRM. We request your comments regarding financial impact on any operators not identified in the NPRM.

Withdrawal of the Proposal To Permit a Single RVSM-Compliant Altimeter

The RVSM standards for aircraft approval are published in 14 CFR part 91, Appendix G, section 2. Section 2 calls for the aircraft to be equipped with two independent altitude measurement systems. In the NPRM, we proposed that turbo-propeller aircraft operated under part 91 that were equipped with a single RVSM-compliant altitude measurement system and all other RVSM required aircraft systems could be considered eligible to conduct RVSM operations within the U.S. airspace and the airspace of foreign countries that authorize such a provision.

In making the proposal, we recognized that the precedence in the first five years of RVSM operations was for RVSM-compliant aircraft to be equipped with two altimetry systems. Both FAA regulations and other civil aviation authorities worldwide followed this precedence. We noted, however, that the 1992 Edition 1 of the International Civil Aviation Authority (ICAO) Manual on RVSM (ICAO Document 9574) contained provision for small aircraft to be equipped with a single RVSM-compliant altimetry system and elected to make the NPRM proposal.

We propose to withdraw the proposal to allow turbo-propeller aircraft operated under part 91 and equipped with a single RVSM-compliant altimeter to conduct RVSM operations within the U.S. and foreign countries adopting that provision. We now conclude that the benefit is not significant enough to warrant changing the RVSM aircraft equipage standard that the FAA and other world authorities have applied for the past five years. We considered the following factors:

First, turbo-propeller aircraft represent a very low percentage of the traffic that operates at FLs where RVSM would be applied, that is, between FLs 290 and 410. Turbo-propeller aircraft operated under part 91 represent an even less significant percentage of traffic at those flight levels. Turbo-propeller aircraft were found to conduct only 0.4 percent of operations between FLS 290 and 410. Turbo-propeller aircraft operated under part 91 are estimated to conduct only 0.3 percent of operations

in the airspace where RVSM will be applied.

The majority of turbo-prop aircraft do not normally operate at or above FL 290, due to performance or design limitations. Operators would most likely avoid RVSM upgrade costs and continue to operate below FL 290. Costs and benefits to turbo-prop operators, therefore were not a factor in the benefit/cost analysis. The vast majority of turbo-propeller aircraft already operate below the floor of RVSM airspace, FL 290, and would retain the option to do so if we implement domestic RVSM.

Second, neither Canada nor Mexico has elected to pursue this proposal for their airspace. U.S. operators are required by 14 CFR part 91, § 91.703 to comply with the regulations in force in foreign countries related to aircraft flight. U.S. operators, therefore, would not be allowed to file a flight plan or accept ATC vectors that would place them in Canadian or Mexican airspace. This would add unnecessary complications to air traffic control in the airspace that borders neighboring countries.

Third, during the comment period, we received comments from other civil aviation authorities and pilot associations advocating that we retain a single standard for RVSM aircraft equipage. They noted that the FAA and world standard for aircraft equipage for the past five years has been for RVSM aircraft to be equipped with two compliant altimeters. They also noted that the Edition 2 (2002) of ICAO Doc 9574 distributed in spring 2002 does not retain the single RVSM compliant altimeter provision provided in Edition 1.

We believe that in the interest of harmonization and standardization of policy and procedures with neighboring states and civil aviation authorities worldwide, we should withdraw the proposal to allow single RVSM compliant altimeter equipped aircraft to conduct RVSM operations within the United States. We have concluded that the potential benefit is not significant enough to warrant revising a standard that has been applied worldwide for the past five years.

Economic Summary

We expect domestic RVSM to produce efficiency benefits for aircraft operators who fly at altitudes from FL 290 through 400. The NPRM for domestic RVSM proposed to require dual altimeters for all aircraft except turbo-propeller aircraft. Canada and Mexico do not permit an exemption from the dual altimeter requirement for turbo-propeller aircraft. Some civil aviation authorities have expressed concern that the proposal in the NPRM is incompatible with Canadian, Mexican, and international standards for RVSM. We have agreed to withdraw the proposal to exempt turbo-propeller aircraft from the dual altimeter requirement. Though this would affect a relatively small number of operators, our decision to require dual altimeters for all aircraft is necessary to achieve the overall benefits attributed to domestic RVSM. U.S. aircraft flying in domestic U.S. RVSM airspace without dual altimeters would not be able to continue at RVSM flight levels on entering Canada or Mexico and would therefore lose the benefits of flying at more efficient altitudes.

We have examined the potential aircraft upgrade costs associated with a dual altimeter requirement for turbo-propeller aircraft to fly in RVSM airspace under part 91 and find the cost to average $140,000 per turbo-propeller aircraft. Flights by turboprop aircraft at (FL) 290–410 and above account for only 0.4 percent of all flights, only 0.1 percent of which are other than part 91 flight. This suggests that, though there may be a large number of turbo-propeller aircraft subject to this rule, few of those aircraft fly at FL 290–410 regularly. We also believe that only a small percentage of those affected operators will find it economical to upgrade their aircraft for RVSM. Those that choose to upgrade would do so because the fuel savings that they would receive regularly from flying at their optimal altitude would pay for the cost of these upgrades. In the economic analysis for the final rule for DRVSM, we have calculated, for the industry as a whole, the cost savings exceeded the upgrade cost by a factor of 6. You can find the analysis for the final rule to Domestic RVSM in the docket on the Internet at *http://dms.dot.gov*, docket number FAA–2002–12261. We believe that those operators that would upgrade their aircraft are not small entities and would not be significantly impacted in an adverse way should they elect to upgrade their aircraft for this requirement.

The FAA recognizes that these upgrade costs could have a significant impact on small operators, but the FAA believes that most small operators would choose not to upgrade. For small operators, the fuel savings associated with flying in FL 290–410 would not exceed the cost of the equipment upgrade. The operational penalties associated with not upgrading or delaying aircraft upgrade plans would not prevent the operators from continuing to operate. Small operators that elect not to upgrade or delay their aircraft upgrade plans would incur on average a 6 percent fuel penalty from conducting operations beneath FL290. We do not believe these operators would fly in RVSM airspace often enough or long enough to incur a significant fuel penalty cost if they choose to fly below RVSM airspace. We request comments on this determination.

Adding Gulf of Mexico High and Atlantic High Offshore Airspace and airspace between Florida and Puerto Rico and the San Juan FIR benefits operators by implementing RVSM in all U.S. domestic airspace. This allows operators who are authorized to fly in RVSM airspace to achieve the full benefits of flying at efficient altitudes.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As flights by turboprop aircraft at FL 290–410 and above account for only 0.3 percent of all flights, we believe that only a small percentage of those affected operators will upgrade their aircraft for RVSM. These upgrade costs are estimated to be $140,000 per aircraft. We believe that those operators that upgrade their aircraft are not small entities.

The FAA recognizes that these upgrade costs could have a significant impact on small operators, but the FAA believes that most small operators would choose not to upgrade. For small operators, the fuel savings associated with flying at FL 290–410 would not exceed the cost of the equipment upgrade. The operational penalties associated with not upgrading or delaying aircraft upgrade plans would not prevent the operators from continuing to operate. Small operators that elect not to upgrade or delay their aircraft upgrade plans would incur on average a 6% fuel penalty from conducting operations beneath FL290. We do not believe these operators would fly in RVSM airspace often enough or long enough to incur a significant fuel penalty cost if they choose to fly below RVSM airspace. We request comments on this determination.

We have determined that the proposed airspace expansion to implement RVSM between FL 290–410 in Atlantic High and Gulf of Mexico High Offshore airspace and in the San Juan Flight Information Region (FIR) would have no cost to U.S. operators beyond those identified in the NPRM.

We therefore conclude that a substantial number of small entity operators would not be significantly affected by the proposals contained in this SNPRM. We request comments on this Regulatory Flexibility Determination.

International Trade Impact Statement

We have assessed the potential effect of this rulemaking and have determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), there are no requirements for information collection associated with this proposed rule.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1501–1571, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARPs) to maximum extent practicable. The FAA and the JAA jointly developed the operator and aircraft approval process under the auspices of the North Atlantic System Planning Group. We have determined that this amendment would not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. We propose that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

For the convenience of the reader, the entire proposal (NPRM as modified by the SNPRM) has been published.

List of Subjects in 14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of title 14 of the Code of Federal Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

* * * * *

Subpart B—Flight Rules

1. Amend section 91.159 by revising paragraph (b) to read as follows and by deleting paragraph (c):

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

2. Amend section 91.179 by revising paragraph (b)(3) introductory text and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) In uncontrolled airspace.

* * * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380, 400).

3. Add section 91.180 to subpart B to read as follows:

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator of the country of registry to conduct such operations.

(b) The Administrator may authorize a deviation from the requirements of this section.

4. In Appendix G, amend section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a); and amend section 8 by adding new paragraphs (d), (e), and (f) to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or § 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

(b) * * *

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* RVSM may be applied in the airspace of the 48 contiguous states, District of Columbia, and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the Gulf of Mexico.* RVSM may be applied in the Gulf of Mexico in the following areas: Gulf of Mexico High Offshore Airspace, Houston Oceanic ICAO FIR and Miami Oceanic ICAO FIR.

(f) *RVSM in Atlantic High Offshore Airspace and the San Juan FIR.* RVSM may be applied in Atlantic High Offshore Airspace and in the San Juan ICAO FIR.

Issued in Washington, DC, on February 21, 2003.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 03–4765 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
February 28, 2003

Part VII

Department of Justice

8 CFR Parts 1, 3, et al.

28 CFR Part 200

Aliens and Nationality; Homeland Security; Reorganization of Regulations; Final Rule

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 101, 103, 204, 205, 207, 208, 209, 211, 212, 214, 215, 216, 235, 236, 238, 239, 240, 241, 244, 245, 246, 249, 270, 274a, 280, 287, 292, 337, 507, 1001, 1003, 1101, 1103, 1204, 1205, 1207, 1208, 1209, 1211, 1212, 1214, 1215, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1280, 1287, 1292, 1299, 1337

28 CFR Part 200

[EOIR No. 137F; AG Order No. 2662–2003]

RIN 1125–AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. The Homeland Security Act of 2002, as amended, retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review and other functions related to immigration that are indigenous to the functions of the Attorney General. These changes require reorganization of title 8 of the Code of Federal Regulations. This final rule reflects the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as are necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616–4852.

SUPPLEMENTARY INFORMATION:

Background

The Homeland Security Act of 2002, as amended (''HSA''), transfers the functions of the Immigration and Naturalization Service (''Service'' or ''INS'') to the Department of Homeland Security (''DHS''). Pub. L. 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (''HSA''). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review (''EOIR''). HSA, 116 Stat. at 2273. This rule reflects that transfer through the division of jurisdiction over regulations currently codified in 8 CFR Chapter I.

EOIR was created by the Attorney General in 1983 to combine the functions of immigration judges and the Board of Immigration Appeals into a single administrative component of the Department of Justice under the Attorney General. 48 FR 8038 (Feb. 25, 1983). The Office of the Chief Administrative Hearing Officer (''OCAHO'') and its administrative law judges were added to EOIR in 1987. 52 FR 44971 (Nov. 24, 1987). This administrative structure separated the administrative adjudication functions from the enforcement and service functions of the INS, both for administrative efficiency and to foster independent judgment in adjudication. However, because both INS and EOIR were elements of the Department of Justice, the regulations affecting these components were included in the same chapter. The Attorney General, as the head of the Department, amended regulations affecting both components in a coordinated manner. The enactment of the Homeland Security Act of 2002, and its transfer of functions to the Department of Homeland Security, now requires that the INS regulations and the EOIR regulations be placed in separate chapters.

As explained more fully below, this final rule transfers certain parts that relate to the jurisdiction and procedures of EOIR to a new chapter V, *i.e.* administrative review provisions. This rule duplicates certain parts and sections of the regulations that relate to proceedings before both the INS and EOIR in both chapter I and chapter V, respectively, *i.e.,* shared provisions. The rule also makes a number of technical amendments to both chapters I and V to ensure that the authorities existing in the INS and EOIR prior to the transfer of functions of the INS to the Department of Homeland Security continue in effect after March 1, 2003.

A. Homeland Security Act of 2002 Division of Jurisdiction and Continuing Relationship

The HSA transfers the enforcement, services, and administrative functions of the INS to the Department of Homeland Security. HSA §§ 441, 451, 455, 456. In addition, the HSA abolishes the INS. HSA § 471. The new structure for immigration enforcement, services and shared services is more fully explained by the HSA, the President's Reorganization Plan under HSA § 1512, and amendments thereto.[1] For the purposes of this rule, and to provide the Secretary of Homeland Security maximum flexibility in the further division of immigration regulations between components of the Department of Homeland Security, if he deems appropriate, this rule makes no changes in the immigration regulations for functions that are being transferred to DHS other than those necessary to effectuate the division of regulations between the functions being transferred to DHS and the functions being retained in the Department of Justice. For purposes of simplicity, this rule continues to refer to the transferred functions as functions held by the INS.

Section 103(g) of the Immigration and Nationality Act, as amended by section 1102 of the HSA provides:

> (1) *In General.* The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date [of the Act].
>
> (2) *Powers.* The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

The final rule creates, a new chapter V within 8 CFR and moves the relevant functions to that chapter. The rule also makes other necessary conforming amendments.

After this rule makes the necessary division of regulations within title 8 CFR to reflect the transfer of INS authorities, the Secretary of DHS can

[1] The Supplementary Information refers to the successor entities to the INS collectively as the INS for the ease of the reader. The Secretary of Homeland Security has further refined the reorganization of functions within the Department of Homeland Security and a further division of the regulations is expected to be made. That division of regulations, on or after March 1, 2003, is not affected by this rule.

make substantive changes to INS rules; the Attorney General can make substantive changes to EOIR rules, and the Secretary and the Attorney General can consult each other when contemplating changes in those rules that affect both EOIR and INS.

B. General Comments

The rule makes no substantive change in the regulations. The rule is a technical rule dividing the regulations for purposes of the transfer of authorities under the HSA. For the ease of public understanding, the structure of chapter V has been created in parallel to the existing structure of chapter I. Accordingly, for example, in asylum proceedings before immigration judges, applicable provisions of chapter I, part 208 (*e.g.,* 8 CFR 208.15(a)) are established in parallel in chapter V, part 1208 (*e.g.,* 8 CFR 1208.15(a)). In creating this parallel structure, the Attorney General is attempting to provide as simple a format as possible for all to understand the legal effect of the transfer, while minimizing the confusion that might occur in practice before the Service and EOIR. Under this technical restructuring, incorrect citation to a regulation that has been transferred into Chapter V will be considered inconsequential. Similarly, until EOIR updates its forms, the references to sections of chapter I should be considered to be references to chapter V, as appropriate.

The rule transfers those parts and sections that deal with procedures before the immigration judges and Board of Immigration Appeals to chapter V. This transfer permits future amendment of the rules without unnecessary conflict with provisions relating to the INS. Similarly, the elimination of those provisions from chapter I that deal with proceedings before EOIR permits the amendment of the substantive regulations of the Service by the Department of Homeland Security without unnecessary conflict with the Attorney General's regulations for EOIR.

The rule duplicates a number of parts and sections that affect both the Service and EOIR, such as the asylum regulations. These provisions necessarily require coordination between the INS and EOIR. The Department of Justice has been guided by the principles of the HSA in duplicating only those provisions that directly affect the authority of EOIR, but has also necessarily duplicated some provisions that affect INS until a further and more detailed division can be accomplished in consultation with the Department of Homeland Security. In this sense, the rule is interim in nature in that further division and elimination of a substantial number of sections is expected in the near future. The inclusion of a section in this duplication process should be understood as a temporary measure to ensure continuity, not as a permanent disposition of authority in the Department of Justice.

The rule also makes a number of specific technical amendments to continue existing authority that cannot be made by simply moving or duplicating sections. For example, the precedent decisions of the Board of Immigration Appeals and the INS are published in *Administrative Decisions under the Immigration and Nationality Laws of the United States,* cited as ''I&N Dec.'' However, there is no rule that currently provides for the publication of Service decisions outside of 8 CFR 103.3, and that provision is incomplete. Accordingly, a provision has been added to chapter I, part 1, providing for the determination of precedent decisions within the Department of Homeland Security and publication of such decisions by EOIR in *Administrative Decisions under the Immigration and Nationality Laws of the United States.*

C. Parts and Sections Affecting EOIR Moved

Part 3, and almost all of part 240, are moved to chapter V because these provisions directly affect only the Executive Office for Immigration Review and proceedings before EOIR. A more general revision of these separated provisions is contemplated in the future to further refine the adjudicatory process, but this rule makes no substantive change in jurisdiction or procedure.

D. Parts and Sections Affecting INS and EOIR Duplicated

A larger number of parts and sections that are currently in chapter I are duplicated in chapter V because they establish processes that are common to both the INS and EOIR. In some cases, for convenience, an entire part has been moved because substantial portions effect common procedure, even though particular sections may affect only the INS or only EOIR. A concerted decision has been made to carry forward the duplication of entire parts to ensure continuity, even though the Attorney General and the Secretary may later amend their respective regulations to further separate the procedures and clarify those sections that affect each agency. It is not manageable at this time to detail a complete paragraph-by-paragraph jurisdictional split between INS and EOIR, and the duplication assures that interpretation will be consistent until coordinated decisions are made respecting these procedures. Thus, for example, part 208, relating to asylum and related forms of relief, is duplicated in part 1208, even though specific subsections relate only with procedure before INS and other subsections relate only to procedure before EOIR. Further disposition of these sections will be made in future rulemaking.

E. Specific Technical Amendments

A number of technical amendments are required to effect a proper division of the authorities from chapter I. In certain instances, new sections must be written, and in others cross-references are required. This is particularly true where only one section or paragraph refers to processes within EOIR, but otherwise the part or section refers only to processes of INS. For example, a number of INS processes result in a decision on an application that may be renewed before an immigration judge or an appeal taken to the Board of Immigration Appeals. Where the part or section is otherwise entirely within the scope of the functions transferred to DHS, only a technical amendment may be necessary to provide for the appeal with the appropriate cross-reference. The major technical changes—which go beyond these cross-references—and the continuity that these changes provide are described below.

Existing 8 CFR § 3.1(g) provides that precedent decisions of the Board of Immigration Appeals and the Attorney General are binding on all Service officers. This historical specification was made by the Attorney General in the course of his overall management of the Service. However, because of the transfer of functions of the Service to the Department of Homeland Security, it is necessary to specify this result in the ongoing regulations of the Service, as well as EOIR. The provision of § 3.1(g) is, therefore, duplicated in chapter I, part 1, § 103.37(g). This restatement of the binding effect of precedent decisions effectuates the clear intent of the Congress in section 1101(2) of the HSA, as amended, amending section 103 of the Immigration and Nationality Act, 8 U.S.C. 1103, by adding subsection (g), and in transferring the Service to DHS while leaving the immigration adjudicatory functions of EOIR under the Attorney General.

Moreover, it is necessary to clarify that the Secretary of Homeland Security may refer cases or questions of law to the Attorney General for decision at any time, both generally, and pursuant to

the proviso of section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), relating to the Attorney General's resolution of legal issues. At the same time, the Attorney General has specified the reservation of the parallel authority to refer cases to himself for decision at any time.

Similarly, the authority to publish precedential decisions of the Service in *Administrative Decisions under the Immigration and Nationality Laws of the United States* is set forth in new 8 CFR §§ 103.37 and 1003.1(i). New § 103.37 is added to ensure that the Secretary of Homeland Security can continue to publish appropriate precedent decisions. See, *e.g.,* Matter of Safetran, 20 I&N Dec. 49 (Comm. 1989).

The fees that are charged for applications for relief filed with the INS are also collected in conjunction with applications filed with the immigration judges and, on occasion, on motions to reopen before the Board of Immigration Appeals. A specific authorization is included in chapter V, referencing the fees charged by the Service for these applications. A separate table is not developed within EOIR for the simple reason that the INS must recalculate the fees periodically to conform them to the actual costs, as more fully explained in each of the fee change regulations. Rather than coordinate each change, in a situation in which EOIR does not have an interest in the substance of the fee calculation, but only in the actual fee imposed, it makes more sense to reference the fees charged by the Service as established in 8 CFR 103.7. This provision does not alter the filing fee for appeals and motions before the Board of Immigration Appeals.

Finally, some specific provisions are moved or not moved, duplicated or not duplicated, because that process provides the simplest means of effecting the division of the regulations without substantive effect. For example, part 240 of chapter I is moved to part 1240 of chapter V, with the exception of § 240.25, which deals with the Service's authority to grant voluntary departure. Similarly, § 240.21 and Subpart H are duplicated because these provisions affect both INS and EOIR.

F. Summary of the Changes From 8 CFR Chapter I to Chapter V

Set out below are general descriptions of the sets of changes in chapter I to chapter V and the rationale for each set of changes.

Part 1—Definitions, is duplicated in part 1001, because the same definitions apply to INS and EOIR.

Part 3—Executive Office for Immigration Review, is transferred to part 1003, because this part is the organic regulation for EOIR. Additionally, provisions have been added to clarify certification procedures and the authority of the Secretary of Homeland Security to designate specific officials to certify cases and questions of law to the Attorney General pursuant to redesignated 8 CFR 1003.1(h). These provisions are provided in parallel for the Department of Homeland Security in a new section of part 3. Finally, savings provisions are added to part 103 and part 1003 to clarify that the jurisdiction and procedures in effect on February 28, 2003, continue in effect after the transition on March 1, 2003.

Part 101—Presumption of lawful admission, is duplicated as part 1101, because it establishes a necessary presumption under the Act for both INS and EOIR.

Part 103—Powers and duties of service officers; availability of service records, is partially duplicated and is amended in several sections to ensure that the existing practices of EOIR are not changed through the transfer of functions.

Part 205—Revocation of approval of petitions, is duplicated as part 1205 because the revocation of petitions involves substantial appeals to the Board of Immigration Appeals and the provisions intermingle the jurisdiction and procedures before the Board of Immigration Appeals with the substantive provisions for revocation of approval of petitions.

Part 207—Admission of refugees, is duplicated in part in part 1207. Only § 207.3 necessarily involves procedure before the Executive Office for Immigration Review and this is the only section that is duplicated.

Part 208—Proceedings for asylum and withholding of removal, is duplicated in part 1208 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. The Department of Justice expects that further division will be accomplished by the Department of Homeland Security and the Department of Justice at a later time.

Part 209—Adjustment of status of refugees and aliens granted asylum, is duplicated as part 1209. For the most part, adjustment of status is accomplished administratively by INS, but provisions that are affected by EOIR are intermingled in this part.

Part 211—Documentary requirements; immigrants; waivers, is duplicated in part in part 1211. The only section that is duplicated is § 211.4, Waiver of documents of returning residents, and this section is duplicated because the section contains the predicate jurisdiction of immigration judges to consider an renewed application in proceedings.

Part 212—Documentary requirements: nonimmigrants: waivers; admission of certain inadmissible aliens; parole, is duplicated in part 1212 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. Part 212 provides the predicates and standards for proceedings to exclude aliens from the United States.

Part 214—Nonimmigrant classes, is duplicated in part in part 1214, because the specific duplicated provisions provide the jurisdictional predicates for review of certain waiver applications by immigration judges.

Part 215—Controls of aliens departing from the United States, is duplicated in part 1215. Although these provisions have been rarely used, they include a number of jurisdictional predicates for review of administrative decisions by an immigration judge, called a special inquiry officer in these sections. These regulations are joint regulations with the Secretary of State, see 22 CFR part 46, and may require further refinement in the future.

Part 216—Conditional basis of lawful permanent residence status, is duplicated in part 1216. This part contains both the administrative and adjudicatory process for revoking the conditional basis for lawful permanent residence based upon marriage.

Part 235—Inspection of persons applying for admission, is duplicated in part 1235 because nearly all of the provisions of this part affect bond hearings before immigration judges.

Part 236—Apprehension and detention of inadmissible and deportable aliens, removal of aliens ordered removed, is duplicated in part in part 1236. Subpart A relates to the determinations of inadmissibility and deportability of aliens and is duplicated in part 1236. Subpart B of part 236, however, relates to the INS Family Unity Program, which does not relate to EOIR processes. Accordingly, Subpart B is not duplicated, although it may be interpreted in appropriate proceedings.

Part 238—Expedited removal of aggravated felons, is duplicated in part 1238 because the expedited removal under this part can be converted to ordinary removal proceedings before an immigration judge under part 240, and initiated proceedings under part 240 may, upon approval of the immigration judge, be terminated and the INS may then file expedited removal proceedings under part 238.

Part 239—Initiation of removal proceedings, is duplicated as part 1239 because the initiation of proceedings

before immigration judges is a detailed mix of authority of service officers to initiate and file charges before an immigration judge.

Part 240—Proceedings to determine removability of aliens in the United States, is largely transferred to part 1240, as proceedings before immigration judges. However, 8 CFR 240.25, which is the INS authority for voluntary departure, is not transferred. Furthermore, 8 CFR 240.21, and subpart H, are duplicated in new part 1240 because these provisions affect both the INS and EOIR. The Department expects, as in many other cases, a further division of these parts will be effected by further regulatory actions by the Department of Homeland Security and the Department of Justice.

Part 241—Apprehension and detention of aliens ordered removed, is duplicated in part 1241 because the finality and implementation of final orders of removal issued by immigration judges and the Board of Immigration Appeals regularly involve the authority of EOIR and interpretation of these regulations by both the INS and EOIR. In particular, changes in the bonding and surrender process currently under consideration will require changes in the authority of both EOIR and the successor agencies of INS within DHS.

Part 244—Temporary protected status for national of designated states, is duplicated in part 1244 because many of the decisions under temporary protected status are made by immigration judges and the Board of Immigration Appeals. Sections 244.1, 244.7, 244.11, and 244.18 all refer to immigration judges' decisional authority. Section 244.20 has a unique fee waiver provisions that also implicates administration and proceedings before EOIR. This duplication will require further refinement to clarify the authority of Secretary of Homeland Security to designate countries for temporary protected status purposes and the duplication should not be viewed as any indication that the Department of Justice is involved in those future decisions. The duplication is necessary at this time to ensure continuity and will be subject to further adjustment by the Department of Homeland Security and the Department of Justice.

Part 245—Adjustment of status to that of person admitted for permanent residence, is duplicated in part 1245 because jurisdiction is intermingled throughout the part. See Matter of Artigas, 23 I&N Dec. 99 (BIA 2001). Further refinement of the division of authority and detailed technical amendments will be required in the future.

Part 246—Rescission of adjustment of status, is duplicated in part 1246 because the part provides the comprehensive procedure before both the Service and EOIR for the rescission of adjustment of status to lawful permanent residence.

Part 249—Creation of records of lawful admission for permanent residence, is duplicated in part 1249 because this part includes both the Service and EOIR procedures for registry of lawful permanent residence. Although the statutory requirements for registry limit the number of cases that arise under this part, the division of authority requires further detailed analysis.

Part 270—Penalties for document fraud, is duplicated in part 1270 because this part sets forth the procedures for document fraud cases before both the Service and the administrative law judges of EOIR. See also 28 CFR Part 68.

Part 274a—Control of employment of aliens, is duplicated as part 1274a because it contains substantial definitional and procedural material relevant to both the INS and the Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice under 28 CFR 0.53, as well as the predicates to administrative proceedings before administrative law judges in EOIR.

Part 280—Imposition and collection of fines, is duplicated in part 1280 because this part is interpreted by the Board of Immigration Appeals in fines appeals. Substantial portions of this duplicated part will ultimately be removed as the jurisdiction of such fines is ultimately transferred from the Board of Immigration Appeals to the administrative law judges of EOIR as previously proposed in other rulemaking. 67 FR 7309 (Feb. 22, 2002).

Part 287—Field officers; powers and duties, is duplicated in part in part 1287 because several discrete provisions of this part provide the underpinnings for specific authority of immigration judges. In particular, the subpoena authority of § 287.4 provides the mechanism for subpoenas before immigration judges. Certification of official records before an immigration judge is provided in § 287.6.

Several sections of part 287 that are not amended or duplicated implicate other authorities of the Attorney General as the United States' prosecutor, including § 287.5 delegations of authority to the Deputy Attorney General to approve the expansion of criminal law enforcement authority in certain areas. That provision, in particular, relates to the Attorney General's inherent authority to manage the criminal law enforcement community, and the delegations that he has made to the Deputy Attorney General to manage the Department. 28 CFR 0.15(a). As with the past practice of the Department, changes in these criminal law enforcement powers are governed by executive branch policies that include review and recommendations from the Criminal Division, through the Deputy Attorney General, to the Attorney General for final determination regarding agencies outside the Department of Justice. The unique regulatory authority in part 287 is the product of statutory requirements in section 287(a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1357(a)(4), as amended by 503(a) of the Immigration Act of 1990, Pub. L. No. 101–690, 104 Stat. 4978 (Nov. 29, 1990). These provisions will require further coordination between the Department of Homeland Security and the Department of Justice.

Part 292—Representation and appearances, is duplicated in part 1292 because representation of aliens before INS and EOIR has historically been considered as a single process and will continue to be so considered for the foreseeable future.

Part 299—Immigration forms, is not duplicated, but is referred to in new part 1299. EOIR will continue to utilize INS forms for most purposes, such as to establish a basis for asylum, adjustment of status, etc. There is no need to create new forms to replicate the forms that are already in use. By the same token, however, there are a number of forms that provide information that is useful to immigration judges in adjudicating cases, and, therefore, the Director of EOIR is authorized to designate the version of the forms to be used.

Part 337—Oath of allegiance, is duplicated in part 1337 only because it involves the authority of immigration judges to administer the oath of citizenship in naturalization ceremonies, and related authorities.

Part 507—Alien terrorist removal procedures, is moved to newly created 28 CFR part 200, to reflect the operational functions of the Office for Immigration Litigation within the Civil Division, which is delegated authority to represent the United States before the Alien Terrorist Removal Court, and the fact that this process is not administrative in nature, but judicial, before Article III judges designated by the Chief Justice of the United States. The sole provision in this part refers to the Attorney General's authority to make a final determination of eligibility

for relief from a judicial order of removal from the Alien Terrorist Removal Court on the grounds that such post-judicial removal would violate the Convention Against Torture.

H. Changes Deferred

A number of changes will need to be made in the future, but are not made at this time. For example, part 215, concerning departure control, refers to ''special inquiry officers'' instead of immigration judges. This is not uncommon in the older provisions of 8 CFR that have not been amended since 1987. Amendments to this particular part require the concurrence of the Secretary of State because this part is a parallel to 22 CFR part 46. Rather than attempt to conform two separate parts, neither of which will remain within the jurisdiction of the Attorney General, this commonly understood term—a historical anomaly that predates the creation of EOIR and means ''immigration judge''—is left in place until such time as the Secretary of State and the Secretary of Homeland Security determine to change the substantive regulations, at which time they, and the Attorney General, will make this necessary but only technical adjustment.

I. Cross-References

The Department will publish in the very near future a table of changes of cross-references in parts of chapter V to other parts of chapter V, and other conforming technical changes.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes changes in internal delegations and procedures, and is a recodification of existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million 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.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review.

Executive Order 13132

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 section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

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

List of Subjects

8 CFR Part 1

Administrative practice and procedure and Immigration.

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 101

Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements and Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure and Immigration.

8 CFR Part 207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements and Students.

8 CFR Part 215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 216

Administrative practice and procedure, and Aliens.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 240

Administrative practice and procedure and Aliens.

8 CFR Part 241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 244

Administrative practice and procedure and Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 246

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 287

Immigration and Law enforcement officers.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization and Courts.

8 CFR Part 507

Aliens, terrorism.

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1101

Immigration.

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1204

Administrative practice and procedure, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1205

Administrative practice and procedure and Immigration.

8 CFR Part 1207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1214

Administrative practice and procedure, Aliens.

8 CFR Part 1215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 1216

Administrative practice and procedure, and Aliens.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1240

Administrative practice and procedure and Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1244

Administrative practice and procedure and Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens and Immigration

8 CFR Part 1249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 1280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 1287

Immigration and Law enforcement officers.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 1299

Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1337

Citizenship and naturalization and Courts.

28 CFR Part 200

Aliens, terrorism.

Authority and Issuance

For the reasons set forth in the preamble, the Department of Justice amends titles 8 and 28 of the Code of Federal Regulations as follows:

TITLE 8—ALIENS AND NATIONALITY

CHAPTER V—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE

Subchapter A—General Provisions

Subchapter B—Immigration Regulations

Subchapter C—Nationality Regulations

1. Amend title 8 CFR by establishing chapter V and its related subchapters to read as set forth above.

Chapter I, Subchapter A

PART 1—[DUPLICATED AS CHAPTER V, PART 1001]

Chapter V, Subchapter A

PART 1001—DEFINITIONS

2. All sections in part 1 are duplicated in part 1001, as set out in the following table:

Part 1	Heading	Is duplicated in Part 1001 as
§ 1.1	Definitions	§ 1001.1

2a. The authority citation for newly designated part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

Chapter I, Subchapter A

PART 3—[REDESIGNATED AS PART 1003]

3. Transfer 8 CFR part 3 from chapter I, subchapter A, to chapter V, subchapter A, and designate as 8 CFR part 1003.

Chapter V, Subchapter A

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

4. All sections of the newly redesignated part 1003 are set forth in the following table:

Part 3	Heading	Is transferred and designated as Part 1003
§ 3.0	Executive Office for Immigration Review	§ 1003.0
	Subpart A	
§ 3.1	Organization, jurisdiction, and powers of the Board of Immigration Appeals	§ 1003.1
§ 3.2	Reopening or reconsideration before the Board of Immigration Appeals	§ 1003.2
§ 3.3	Notice of Appeal	§ 1003.3
§ 3.4	Withdrawal of appeal	§ 1003.4
§ 3.5	Forwarding of record on appeal	§ 1003.5
§ 3.6	Stay of execution of decision	§ 1003.6
§ 3.7	Notice of Certification	§ 1003.7
§ 3.8	Fees	§ 1003.8
	Subpart B	
§ 3.9	Chief Immigration Judge	§ 1003.9
§ 3.10	Immigration Judges	§ 1003.10
§ 3.11	Administrative control Immigration Courts	§ 1003.11
	Subpart C	
§ 3.12	Scope of rules	§ 1003.12
§ 3.13	Definitions	§ 1003.13
§ 3.14	Jurisdiction and commencement of proceedings	§ 1003.14
§ 3.15	Contents of the order to show cause and notice to appear and notification of change of address.	§ 1003.15
§ 3.16	Representation	§ 1003.16
§ 3.17	Appearances	§ 1003.17
§ 3.18	Scheduling of cases	§ 1003.18
§ 3.19	Custody/bond	§ 1003.19
§ 3.20	Change of venue	§ 1003.20
§ 3.21	Pre-hearing conferences and statement	§ 1003.21
§ 3.22	Interpreters	§ 1003.22
§ 3.23	Reopening or reconsideration before the Immigration Court	§ 1003.23
§ 3.24	Fees pertaining to matters within the jurisdiction of the Immigration Judge	§ 1003.24
§ 3.25	Form of the proceeding	§ 1003.25
§ 3.26	In absentia hearings	§ 1003.26

Part 3	Heading	Is transferred and designated as Part 1003
§ 3.27	Public access to hearings	§ 1003.27
§ 3.28	Recording equipment	§ 1003.28
§ 3.29	Continuances	§ 1003.29
§ 3.30	Additional charges in deportation or removal hearings	§ 1003.30
§ 3.31	Filing documents and applications	§ 1003.31
§ 3.32	Service and size of documents	§ 1003.32
§ 3.33	Translation of documents	§ 1003.33
§ 3.34	Testimony	§ 1003.34
§ 3.35	Depositions and subpoenas	§ 1003.35
§ 3.36	Record of proceeding	§ 1003.36
§ 3.37	Decisions	§ 1003.37
§ 3.38	Appeals	§ 1003.38
§ 3.39	Finality of decision	§ 1003.39
§ 3.40	Local operating procedures	§ 1003.40
§ 3.41	Evidence of criminal conviction	§ 1003.41
§ 3.42	Review of credible fear determination	§ 1003.42
§ 3.43	Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.	§ 1003.43
§ 3.44	Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996.	§ 1003.44
§ 3.46	Protective orders, sealed submissions in Immigration Courts	§ 1003.46
Subpart D—Reserved		
Subpart E		
§ 3.61	List	§ 1003.61
§ 3.62	Qualifications	§ 1003.62
§ 3.63	Applications	§ 1003.63
§ 3.64	Approval and denial of applications	§ 1003.64
§ 3.65	Removal of an organization or attorney from list	§ 1003.65
Subpart F—Reserved		
Subpart G		
§ 3.101	General provisions	§ 1003.101
§ 3.102	Grounds	§ 1003.102
§ 3.103	Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.	§ 1003.103
§ 3.104	Filing of complaints; preliminary inquires; resolutions; referral of complaints	§ 1003.104
§ 3.105	Notice of Intent to Discipline	§ 1003.105
§ 3.106	Hearing and disposition	§ 1003.106
§ 3.107	Reinstatement after expulsion or suspension	§ 1003.107
§ 3.108	Confidentiality	§ 1003.108
§ 3.109	Discipline of government attorneys	§ 1003.109

4a. The authority citation for the newly redesignated part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

5. A new 8 CFR part 3 is added to read as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

§ 3.0 Executive Office for Immigration Review

Regulations of the Executive Office for Immigration Review relating to the adjudication of immigration matters before immigration judges (referred to in some regulations as special inquiry officers) and the Board of Immigration Appeals are located in 8 CFR chapter V, part 1003.

PART 1003—[FURTHER AMENDED]

6. Section 1003.1 is amended by revising paragraphs (g) and (h) and adding paragraphs (i) through (j) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(g) *Decisions as precedents.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and

decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases that:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

(j) *Continuation of jurisdiction and procedure.* The jurisdiction of, and procedures before, the Board of Immigration Appeals in exclusion, deportation, removal, rescission, asylum-only, and any other proceedings, shall remain in effect as in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or to an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

7. Section 1003.14 is amended by adding a new paragraph (d) to read as follows:

§ 1003.14 Jurisdiction and commencement of proceedings.

* * * * *

(d) The jurisdiction of, and procedures before, immigration judges in exclusion, deportation and removal, rescission, asylum-only, and any other proceedings shall remain in effect as it was in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

Chapter I, Subchapter B

PART 101—[DUPLICATED AS CHAPTER V, PART 1101]

Chapter V, Subchapter B

PART 1101—PRESUMPTION OF LAWFUL ADMISSION

8. All the sections in part 101 are duplicated in a new part 1101 in 8 CFR chapter V, subchapter B, as set forth in the following table:

Part 101	Heading	Is duplicated as Part 1101
§ 101.1	Presumption of lawful admission	§ 1101.1
§ 101.2	Presumption of lawful admission; entry under erroneous name or other errors	§ 1101.2
§ 101.3	Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.	§ 1101.3
§ 101.4	Registration procedure	§ 1101.4
§ 101.5	Special immigrant status for certain G–4 nonimmigrants	§ 1101.5

8a. The authority citation newly duplicated part 1101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

9. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

10. Amend § 103.3 by removing from paragraph (c) ''§ 3.1(g) of this chapter,'' and adding in its place ''§ 1003.1(g) of chapter V,'' and by adding at the beginning of paragraph (c) a new sentence to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

* * * * *

(c) Service precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. * * *

11. Add § 103.37 to read as follows:

§ 103.37 Precedent decisions.

(a) Proceedings before the immigration judges, the Board of Immigration Appeals and the Attorney

General are governed by part 1003 of 8 CFR chapter V.

(b)–(f) [Reserved.]

(g) Decisions as precedents. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) Referral of cases to the Attorney General. (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) Publication of Secretary's precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General Service precedent decisions as set forth in § 103.3(c).

Chapter I, Subchapter B

PART 103—[DUPLICATED IN PART AS PART 1103]

Chapter V, Subchapter B

PART 1103—APPEALS, RECORDS, AND FEES

12. Sections 103.3, 103.4 and 103.7 of part 103 are duplicated in part 1103 and redesignated as set forth in the following table:

Part 103	Heading	Is duplicated as Part 1103
§ 103.3	Denials, appeals, and precedent decisions	§ 1103.3
§ 103.4	Certifications	§ 1103.4
§ 103.7	Fees	§ 1103.7

12a. The authority citation for newly duplicated part 1103 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

Chapter V, Subchapter B

13. Add part 1204 to read as follows:

PART 1204—IMMIGRANT PETITIONS

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 1204.1 Single level of appellate review.

The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition under 8 CFR chapter I, part 204 because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in that part will constitute the single level of appellate review established by statute.

PART 205—[DUPLICATED AS PART 1205]

Chapter V, Subchapter B

PART 1205—REVOCATION OF APPROVAL OF PETITIONS

14. All sections in part 205 are duplicated in part 1205, as set out in the following table:

Part 205	Heading	Is duplicated as Part 1205
§ 205.1	Automatic Revocation	§ 1205.1
§ 205.2	Revocation on notice	§ 1205.2

14a. The authority citation for newly designated part 1205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

Chapter I, Subchapter B

PART 207—[DUPLICATED IN PART AS PART 1207]

Chapter V, Subchapter B

PART 1207—ADMISSION OF REFUGEES

15. Section 207.3 is duplicated in part 1207 of chapter V, subchapter B of 8 CFR, as section 1207.3.

15a. The authority citation for newly designated part 1207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

Chapter I, Subchapter B

PART 208—[DUPLICATED AS PART 1208]

Chapter V, Subchapter B

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

16. All sections in part 208 are duplicated in part 1208, as set out in the following table:

Part 208	Heading	Is duplicated as Part 1208
	Subpart A	
§ 208.1	General	§ 1208.1
§ 208.2	Jurisdiction	§ 1208.2
§ 208.3	Form of application	§ 1208.3
§ 208.4	Filing the application	§ 1208.4
§ 208.5	Special duties toward aliens in custody of the Service	§ 1208.5
§ 208.6	Disclosure to third parties	§ 1208.6
§ 208.7	Employment authorization	§ 1208.7
§ 208.8	Limitations on travel outside the United States	§ 1208.8
§ 208.9	Procedure for interview before an asylum officer	§ 1208.9
§ 208.10	Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.	§ 1208.10
§ 208.11	Comments from the Department of State	§ 1208.11
§ 208.12	Reliance on information compiled by other sources	§ 1208.12
§ 208.13	Establishing asylum eligibility	§ 1208.13
§ 208.14	Approval, denial, referral, or dismissal of application	§ 1208.14
§ 208.15	Definition of ''firm resettlement''	§ 1208.15
§ 208.16	Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.	§ 1208.16
§ 208.17	Deferral of removal under the Convention Against Torture	§ 1208.17
§ 208.18	Implementation of the Convention Against Torture	§ 1208.18
§ 208.19	Decisions	§ 1208.19
§ 208.20	Determining if an asylum application is frivolous	§ 1208.20
§ 208.21	Admission of the asylee's spouse and children	§ 1208.21
§ 208.22	Effect on exclusion, deportation, and removal proceedings	§ 1208.22
§ 208.23	Restoration of status	§ 1208.23
§ 208.24	Termination of asylum or withholding of removal or deportation	§ 1208.24
§ 208.25	Reserved	§ 1208.25
§ 208.26	Reserved	§ 1208.26
§ 208.27	Reserved	§ 1208.27
§ 208.28	Reserved	§ 1208.28
§ 208.29	Reserved	§ 1208.29
	Subpart B	
§ 208.30	Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.	§ 1208.30
§ 208.31	Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.	§ 1208.31

16a. The authority citation for newly duplicated part 1208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

Chapter I, Subchapter B

PART 209—[DUPLICATED AS PART 1209]

Chapter V, Subchapter B

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

17. All sections in part 209 are duplicated in part 1209, as set out in the following table:

Part 209	Heading	Is duplicated as Part 1209
§ 209.1	Adjustment of status of refugees	§ 1209.1
§ 209.2	Adjustment of status of alien granted asylum	§ 1209.2

17a. The authority citation for newly designated part 1209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

PART 211—[DUPLICATED IN PART AS PART 1211]

Chapter V, Subchapter B

PART 1211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

18. Section 211.4 is duplicated in part 1211, as section 1211.4.

18a. The authority citation for newly designated part 1211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

PART 212—[DUPLICATED AS PART 1212]

Chapter V, Subchapter B

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

19. All sections in part 212 are duplicated in part 1212, as set out in the following table:

Part 212	Heading	Is duplicated as Part 1212
§ 212.1	Documentary requirements for nonimmigrants	§ 1212.1
§ 212.2	Consent to reapply for admission after deportation, removal or departure at Government expense.	§ 1212.2
§ 212.3	Application for the exercise of discretion under section 212(c)	§ 1212.3
§ 212.4	Application for the exercise of discretion under section 212(d)(1) and 212(d)(3)	§ 1212.4
§ 212.5	Parole of aliens into the United States	§ 1212.5
§ 212.6	Border crossing identification cards	§ 1212.6
§ 212.7	Waiver of certain grounds of inadmissibility	§ 1212.7
§ 212.8	Certification requirement of section 212(a)(14)	§ 1212.8
§ 212.9	Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.	§ 1212.9
§ 212.10	Section 212(k) waiver	§ 1212.10
§ 212.11	Controlled substance convictions	§ 1212.11
§ 212.12	Parole determinations and revocations respecting Mariel Cubans	§ 1212.12
§ 212.13	[Reserved]	§ 1212.13
§ 212.14	Parole determinations for alien witnesses and informants for whom a law enforcement authority (''LEA'') will request S classification.	§ 1212.14
§ 212.15	Certificates for foreign health care workers	§ 1212.15
§ 212.16	Applications for exercise of discretion relating to T nonimmigrant status	§ 1212.16

19a. The authority citation for newly designated part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

Chapter V, Subchapter B

20. Add part 1214 to chapter V to read as follows:

PART 1214—REVIEW OF NONIMMIGRANT CLASSES

Sec.

1214.1 Review of requirements for admission, extension, and maintenance of status.
1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.
1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

§ 1214.1 Review of requirements for admission, extension, and maintenance of status.

Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, shall establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien shall present a valid passport and valid visa unless either or both documents have been waived. However, an alien applying for extension of stay shall present a passport only if requested to do so by the Service. The passport of an alien applying for admission shall be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien shall agree to abide by the terms and conditions of his or her admission. The passport of an alien applying for extension of stay shall be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien shall agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension. The alien shall also agree to depart the United States at the expiration of his or her authorized period of admission or extension, or upon abandonment of his or her authorized nonimmigrant status. At the time a nonimmigrant alien applies for admission or extension of stay he or she shall post a bond on Form I–352 in the sum of not less than $500, to insure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the director, immigration judge or Board of Immigration Appeals.

§ 1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.

(a) Applications for T visas while in proceedings. Individuals who believe they are victims of severe forms of trafficking in persons and who are in pending immigration proceedings must inform the Service if they intend to apply for T nonimmigrant status under this section. With the concurrence of Service counsel, a victim of a severe form of trafficking in persons in proceedings before an immigration judge or the Board of Immigration Appeals may request that the proceedings be administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service. If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may grant such a request to administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service finds an alien ineligible for T–1 nonimmigrant status, the Service may recommence proceedings that have been administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(b) Stay of final order of exclusion, deportation, or removal. A determination by the Service that an application for T–1 nonimmigrant status is bona fide automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the execution of a final order unless the Service has determined that the application is bona fide. Neither an immigration judge nor the Board of Immigration Appeals has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

§ 1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

An alien who is already in immigration proceedings and believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board of Immigration Appeals, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

Chapter I, Subchapter B

PART 215—[DUPLICATED AS PART 1215]

Chapter V, Subchapter B

PART 1215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

21. All sections in part 215 are duplicated in part 1215, as set out in the following table:

Part 215	Heading	Is duplicated as Part 1215
§ 215.1	Definitions	§ 1215.1
§ 215.2	Authority of departure-control officer to prevent alien's departure from the United States.	§ 1215.2
§ 215.3	Alien whose departure is deemed prejudicial to the interests of the United States	§ 1215.3
§ 215.4	Procedure in case of alien prevented from departing from the United States	§ 1215.4
§ 215.5	Hearing procedure before special inquiry officer	§ 1215.5
§ 215.6	Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.	§ 1215.6
§ 215.7	Instructions from the Administrator required in certain cases	§ 1215.7

21a. The authority citation for newly designated part 1215 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

Chapter I, Subchapter B

PART 216—[DUPLICATED AS PART 1216]

Chapter V, Subchapter B

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

22. All sections in part 216 are duplicated in part 1216, as set out in the following table:

Part 216	Heading	Is duplicated as Part 1216
§ 216.1	Definitions of conditional permanent resident	§ 1216.1
§ 216.2	Notification requirements	§ 1216.2
§ 216.3	Termination of conditional resident status	§ 1216.3
§ 216.4	Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.	§ 1216.4
§ 216.5	Waiver of requirement to file joint petition to remove conditions by alien spouse	§ 1216.5
§ 216.6	Petition by entrepreneur to remove conditional basis of lawful permanent resident status.	§ 1216.6

22a. The authority citation for newly designated part 1216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

Chapter I, Subchapter B

PART 235—[DUPLICATED IN PART AS PART 1235]

Chapter V, Subchapter B

PART 1235—INSPECTION OF PERSONS APPLYING FOR PERMISSION

23. The following sections in part 235 are duplicated in part 1235, as set out in the following table:

Part 235	Heading	Is duplicated as Part 1235
§ 235.1	Scope of examination	§ 1235.1
§ 235.2	Parole for deferred inspection	§ 1235.2
§ 235.3	Inadmissible aliens and expedited removal	§ 1235.3
§ 235.4	Withdrawal of application for admission	§ 1235.4
§ 235.5	Preinspection	§ 1235.5
§ 235.6	Referral to immigration judge	§ 1235.6
§ 235.8	Inadmissibility on security and related grounds	§ 1235.8
§ 235.9	Northern Marianas identification card	§ 1235.9
§ 235.10	U.S. Citizen Identification Card	§ 1235.10
§ 235.11	Admission of conditional permanent residents	§ 1235.11
§ 235.12	[Redesignated]	§ 1235.12
§ 235.13	[Redesignated]	§ 1235.13

23a. The authority citation for newly designated part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 236—[DUPLICATED AS PART 1236]

Chapter V, Subchapter B

PART 1236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

24. All sections in part 236, Subpart A, are duplicated in part 1236, as set out in the following table:

Part 236	Heading	Is duplicated as Part 1236
	Subpart A	
§ 236.1	Apprehension, custody, and detention	§ 1236.1
§ 236.2	Confined aliens, incompetents, and minors	§ 1236.2
§ 236.3	Detention and release of juveniles	§ 1236.3
§ 236.4	Removal of S–5, S–6, and S–7 nonimmigrants	§ 1236.4
§ 236.5	Fingerprints and photographs	§ 1236.5
§ 236.6	Information regarding detainees	§ 1236.6
§ 236.7	[Reserved]	§ 1236.7
§ 236.8	[Reserved]	§ 1236.8
§ 236.9	[Reserved]	§ 1236.9

24a. The authority citation for newly designated part 1236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

Chapter I, Subchapter B

PART 238—[DUPLICATED AS PART 1238]

Chapter V, Subchapter B

PART 1238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

25. Section 238.1 is duplicated in part 1238, as § 1238.1.

25a. The authority citation for newly designated part 1238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 239—[DUPLICATED AS PART 1239]

Chapter V, Subchapter B

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

26. All sections in part 239 are duplicated in part 1239, as set out in the following table:

Part 239	Heading	Is duplicated as Part 1239
§ 239.1	Notice to appear	§ 1239.1
§ 239.2	Cancellation of notice to appear	§ 1239.2
§ 239.3	Effect of filing notice to appear	§ 1239.3

26a. The authority citation for newly designated part 1239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

Chapter I, Subchapter B

PART 240—[REDESIGNATED IN PART AS PART 1240]

Chapter V, Subchapter B

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

27. Transfer the following sections of 8 CFR part 240 from chapter I, subchapter B, to chapter V, subchapter B, and designate as 8 CFR part 1240, as set out in the following table:

Part 240	Heading	Is transferred and redesignated as Part 1240
	Subpart A	
§ 240.1	Immigration judges	§ 1240.1
§ 240.2	Service counsel	§ 1240.2
§ 240.3	Representation by counsel	§ 1240.3
§ 240.4	Incompetent respondents	§ 1240.4
§ 240.5	Interpreter	§ 1240.5
§ 240.6	Postponement and adjournment of hearing	§ 1240.6
§ 240.7	Evidence in removal proceedings under section 240 of the Act	§ 1240.7
§ 240.8	Burdens of proof in removal proceedings	§ 1240.8
§ 240.9	Contents of record	§ 1240.9
§ 240.10	Hearing	§ 1240.10
§ 240.11	Ancillary matters, applications	§ 1240.11
§ 240.12	Decision of the immigration judge	§ 1240.12
§ 240.13	Notice of decision	§ 1240.13
§ 240.14	Finality of order	§ 1240.14
§ 240.15	Appeals	§ 1240.15
§ 240.16	Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.	§ 1240.16
§ 240.17	[Reserved]	§ 1240.17
§ 240.18	[Reserved]	§ 1240.18
	Subpart B	
§ 240.19	[Reserved]	§ 1240.19
§ 240.20	Cancellation of removal and adjustment of status under section 240A of the Act	§ 1240.20
§ 240.22	[Reserved]	§ 1240.22
§ 240.23	[Reserved]	§ 1240.23
§ 240.24	[Reserved]	§ 1240.24
	Subpart C	
§ 240.26	Voluntary departure—authority of the Executive Office for Immigration Review	§ 1240.26
§ 240.27	[Reserved]	§ 1240.27
§ 240.28	[Reserved]	§ 1240.28
§ 240.29	[Reserved]	§ 1240.29
	Subpart D	
§ 240.30	Proceedings prior to April 1, 1997	§ 1240.30
§ 240.31	Authority of immigration judges	§ 1240.31
§ 240.32	Hearing	§ 1240.32
§ 240.33	Applications for asylum or withholding of deportation	§ 1240.33
§ 240.34	Renewal of application for adjustment of status under section 245 of the Act	§ 1240.34
§ 240.35	Decision of the immigration judge; notice to the applicant	§ 1240.35
§ 240.36	Finality of order	§ 1240.36
§ 240.37	Appeals	§ 1240.37
§ 240.38	Fingerprinting of excluded aliens	§ 1240.38
§ 240.39	[Reserved]	§ 1240.39
	Subpart E	
§ 240.40	Proceedings commenced prior to April 1, 1997	§ 1240.40
§ 240.41	Immigration Judges	§ 1240.41
§ 240.42	Representation by counsel	§ 1240.42
§ 240.43	Incompetent respondents	§ 1240.43
§ 240.44	Interpreter	§ 1240.44
§ 240.45	Postponement and adjournment of hearing	§ 1240.45
§ 240.46	Evidence	§ 1240.46
§ 240.47	Contents of record	§ 1240.47
§ 240.48	Hearing	§ 1240.48
§ 240.49	Ancillary matters, applications	§ 1240.49
§ 240.50	Decision of the immigration judge	§ 1240.50
§ 240.51	Notice of decision	§ 1240.51
§ 240.52	Finality of order	§ 1240.52
§ 240.53	Appeals	§ 1240.53
§ 240.54	[Reserved]	§ 1240.54
	Subpart F	
§ 240.55	Proceedings commenced prior to April 1, 1997	§ 1240.55

Part 240	Heading	Is transferred and redesignated as Part 1240
§ 240.56	Application	§ 1240.56
§ 240.57	Extension of time to depart	§ 1240.57
§ 240.58	Extreme hardship	§ 1240.58
Subpart G—Reserved		

28. The following sections in part 240 are duplicated in part 1240, as set out in the following table:

Part 240	Heading	Is duplicated as Part 1240
Subpart B		
§ 240.21	Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.	§ 1240.21
Subpart H		
§ 240.60	Definitions	§ 1240.60
§ 240.61	Applicability	§ 1240.61
§ 240.62	Jurisdiction	§ 1240.62
§ 240.63	Application process	§ 1240.63
§ 240.64	Eligibility—general	§ 1240.64
§ 240.65	Eligibility for suspension of deportation	§ 1240.65
§ 240.66	Eligibility for special rule cancellation of removal	§ 1240.66
§ 240.67	Procedure for interview before an asylum officer	§ 1240.67
§ 240.68	Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.	§ 1240.68
§ 240.69	Reliance on information compiled by other sources	§ 1240.69
§ 240.70	Decision by the Service	§ 1240.70

28a. The authority citation for newly redesignated part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

Chapter I, Subchapter B

PART 241—[DUPLICATED AS PART 1241]

Chapter V, Subchapter B

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

29. All sections in part 241 are duplicated in part 1241, as set out in the following table:

Part 241	Heading	Is duplicated as Part 1241
Subpart A		
§ 241.1	Final order of removal	§ 1241.1
§ 241.2	Warrant of removal	§ 1241.2
§ 241.3	Detention of aliens during removal period	§ 1241.3
§ 241.4	Continued detention of inadmissible, criminal, and other aliens beyond the removal period.	§ 1241.4
§ 241.5	Conditions of release after removal period	§ 1241.5
§ 241.6	Administrative stay of removal	§ 1241.6
§ 241.7	Self-removal	§ 1241.7
§ 241.8	Reinstatement of removal orders	§ 1241.8
§ 241.9	Notice to transportation line of alien's removal	§ 1241.9

Part 241	Heading	Is duplicated as Part 1241
§ 241.10	Special care and attention of removable aliens	§ 1241.10
§ 241.11	Detention and removal of stowaways	§ 1241.11
§ 241.12	Nonapplication of costs of detention and maintenance	§ 1241.12
§ 241.13	Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future.	§ 1241.13
§ 241.14	Continued detention of removable aliens on account of special circumstances	§ 1241.14
§ 241.15	Information regarding detainees	§ 1241.15
§ 241.16	Reserved	§ 1241.16
§ 241.17	Reserved	§ 1241.17
§ 241.18	Reserved	§ 1241.18
§ 241.19	Reserved	§ 1241.19
Subpart B		
§ 241.20	Proceedings commenced prior to April 1, 1997	§ 1241.20
§ 241.21	Stay of deportation of excluded alien	§ 1241.21
§ 241.22	Notice to surrender for deportation	§ 1241.22
§ 241.23	Cost of maintenance not assessed	§ 1241.23
§ 241.24	Notice to transportation line of alien's exclusion	§ 1241.24
§ 241.25	Deportation	§ 1241.25
§ 241.26	Reserved	§ 1241.26
§ 241.27	Reserved	§ 1241.27
§ 241.28	Reserved	§ 1241.28
§ 241.29	Reserved	§ 1241.29
Subpart C		
§ 241.30	Proceedings commenced prior to April 1, 1997	§ 1241.30
§ 241.31	Final order of deportation	§ 1241.31
§ 241.32	Warrant of deportation	§ 1241.32
§ 241.33	Expulsion	§ 1241.33

29a. The authority citation for newly designated part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

Chapter I, Subchapter B

PART 244—[DUPLICATED AS PART 1244]

Chapter V, Subchapter B

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

30. All sections in part 244 are duplicated in part 1244, as set out in the following table:

Part 244	Heading	Is duplicated as Part 1244
§ 244.1	Definitions	§ 1244.1
§ 244.2	Eligibility	§ 1244.2
§ 244.3	Applicability of grounds of inadmissibility	§ 1244.3
§ 244.4	Ineligible aliens	§ 1244.4
§ 244.5	Temporary treatment benefits for eligible aliens	§ 1244.5
§ 244.6	Application	§ 1244.6
§ 244.7	Filing the application	§ 1244.7
§ 244.8	Appearance	§ 1244.8
§ 244.9	Evidence	§ 1244.9
§ 244.10	Decision by the director or Administrative Appeals Unit (AAU)	§ 1244.10
§ 244.11	Renewal of application; appeal to the Board of Immigration Appeals	§ 1244.11
§ 244.12	Employment authorization	§ 1244.12
§ 244.13	Termination of temporary treatment benefits	§ 1244.13
§ 244.14	Withdrawal of Temporary Protected Status	§ 1244.14
§ 244.15	Travel abroad	§ 1244.15
§ 244.16	Confidentiality	§ 1244.16
§ 244.17	Annual registration	§ 1244.17
§ 244.18	Issuance of charging documents; detention	§ 1244.18
§ 244.19	Termination of designation	§ 1244.19

Part 244	Heading	Is duplicated as Part 1244
§ 244.20	Waiver of Fees	§ 1244.20

30a. The authority citation for newly designated part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

Chapter I, Subchapter B

PART 245—[DUPLICATED AS PART 1245]

Chapter V, Subchapter B

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

31. All sections in part 245 are duplicated in part 1245, as set out in the following table:

Part 245	Heading	Is duplicated as Part 1245
§ 245.1	Eligibility	§ 1245.1
§ 245.2	Application	§ 1245.2
§ 245.3	Adjustment of status under section 13 of the Act of September 11, 1957, as amended.	§ 1245.3
§ 245.4	Documentary requirements	§ 1245.4
§ 245.5	Medical examination	§ 1245.5
§ 245.6	Interview	§ 1245.6
§ 245.7	Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101–167).	§ 1245.7
§ 245.8	Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act	§ 1245.8
§ 245.9	Adjustment of status of certain nationals of the People's Republic of China under Public Law 102–404.	§ 1245.9
§ 245.10	Adjustment of status upon the payment of additional sum under section 245(i)	§ 1245.10
§ 245.11	Adjustment of aliens in S nonimmigrant classification	§ 1245.11
§ 245.12	What are the procedures for certain Polish and Hungarian parolees who are adjusting status to that of permanent resident under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996?	§ 1245.12
§ 245.13	Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105–100.	§ 1245.13
§ 245.14	Adjustment of status of certain health care workers	§ 1245.14
§ 245.15	Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).	§ 1245.15
§ 245.18	How can physicians (with approved Forms I–140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?	§ 1245.18
§ 245.20	Adjustment of status of Syrian asylees under Public Law 106–378	§ 1245.20
§ 245.21	Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106–429) Syrian asylees under Public Law 106–378.	§ 1245.21
§ 245.22	Evidence to demonstrate an alien's physical presence in the United States on a specific date.	§ 1245.22

31a. The authority citation for newly designated part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub.L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub.L. 105–277, 112 Stat. 2681; 8 CFR part 2.

Chapter I, Subchapter B

PART 246—[DUPLICATED AS PART 1246]

Chapter V, Subchapter B

PART 1246—RESCISSION OF ADJUSTMENT OF STATUS

32. All sections in part 246 are duplicated in part 1246, as set out in the following table:

Part 246	Heading	Is duplicated as Part 1246
§ 246.1	Notice	§ 1246.1
§ 246.2	Allegations admitted; no answer filed; no hearing requested	§ 1246.2
§ 246.3	Allegations contested or denied; hearing requested	§ 1246.3
§ 246.4	Immigration judge's authority; withdrawal and substitution	§ 1246.4
§ 246.5	Hearing	§ 1246.5
§ 246.6	Decision and order	§ 1246.6
§ 246.7	Appeals	§ 1246.7
§ 246.8	[Reserved]	§ 1246.8
§ 246.9	Surrender of Form I–551	§ 1246.9

32a. The authority citation for newly designated part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 249—[DUPLICATED AS PART 1249]

Chapter V, Subchapter B

PART 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

33. All sections in part 249 are duplicated in part 1249, as set out in the following table:

Part 249	Heading	Is duplicated as Part 1249
§ 249.1	Waiver of inadmissibility	§ 1249.1
§ 249.2	Application	§ 1249.2
§ 249.3	Reopening and reconsideration	§ 1249.3

33a. The authority citation for newly designated part 1249 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 270—[DUPLICATED AS PART 1270]

Chapter V, Subchapter B

PART 1270—PENALTIES FOR DOCUMENT FRAUD

34. All sections in part 270 are duplicated in part 1270, as set out in the following table:

Part 270	Heading	Is duplicated as Part 1270
§ 270.1	Definitions	§ 1270.1
§ 270.2	Enforcement procedures	§ 1270.2
§ 270.3	Penalties	§ 1270.3

34a. The authority citation for newly designated part 1270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 274a—[DUPLICATED AS PART 1274a]

Chapter V, Subchapter B

PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

35. All sections in part 274a are duplicated in part 1274a, as set out in the following table:

Part 274a	Heading	Is duplicated as Part 1274a
	Subpart A	
§ 274a.1	Definitions	§ 1274a.1
§ 274a.2	Verification of employment eligibility	§ 1274a.2
§ 274a.3	Continuing employment of unauthorized aliens	§ 1274a.3
§ 274a.4	Good faith defense	§ 1274a.4
§ 274a.5	Use of labor through contract	§ 1274a.5
§ 274a.6	State employment agencies	§ 1274a.6
§ 274a.7	Pre-enactment provisions for employees hired prior to November 7, 1986	§ 1274a.7
§ 274a.8	Prohibition of indemnity bonds	§ 1274a.8
§ 274a.9	Enforcement procedures	§ 1274a.9
§ 274a.10	Penalties	§ 1274a.10
§ 274a.11	Reserved	§ 1274a.11
	Subpart B	
§ 274a.12	Classes of aliens authorized to accept employment	§ 1274a.12
§ 274a.13	Application for employment authorization	§ 1274a.13
§ 247a.14	Termination of employment authorization	§ 1274a.14

35a. The authority citation for newly designated part 1274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

Chapter I, Subchapter B

PART 280—[DUPLICATED AS PART 1280]

Chapter V, Subchapter B

PART 1280—IMPOSITION AND COLLECTION OF FINES

36. All sections in part 280 are duplicated in part 1280, as set out in the following table:

Part 280	Heading	Is duplicated as Part 1280
§ 280.1	Notice of intention to fine; administrative proceedings not exclusive	§ 1280.1
§ 280.2	Special provisions relating to aircraft	§ 1280.2
§ 280.3	Departure of vessel or aircraft prior to denial of clearance	§ 1280.3
§ 280.4	Data concerning cost of transportation	§ 1280.4
§ 280.5	Mitigation or remission of fines	§ 1280.5
§ 280.6	Bond to obtain clearance; form	§ 1280.6
§ 280.7	Approval of bonds or acceptance of cash deposit to obtain clearance	§ 1280.7
§ 280.11	Notice of intention to fine; procedure	§ 1280.11
§ 280.12	Answer and request or order for interview	§ 1280.12
§ 280.13	Disposition of case	§ 1280.13
§ 280.14	Record	§ 1280.14
§ 280.15	Notice of final decision to district director of customs	§ 1280.15
§ 280.21	Seizure of aircraft	§ 1280.21
§ 280.51	Application for mitigation or remission	§ 1280.51
§ 280.52	Payment of fines	§ 1280.52
§ 280.53	Civil monetary penalties inflation adjustment	§ 1280.53

36a. The authority citation for newly designated part 1280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 287—[DUPLICATED IN PART AS PART 1287]

Chapter V, Subchapter B

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

37. The following sections in part 287 are duplicated in part 1287, as set out in the following table:

Part 287	Heading	Is duplicated as Part 1287
§ 287.4	Subpoena	§ 1287.4
§ 287.6	Proof of official records	§ 1287.6

37a. The authority citation for newly designated part 1287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

Chapter I, Subchapter B

PART 292—[DUPLICATED AS PART 1292]

Chapter V, Subchapter B

PART 1292—REPRESENTATION AND APPEARANCES

38. All sections in part 292 are duplicated in part 1292, as set out in the following table:

Part 292	Heading	Is duplicated as Part 1292
§ 292.1	Representation of others	§ 1292.1
§ 292.2	Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.	§ 1292.2
§ 292.3	Professional conduct for practitioners—Rules and procedures	§ 1292.3
§ 292.4	Appearances	§ 1292.4
§ 292.5	Service upon and action by attorney or representative of record	§ 1292.5
§ 292.6	Interpretation	§ 1292.6

38a. The authority citation for newly designated part 1292 continues to read as follows:

Authority: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

Chapter V, Subchapter B

PART 1299—IMMIGRATION REVIEW FORMS

39. Part 1299 is added to chapter V, subchapter C, to read as follows:

Sec.
1299.1 Use of immigration forms.
1299.2 Specific immigration review forms.

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; Homeland Security Act of 2002, Pub. L. 107–296.

§ 1299.1 Use of immigration forms.

In addition to forms prepared by the Executive Office for Immigration Review, the Executive Office for Immigration Review, immigration judges, the Board of Immigration Appeals, and administrative law judges use forms listed under 8 CFR chapter I, part 299.

§ 1299.2 Specific immigration review forms.

The Director of the Executive Office for Immigration Review may designate the specific version of a form listed in 8 CFR chapter I, part 299, which shall be utilized in filings before the immigration judges, the Board of Immigration Appeals, and administrative law judges.

Chapter I, Subchapter C

PART 337—[DUPLICATED AS PART 1337]

Chapter V, Subchapter C

PART 1337—OATH OF ALLEGIANCE

40. All sections in part 337 are duplicated in part 1337, as set out in the following table:

Part 337	Heading	Is duplicated as Part 1337
§ 337.1	Oath of allegiance	§ 1337.1

Part 337	Heading	Is duplicated as Part 1337
§ 337.2	Oath administered by the Immigration and Naturalization Service or an Immigration Judge.	§ 1337.2
§ 337.3	Expedited administration of oath of allegiance	§ 1337.3
§ 337.4	When requests for change of name granted	§ 1337.4
§ 337.5	[Reserved]	§ 1337.5
§ 337.6	[Reserved]	§ 1337.6
§ 337.7	Information and assignment of individuals under exclusive jurisdiction	§ 1337.7
§ 337.8	Oath administered by the courts	§ 1337.8
§ 337.9	Effective date of naturalization	§ 1337.9
§ 337.10	Failure to appear for oath administration ceremony	§ 1337.10

40a. The authority citation for newly designated part 1337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

41. All references in part 1003 to ''§ 3.'' are revised to read ''§ 1003.''.

42. All references in part 1101 to ''§ 101.'' are revised to read ''§ 1101.''.

43. All references in part 1103 to ''§ 103.3'' are revised to read ''§ 1103.3''; references in part 1103 to ''§ 103.4'' are revised to read ''§ 1103.4'', and references in part 1103 to ''§ 103.7'' are revised to read ''§ 1103.7'.

44. All references in part 1205 to ''§ 205.'' are revised to read ''§ 1205.''.

45. All references in part 1208 to ''§ 208.'' are revised to read ''§ 1208.''.

46. All references in part 1209 to ''§ 209.''are revised to read ''§ 1209.''.

47. All references in part 1211 to ''§ 211.'' are revised to read ''§ 1211.''.

48. All references in part 1212 to ''§ 212.'' are revised to read ''§ 1212.''.

49. All references in part 1215 to ''§ 215.'' are revised to read ''§ 1215.''.

50. All references in part 1216 to ''§ 216.'' are revised to read ''§ 1216.''.

51. All references in part 1235 to ''§ 235.'' are revised to read ''§ 1235.'', except any reference to ''235.7'' shall not be revised.

52. All references in part 1236 to ''§ 236.'' are revised to read ''§ 1236.''.

53. All references in part 1239 to ''§ 239.'' are revised to read ''§ 1239.''.

54. All references in part 1240 to ''§ 240.'' are revised to read ''§ 1240.'', except that any reference to ''240.25'' shall not be revised.

55. All references in part 1241 to ''§ 241.'' are revised to read ''§ 1241.''.

56. All references in part 1244 to ''§ 244.'' are revised to read ''§ 1244.''.

57. All references in part 1245 to ''§ 245.'' are revised to read ''§ 1245.''.

58. All references in part 1246 to ''§ 246.'' are revised to read ''§ 1246.''.

59. All references in part 1249 to ''§ 249.'' are revised to read ''§ 1249.''.

60. All references in part 1270 to ''§ 270.'' are revised to read ''§ 1270.''.

61. All references in part 1274a to ''§ 274a.'' are revised to read ''§ 1274a.''.

62. All references in part 1280 to ''§ 280.'' are revised to read ''§ 1280.''.

63. All references in part 1287 to ''§ 287.4'' are revised to read ''§ 1287.4'', and references to ''§ 287.6'' are revised to read ''1287.6''.

64. All references in part 1292 to ''§ 292.'' are revised to read ''§ 1292.''.

65. All references in part 1337 to ''§ 337.'' are revised to read ''§ 1337.''.

Chapter I, Subchapter C

PART 507—[REDESIGNATED AS 28 CFR Part 200]

28 CFR—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

66. 8 CFR part 507 is transferred to 28 CFR chapter I and redesignated as part 200, consisting of § 200.1.

66a. The authority citation for part 200 continues to read as follows:

Authority: Pub. L. 105–277, 112 Stat. 2681.

Dated: February 26, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–4935 Filed 2–27–03; 8:45 am]

BILLING CODE 4410–30–P

Federal Register

Friday,
February 28, 2003

Part VIII

The President

Notice of February 27, 2003—Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 68, No. 40
Friday, February 28, 2003

Presidential Documents

Title 3—

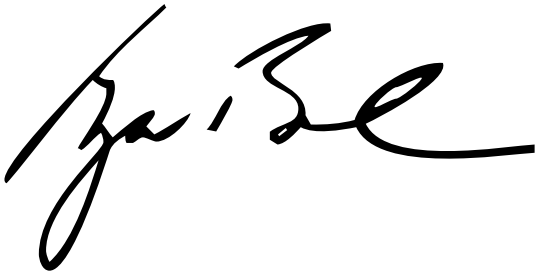
The President

Notice of February 27, 2003

Continuation of the National Emergency Relating to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, President Clinton declared a national emergency to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Government of Cuba of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. In July 1996 and on subsequent occasions, the Government of Cuba stated its intent to forcefully defend its sovereignty against any U.S.-registered vessels or aircraft that might enter Cuban territorial waters or airspace while involved in a flotilla and peaceful protest. Since these events, the Government of Cuba has not demonstrated that it will refrain from the future use of reckless and excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, February 27, 2003.

[FR Doc. 03–5016
Filed 2–27–03; 12:34 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 68, No. 40

Friday, February 28, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5203–5528 3
5529–5784 4
5785–6060 5
6061–6338 6
6339–6602 7
6603–6814 10
6815–7062 11
7063–7300 12
7301–7410 13
7411–7692 14
7693–7896 18
7897–8152 19
8153–8444 20
8445–8538 21
8539–8702 24
8703–8816 25
8817–8988 26
8989–9502 27
9503–9850 28

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7644 6055
7645 6057
7646 6059
7647 7053

Executive Orders:
13285 5203

Executive Orders:
Notices:
Notice of February 27, 2003 9849

Presidential Determinations:
No. 2003-13 of January 29, 2003 5785
No. 2003-14 of January 30, 2003 5787

5 CFR

576 5529
875 5530
890 5470

Proposed Rules:
890 6649
2637 7844
2641 7844

7 CFR

1 6339
15f 7411
301 ..... 5793, 5794, 6603, 8817
318 ..... 5796, 5800
319 6544
330 6341
354 6341
762 7693
764 7693
774 7693
1000 7063
1001 7063
1005 7063
1006 7063
1007 7063
1030 7063
1032 ..... 7063, 7070
1033 7063
1124 7063
1126 7063
1131 7063
1135 7063
1413 5205
1738 8989
1755 7897
1910 7693
1924 7693
1941 7693
1943 7693
1951 7693
1955 7693
1956 7693
1962 7693
1965 7693

Proposed Rules:
319 6352
360 6653
800 9589
868 9593
1466 6655
1470 7720

8 CFR

1 9824
3 9824
101 9824
103 ..... 8989, 9824
204 9824
205 9824
207 9824
208 9824
209 9824
211 9824
212 9824
214 9824
215 9824
216 9824
235 9824
236 9824
238 9824
239 9824
240 9824
241 9824
244 9824
245 9824
246 9824
249 9824
270 9824
274a 9824
280 9824
287 9824
292 9824
337 9824
507 9824
1001 9824
1003 9824
1101 9824
1103 9824
1204 9824
1205 9824
1207 9824
1208 9824
1209 9824
1211 9824
1212 9824
1214 9824
1215 9824
1216 9824
1235 9824
1236 9824
1238 9824
1239 9824
1240 9824
1241 9824
1244 9824
1245 9824
1246 9824

1249 9824
1270 9824
1274a 9824
1280 9824
1287 9824
1292 9824
1299 9824
1337 9824

9 CFR

4 6341
11 6341
12 6341
49 6341
50 6341
51 6341
52 6341
53 6341
54 6341
70 6341
71 6341
72 6341
73 6341
74 6341
75 6341
77 6341
78 6341
79 6341
80 6341
82 7412
85 6341
89 6341
91 6341
92 6341
93 ....6341, 7414
94 ....5802, 6341
95 6341
96 6341
97 6341
98 6341
99 6341
122 6341
123 6341
124 6341
130 6341
145 6341
147 6341
160 6341
161 6341
162 6341
166 ....6341, 7415

Proposed Rules:

94 ....6673, 7722
391 8858
590 8858
592 8858

10 CFR

72 8445

Proposed Rules:

20 9595
63 9023
72 8472

11 CFR

110 6346

Proposed Rules:

100 7728
110 7728

12 CFR

211 7898
220 8993
272 6061
303 7301
1750 7309
1805 5704
1806 5717

Proposed Rules:

3 6363
5 6363
6 6363
7 6363
9 6363
28 6363
34 6363
609 5595
611 5587
612 5587
614 ....5587, 5595
615 5595
617 ....5587, 5595
709 8860

13 CFR

Proposed Rules:

120 5234
121 5234

14 CFR

23 5538
25 5208
39 ....5541, 5805, 5808, 5810, 5812, 5815, 5818, 5819, 5822, 6347, 6815, 7652, 7900, 7902, 7904, 7908, 7910, 7911, 8539, 8994, 9503, 9504, 9508, 9509, 9511, 9513, 9516, 9518, 9520, 9521, 9523, 9525
71 ....6606, 6607, 7652, 7913, 7914, 7915, 7916, 8703, 8704, 8705, 8706, 8997, 8998, 8999, 9527
73 7917
91 ....7684, 9792
93 ....9496, 9792
95 7918
97 ....6816, 6818, 8707, 8709
119 5782
121 5782
129 5782
135 5782
150 6608
183 5782

Proposed Rules:

1 6802
39 ....5610, 5856, 6376, 6379, 6380, 6382, 6383, 7081, 7084, 7449, 7451, 7947, 8155, 8157, 8161, 8473, 8475, 8477, 8555, 8558, 8560, 8563, 8564, 8566, 8862, 8865, 9032, 9034, 9602, 9607
71 ....5613, 6677, 7949
91 ....6802, 9818
121 6802
125 ....5488, 6802
135 ....5488, 6802
255 7325

15 CFR

2016 5542

16 CFR

1512 7072
305 8448

17 CFR

1 5545
30 5545
190 5545
205 6296
210 6006
228 5982
229 5982
239 6564
240 ....5348, 6006, 8686
242 9482
249 ....5348, 5982, 6006, 6564
270 ....5348, 6564, 8438
274 ....5348, 6006, 6564
275 6585

Proposed Rules:

201 8138
205 6324
240 6324
249 6324
270 7038
275 7038

18 CFR

157 8710
375 6608
390 7416

19 CFR

102 8711
141 8713
142 8713

20 CFR

260 6820
320 6820
404 5210
416 5210

21 CFR

58 6609
73 7416
172 9000
201 6062
349 7919
522 8153
529 5562
530 9528
558 6820
864 9530
866 5825

Proposed Rules:

1 ....5378, 5428
101 8163
349 7951
1301 7728

22 CFR

120 7417
123 6609

Proposed Rules:

307 5857

23 CFR

450 7418
636 7921

Proposed Rules:

1225 6091

24 CFR

234 6396

Proposed Rules:

902 6262
3500 6385

26 CFR

1 ....5346, 6081, 6350, 9532
157 7922
602 7922

Proposed Rules:

1 ....7453, 7454, 8868
41 7454
48 7454
145 7454
157 7956
602 7956

27 CFR

Proposed Rules:

55 ....7410, 8331

28 CFR

65 8820
105 7313
200 9824
522 5563

29 CFR

4022 7419
4044 7419

Proposed Rules:

403 8727
408 8727
1926 9036
4000 7454
4003 7454
4007 7454
4010 7454
4011 7454
4022 7454
4041 7454
4041a 7454
4043 7454
4050 7454
4062 7454
4203 7454
4204 7454
4207 7454
4208 7454
4211 7454
4219 7454
4220 7454
4221 7454
4231 7454
4245 7454
4281 7454
4901 7454
4902 7454
4903 7454
4907 7454

30 CFR

100 6609
250 ....7421, 8402
875 9500

Proposed Rules:

206 ....7085, 7086
250 8480
917 6838
934 6842

31 CFR

50 9804
103 6613
321 7427
351 7427
352 7427
353 7427
359 7427
360 7427
501 6820

Proposed Rules:

50 9815

103 .....8480, 8568, 8571

32 CFR

171.....8822
199.....6617
254.....6082
285.....8825
311.....8721
706 .....5827, 5828, 5829, 5830, 5831

Proposed Rules:

322.....8179

33 CFR

1.....9533
3.....9533
5.....9533
45.....9533
51.....9533
52.....9533
53.....9533
66.....9533
109.....9533
114.....9533
117 .....5832, 6621, 7427, 9535, 9536, 9537
120.....9533
160.....9537
165 .....5833, 7073, 7075, 7078, 7701, 7926, 9003, 9547
401.....9549

Proposed Rules:

100.....9037
117 .....5858, 6100, 7087, 9609
147.....9611
165 .....5614, 6844, 7093, 7471, 7473, 7958, 7960, 9039
179.....7096
181.....7096
183.....7096
328.....9613
385.....5860

34 CFR

34.....8142

36 CFR

242 .....7276, 7298, 7703
404.....8825

Proposed Rules:

242.....7294, 7734

37 CFR

4.....9551

Proposed Rules:

201.....6678

38 CFR

14.....8541
19.....6621
36.....6625
60.....8547

Proposed Rules:

3.....6679, 6998
4.....6998

39 CFR

111.....9006

40 CFR

9.....7176, 9746
52 .....5221, 5228, 6627, 6629, 7174, 7321, 7428, 7704, 8550, 8723, 8830, 8835, 8838, 8839, 8841, 8845, 9009, 9012, 9015, 9017, 9553, 9559, 9561, 9565
61.....6082
62 .....6630, 6633, 9019
63.....6635, 7706
81 .....7174, 7410, 8185
94.....9746
122.....7176
123.....7176
180 .....5835, 5839, 5847, 7428, 7931, 7935, 8847
261.....8553
412.....7176

Proposed Rules:

51.....9614
52 .....5246, 5263, 6681, 7327, 7330, 7476, 8574, 8727, 8868, 8869, 8871, 9042, 9043, 9614, 9615
60.....8574
62 .....6681, 6682, 9043
63.....7735
110.....9613
112.....9613
116.....9613
117.....9613
122.....9613
180.....7097
230.....9613
232.....9613
300.....9613, 9615
401.....9613

41 CFR

109–6.....7940
Ch. 302.....7941

42 CFR

405.....6636
410.....9567
414.....9567
419.....6636
485.....9567

Proposed Rules:

413.....6682

44 CFR

64.....5852
65 .....6644, 6823, 6826
67.....6828, 6830

Proposed Rules:

5.....9621
61.....5264
67.....6847, 6861

45 CFR

160.....8334
162.....8334, 8381
164.....8334
1602.....7433
1611.....7718, 8856

46 CFR

1.....9533
68.....9533
356.....5564

Proposed Rules:

4.....9622
401.....7489

47 CFR

32.....6351
52.....7323
53.....6351
54.....6646, 6832
64 .....6351, 6352, 8553
73 .....5583, 5584, 5854, 5855, 6082, 7944, 8724, 8725

Proposed Rules:

0.....6689
43.....6689
63.....6689
64.....6689
73 .....5616, 5617, 5860, 5861, 5862, 7737, 7961, 7962, 7963, 7964, 8486, 8728, 8729, 8730
74.....7737
76.....7737
90 .....6687, 6688, 7737

48 CFR

201.....7438
202.....7438
204.....7438
206.....7438
209.....7438
212.....7438
214.....7438, 9580
217.....7438
219.....7438
225.....7441
230.....7438
231.....7438
232.....7438, 8450
236.....7438
237.....7443
239.....7438
242.....7438
249.....7438
250.....7438
252.....7441, 8450
253.....7438
923.....6355
936.....6355
970.....6355
1804.....5230
1827.....5230
1835.....5230
1852.....5230

Proposed Rules:

2.....5774
31.....5774
52.....5778
228.....7490
232.....9627
252.....7491, 9627
532.....8486
538.....8486
552.....8486

49 CFR

390.....8580
396.....8580
571.....6359
661.....9798
1011.....8725
1540.....7444
1570.....6083
1572.....6083

Proposed Rules:

173.....6689
192.....6385
571 .....5863, 7100, 7747
661.....9801
1180.....6695

50 CFR

17.....8088, 9116
100 .....7276, 7298, 7703
222.....8456
223.....7080, 8456
224.....8456
622.....6360
648.....6088, 9580
679 .....5585, 6833, 7323, 7448, 7719, 8153, 8154, 8726

Proposed Rules:

17 .....6863, 8487, 8730
20.....6697
21.....6697
92.....6697
100.....7294, 7734
300.....6103
600 .....6863, 7492, 8487, 8871, 8872, 9044, 9628, 9629
648 .....7749, 7965, 8731
679 .....6386, 6865, 7750, 9630

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 28, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; published 1-29-03

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Administrative investigations; transcripts of witness testimony; published 1-29-03

COMMERCE DEPARTMENT

Patent and Trademark Office

Patents:

Invention promoters; complaints; published 2-28-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; published 2-28-03

Kentucky; published 12-30-02

JUSTICE DEPARTMENT

Organization, functions, and authority delegations:

Immigration and Naturalization Service; transfer to Homeland Security Department; reorganization of regulations; published 2-28-03

TREASURY DEPARTMENT

Terrorism Risk Insurance Program; published 2-28-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Peaches, plums, and nectarines; grade standards; comments due by 3-7-03; published 1-31-03 [FR 03-02250]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning; comments due by 3-6-03; published 12-6-02 [FR 02-30683]

COMMERCE DEPARTMENT

National Institute of Standards and Technology

National Construction Safety Team Act; implementation; comments due by 3-3-03; published 1-30-03 [FR 03-02084]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Section 508 micro-purchase exception sunset provision; comments due by 3-3-03; published 12-31-02 [FR 02-32743]

DEFENSE DEPARTMENT

Engineers Corps

Water pollution control:

Clean Water Act—

Waters of United States; definition; comments due by 3-3-03; published 1-15-03 [FR 03-00960]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans:

Preparation, adoption, and submittal—

Prevention of significant deterioration and nonattainment new source review; routine maintenance, repair, and replacement; comments due by 3-3-03; published 12-31-02 [FR 02-31900]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Missouri and Illinois; comments due by 3-3-03; published 1-30-03 [FR 03-01773]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-3-03; published 1-31-03 [FR 03-02174]

District of Columbia, Maryland, and Virginia; comments due by 3-5-03; published 2-3-03 [FR 03-02333]

Maryland; comments due by 3-5-03; published 2-3-03 [FR 03-02433]

Missouri; comments due by 3-3-03; published 1-30-03 [FR 03-01772]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Lambda-cyhalothrin; comments due by 3-4-03; published 1-3-03 [FR 03-00006]

S-metolachlor; comments due by 3-4-03; published 1-3-03 [FR 03-00005]

Radiation protection programs:

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability—

Argonne National Laboratory-East Site, NM; comments due by 3-3-03; published 1-31-03 [FR 03-02343]

Water pollution control:

Clean Water Act—

Waters of United States; definition; comments due by 3-3-03; published 1-15-03 [FR 03-00960]

FARM CREDIT ADMINISTRATION

Farm credit system:

Borrower rights; effective interest rates and related loan information; disclosure; comments due by 3-6-03; published 2-4-03 [FR 03-02401]

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program:

Increased coverage rates; comments due by 3-5-03; published 2-3-03 [FR 03-02453]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Section 508 micro-purchase exception sunset provision; comments due by 3-3-03; published 12-31-02 [FR 02-32743]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Physician fee schedule (2003 CY); payment policies and relative value unit adjustments; comments due by 3-3-03; published 12-31-02 [FR 02-32503]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants:

Faith-based organizations; equal treatment with other participants in HUD programs; comments due by 3-7-03; published 1-6-03 [FR 03-00133]

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 3-3-03; published 1-31-03 [FR 03-02251]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright Arbitration Royalty Panel rules and procedures:

Digital performance of sound recordings by preexisting subscription services; reasonable rates and terms determination; comments due by 3-3-03; published 1-30-03 [FR 03-02081]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Section 508 micro-purchase exception sunset provision; comments due by 3-3-03; published 12-31-02 [FR 02-32743]

PEACE CORPS

Standards of conduct; comments due by 3-7-03; published 2-5-03 [FR 03-02703]

POSTAL SERVICE

Domestic Mail Manual:

Outside-country periodicals co-palletization and drop-ship classification; experimental testing; comments due by 3-3-03; published 1-30-03 [FR 03-02198]

SMALL BUSINESS ADMINISTRATION

Business loans:

Certified Development Company Loan Program; comments due by 3-6-03; published 2-3-03 [FR 03-02399]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Transport category airplanes—

Passenger and flight attendant seats; improved crashworthiness; comments due by 3-3-03; published 12-3-02 [FR 02-30695]

Airworthiness directives:

Boeing; comments due by 3-3-03; published 1-2-03 [FR 02-32884]

Bombardier; comments due by 3-3-03; published 1-30-03 [FR 03-02098]

Dassault; comments due by 3-3-03; published 1-30-03 [FR 03-02148]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-3-03; published 1-30-03 [FR 03-02096]

Eurocopter France; comments due by 3-3-03; published 12-31-02 [FR 02-32889]

Hartzell Propeller, Inc.; comments due by 3-3-03; published 1-2-03 [FR 02-33074]

Raytheon; comments due by 3-3-03; published 1-27-03 [FR 03-01678]

Rolls-Royce Ltd.; comments due by 3-3-03; published 1-2-03 [FR 02-32888]

Airworthiness standards:

Special conditions—

Bombardier Model BD-100-1A10 airplanes; comments due by 3-5-03; published 2-3-03 [FR 03-02422]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 141/P.L. 108–8
To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

Last List February 24, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.